

Town of Hamburg
Planning Board Meeting

June 16, 2010

Minutes

The Town of Hamburg Planning Board met in regular session on Wednesday, June 16, 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, David Bellissimo, Sasha Yerkovich, Karen Rogers and Brendan Lovullo.

Others in attendance included Andrew Reilly, Sarah desJardins and Richard Lardo.

Excused: Stephen McCabe, Attorney Cheryl McFaddon-Zak

Buffalo Computer Graphics

Mr. Reilly stated that the plan before the Board is not yet a full site plan and that the Board should decide whether it has enough information at this time to schedule a public hearing. He further stated that the Town Board did grant the applicant the ability to install a curb cut at this location with the condition that the Planning Board will determine whether a cross access with K-Technologies will be required.

Craig Peace, project architect from Carmina Wood Morris, stated that a single story 25,000 square foot building is proposed on Bayview Road and that 70 parking spaces are shown, although the applicant will seek a variance because that many spaces are not needed by the applicant. He further stated that "future building" areas and a "future parking" area are shown but that at this time the applicant only proposes to build the 25,000 square foot building.

Mr. Peace stated that the acre is 8.31 acres in size and that only five acres would be developed, noting that there are wetlands on the site that will not be disturbed. He further stated that this building would be the applicant's future headquarters.

Chris Zak, applicant, stated that the site is currently wooded and that one of his goals is to keep the site as natural as possible. He further noted that he plans to keep quite a large buffer of existing trees on the west side of the site, the building has been placed as far to the east side of the site as possible, set the building back as far from Bayview Road as is reasonable and to install plantings to bring back as much of the natural environment as possible.

Mr. Zak stated that he is aware of the Ravenwood North Industrial Park covenants and he believes this project exceeds those setback requirements. He further stated that, because only a small number of cars would come in to the parking lot, he would prefer to get some relief on the parking requirements.

In response to a question from Chairman Reszka, Mr. Zak stated that he was surprised to hear the Town Board resolve that the Planning Board would determine whether or not the cross access will be required because he thought he made it clear to the Town

Board at the outset that Buffalo Computer Graphics does not want a cross access. He further stated that he is not in favor of a cross access because of liability and logistical issues. He asked the Board members if this is something Buffalo Computer Graphics really needs and is it something they feel strongly about. He also noted that he has had no conversations with Jeff Kryszak (owner of K-Technologies) about this issue to date.

Mr. Reszka asked Mr. Zak if his insurance rates would be lower with the cross access installed, since the fire department would have a second way to access the site in case of an emergency. Mr. Zak responded that he does not know the answer to that question, adding that he does not know if K-Technologies' curb cut on Bayview Road will be engineered and built large enough to support vehicles that would be accessing the Buffalo Computer Graphics site. He further stated that it is his opinion that the proposed curb cut on this site should be more than adequate for fire vehicles in terms of turning radius and size.

Mr. Koenig asked what purpose cross access would serve. Mr. Reilly responded that it would keep vehicles that might want to go to both Buffalo Computer Graphics and K-Technologies from having to go in and out of the roadway, noting that the two businesses probably do not have the same customers. He further stated that originally there was only to be one curb cut onto Bayview Road and now that there will be two, the thought was that cross access would limit the number of vehicles entering and exiting Bayview Road.

Mr. Peace stated that the cross access could potentially become a cut-through for vehicles that enter Buffalo Computer Graphics and then use the cross access to get to Jeffrey Boulevard, noting that this would be a concern to the applicant.

Mr. Reilly stated that, because this issue was a condition of approval of the curb cut from the Town Board, the Planning Board must deal with it.

Mr. Zak stated that UPS and Fed Ex trucks delivers to Buffalo Computer Graphics on average once per day and semi tractor trailer truck deliveries happen very infrequently.

Chairman Reszka stated that, because the neighbors in the area have expressed concern regarding children having to walk on Bayview Road, he was wondering if the Planning Board could waive the cross access and the requirement of installing sidewalks along the applicant's frontage and instead have the applicant install the sidewalks on the opposite side of the road in the public right of way. He further stated that this would address the neighbors' concerns, as well as help keep the children out of the industrial area. He noted that he checked with the Town's legal department and was informed that the Planning Board does have the right to require that an applicant install sidewalks on property the applicant does not control.

Mr. Zak stated that he would entertain Chairman Reszka's idea but wondered where the sidewalk would begin and end. Chairman Reszka responded that he would like to see sidewalks installed from Riggs Street west to Highway Parkway.

Mr. Reilly stated that the law indicates that the applicant must install sidewalks along the frontage of the site, noting that the Planning Board would have to waive this

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requirement.

In response to a question from Mr. Koenig, Mr. Peace stated that the applicant would like to

install approximately ten less parking spaces than what is required.

Mr. Koenig made a motion, seconded by Mr. Lovullo, to schedule a public hearing for this project for July 21, 2010. Carried.

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

BHC Reload and Metal Processing

Chairman Reszka stated that the applicant asked to be tabled at this meeting.

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

Hamburg Senior Apartments

Chairman Reszka stated that the accident reports requested by the Planning Board have been received and noted that, according to the Hamburg Police Department, there have been no reported accidents between June 2007 and June 2010 at the intersection of Briercliff Drive and Amsdell Road as well as the intersection of Briercliff Drive and Cloverbank Road.

Mrs. desJardins stated that she spoke with Joseph Wenzel, Acting Director of the Town of Hamburg Department of Senior Services, and was informed that the department has the capacity to handle additional seniors and that it is extensive and flexible in its offerings. He further informed her that he is pleased to see the owners being proactive in establishing relationships with service providers to assist the future residents.

Chairman Reszka stated that the Board received a memo from Mr. Reilly summarizing the environmental aspects of this project and noted that he would be going through the document and that he might be asking for input from the audience, if necessary. He further stated that if any Planning Board member had any questions or concerns about any part of the memo as it was read, he or she could bring it up at that time.

Chairman Reszka read the following memo from Mr. Reilly:

“As you are aware, the Brierwood PUD project was the subject of an Environmental Impact Statement (EIS) process many years ago that resulted in Positive Findings for the project. Early on in the “construction” of the project, the Town received a great deal of input on how to process each phase of development as it was proposed. In accordance with SEQR and the legal advice received by the Planning Board, each project proposed was evaluated against the original EIS, additional information was asked for as needed, and decisions were made to either request a supplemental EIS or to determine that the project was in accordance with the EIS and would not have a

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significant impact on the environment. The Town has been very consistent in this process. For this proposed project, we have utilized the Full EAF, additional information submitted from the applicant and comments from the public and the attorney representing them, to gather information needed to make our decision.

- (i) In accordance with the SEQR regulations, Section 617.9 (7):
The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:
 - (‘a’) changes proposed for the project; or
 - (‘b’) newly discovered information; or
 - (‘c’) a change in circumstances related to the project.
- (ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:
 - (‘a’) the importance and relevance of the information; and
 - (‘b’) the present state of the information in the EIS
- (iii) If a supplement is required, it will be subject to the full procedures of this Part.

The following are the Planning Departments comments on the need for a supplemental; based on the information submitted to date and utilizing the format of Part II of the EAF:

“Impact on Land: No project changes have been made that would affect the impact on land in this area at the project site. The slope of land in the area had not changed, the paved parking area will be about the same, bedrock conditions have not changed, and there are no mining, sanitary landfill or floodway issues in the area. The original EIS acknowledged that this was a multi-phased project that would take many years to fully develop.”

Board members agreed with the above.

“Impact on Water: There are no protected bodies of water in this area of the Brierwood PUD and the project will not be significantly affecting any non-protected bodies of water. Since there are new stormwater drainage requirements (SPDES) that were not in place at the time of the EIS, the applicant will need to meet these requirements. Although this is a project change, meeting the new SPDES requirements will be more protective of the environment. This project area has always been shown as having multi-family housing and the impacts of this proposed project on water and sewer systems will be similar to those evaluated in the EIS. It has been noted that the present water and sewer systems are adequate to handle this project.”

Board members agreed with the above.

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“Impact on Air: No changes have occurred from the original EIS or due to this specific project that would result in any significant impacts on air.”

Board members agreed with the above.

“Impacts on Plants and Animals: No changes have occurred from the original EIS or due to this specific project that would result in any significant impacts on plants and animals.”

Board member agreed with the above.

“Impact on Agricultural Land Resources: There are no agricultural land resources in this area.”

Board members agreed with the above.

“Impacts on Aesthetic Resources: No changes have occurred from the original EIS or due to this specific project that would result in any significant impacts on Aesthetic Resources. It must be noted that the site has always been planned for multi-family housing (either large units or more numerous smaller units). Like with all projects in the Town requiring site plan approval, and as contemplated in the original EIS, individual site plan review will address issues of aesthetics of the design (proper landscaping and survey will be included in the site plan).”

Board members agreed with the above.

“Impacts on Historic and Archaeological Resources: There have been no significant historic or archaeological resources identified in this area.”

Board members agreed with the above.

“Impacts on Open Space and Recreation: The issue of open space and recreation was thoroughly discussed in the original EIS and subsequent studies done on this project. The current proposed project is in conformance with the plans for open space and recreation; including the Heart Trail and recreation areas on the site. It must be noted though that the proposed area for “Recreation” is smaller than that shown as the “tot lot” area on the previously approved plans. The applicant has argued that the overall areas required for open space and recreation are greater than that originally proposed and therefore this smaller area is not significant. We believe that the Planning Board can address this issue during site plan review by making sure the site has the amenities necessary for the seniors living there and/or requiring additional improvements or ‘payments in lieu’ to the Town.”

Mr. Reilly stated that it is clear that the proposed recreation area is smaller than what is shown on the original Open Space Plan that was re-adopted by the Town in approximately 2003, noting that the applicant is proposing amenities for seniors, instead of a tot lot. He further stated that the Planning Board can ask for additional amenities during Site Plan Review, if it so chooses or it can ask for payments in lieu of recreation space.

Mr. Koenig stated that this change in the amount of open space is not significant enough to warrant a supplement to the Environmental Impact Statement.

Mr. Reilly stated that the Heart Trail will have to be constructed per the above-mentioned Open Space Plan.

“Impacts on Critical Environmental Areas: There are no CEAs in this area.”

Board members agreed with the above.

“Impacts on Transportation: The site has always been shown as having multi-family housing and the original EIS and follow-up traffic studies have always shown over 80 units at this location. The current proposed development has less than 80 units and the applicant has also argued that these units, being for seniors, will also generate less traffic than the originally proposed multi-family housing units. This amount of units (whether senior or not) would generate peak hour trips in accordance with previous studies and represents hourly trip generation rates (7-29 trips per hour) in ranges that normally would not require additional traffic studies. We have found no changes in conditions that would indicate a significant impact on transportation.”

Mr. Reilly stated that the above section of the memo should be supplemented with the recently received traffic accident counts.

Board members agreed with the above.

“Impact on Energy: There will be no significant impacts on Energy.”

Board members agreed with the above.

“Noise and odor impacts: The project area has always been proposed for multi-family housing and no significant impacts from noise and odor have been identified for this type of use in this area (no sensitive noise receptors and due to its location adjoining a railroad line). It has been suggested by a resident that although the project will not generate significant noise, the project’s proposed residents should be protected from railroad noise by the installation of sound proofing in the units. This is not a bad idea and the applicants will probably include this because it will probably be a HUD requirement.”

Mr. Reilly stated that, regarding the possibility of sound proofing in the units, the

Planning Board does not usually get involved in building construction issues, but it could be

suggested to the applicant, as it is not a bad idea.

Board members agreed with the above.

“Impact on Public Health and Safety: Although there have been no significant changes to the project, this issue has been the most difficult to analyze. Questions concerning the location of “senior housing” so close to an active railroad line have raised concerns about the safety of the proposed residents. The Fire Department has gone on record with their concerns about the ability to evacuate these seniors if there were a major accident or spill in this area. The applicants have argued that the site plan does propose a buffer which is greater than, or equal to, the prescribed buffer requirement (50 feet) in the Town’s subdivision regulations. They also argue that the proposed housing is not assisted living and the residents, like all of the other residents along the railroad, will be able to evacuate themselves. They have also provided data that illustrates that accidents have decreased on railroads in this decade.

Another issue that has raised concerns is the potential contamination of the site. It has been reported by one individual that the site was subject to dumping in the past. The applicant has completed a Phase I Environmental Audit which concluded that there were no issues of potential contamination.”

Chairman Reszka stated that Mrs. Rogers has brought up the issue of soil testing on a number of occasions and asked Mr. Reilly if, as part of HUD’s funding procedures, the applicant would have to perform soil testing. Mr. Reilly responded that HUD would do due diligence when approving funding for a project such as this one, noting that if HUD were to require soil testing and the results were not favorable, the project would not be funded by HUD. He further noted that the applicant did have a Phase I audit done on the site per the American Society of Testing Materials.

Mr. Reilly stated that if the Planning Board does move forward with this project, it could require the applicant to provide information proving that there is no problem with soil contamination before building permits are issued for the buildings.

Chairman Reszka asked whether, if the project goes ahead but is not funded by HUD, the Planning Board can require that the soil be tested at the time of Site Plan Approval. Mr. Reilly responded that the Board could make that a reasonable condition of approval.

Chairman Reszka stated that, during the last three years that he has been a member of the Planning Board, every time a project has been proposed near railroad tracks there has been opposition because of safety concerns. He further stated that he done a lot of research and has learned that there is no recognized standard for a safe distance from a railroad.

“Impact on Growth and Character of Community and Neighborhood: The Brierwood PUD is a planned development that throughout its planning period has always depicted multi-family housing in this area of the site and therefore is in conformance with the Town’s Comprehensive Plan and the plan for this area. No changes have occurred that

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would significantly impact the growth and character of the community or its neighborhood. It must be clearly noted that the issues of the income or age of the residents are not issues that we can consider for character issues of the community or neighborhood. As to the issue of

seniors, as it relates to community services; the project will have less of an impact on schools, but potentially some additional demand for emergency services. The Hamburg Senior Department has stated that this will not impact its ability to provide services.”

Board members agreed with the above.

Chairman Reszka directed the Planning Department to prepare a resolution for the Board’s next meeting stating that an SEIS (Supplemental Environmental Impact Statement) will not be required. He further stated that the resolution should include reasoning for this decision and noted that the Board will review it, amend it as necessary and vote on it on July 7, 2010.

Mr. Bellissimo made a motion, seconded by Mrs. Rogers, to table this project to the Board’s next meeting. Carried.

Mr. Reilly stated that Donald Wiess, Hamburg resident, submitted a Freedom of Information Act request and noted the following regarding the information that has been requested:

1. Mr. Wiess requested the permits for soil removal at the Briercliff Senior Apartments site (Brierwood Development Phase 3). The Building Inspector has indicated that there are no soil permits at that location because they did not have soil permits at that location.
2. Mr. Wiess requested permits for site preparation for the quarry area of Phase 3, Briercliff Drive, proposed senior apartments site from 1991 to present. The Building Inspector has indicated that there are permits, but they are standard permits for construction and do not have any information relative to Mr. Wiess’ request.
3. Mr. Wiess requested soil testing results from Brierwood Phase 3 (quarry area). There are no soil testing results because the Town of Hamburg did not ask for any soil testing.
4. Mr. Wiess requested reports of flooded basements on Briercliff Drive. The Building Inspector has indicated that there have been some reports of flooded basements on Briercliff Drive. Mr. Lardo stated that there is one home that flooded twice, noting that the first time the culvert was found to be plugged and the second time the area experienced a storm in excess of one hundred years.
5. Mr. Wiess requested maps of gas wells in the quarry area, Phase 3. Mr. Reilly stated that he is not aware of any gas wells on the site and further noted that he would not know where to look in the old records for any maps of gas wells on the site.
6. Mr. Wiess requested any reports or communications regarding four gas wells on the site. The New York State Department of Environmental Conservation (NYSDEC) indicated that any gas wells on the site have to be capped to NYSDEC standards.

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7. Mr. Wiess requested communication with NYSDEC concerning soil testing, toxic materials and gas wells. Mr. Reilly stated that he knows of no correspondence with NYSDEC about soil testing and further noted that, relative to this project before the Planning Board, there has been no communication with NYSDEC concerning any of the above issues.
8. Mr. Wiess requested the policy on recreation fees for the senior apartments, Phase 3. There has been a policy regarding the Brierwood Planned Unit Development (PUD) that the Town of Hamburg has not collected recreation fees in any of the phases due to the

construction of the Heart Trail and the other open space connected with the PUD. Mr. Reilly stated that, because the open space associated with this current proposal is smaller than what was originally planned for this site, the Planning Board may choose to collect recreation fees or additional amenities.

Mr. Donald Wiess stated that he is simply trying to bring the major issues to the Board's attention, noting that it is the Board's decision whether or not to require an SEIS. He further stated that he is in favor of this project but worries about locating residents so close to the railroad tracks and the noise problems that could arise.

Mr. Wiess stated that the Planning Board minutes of 1993 stated that a recreation fee of \$500 per unit would be collected. Mr. Reilly stated that he will research this discrepancy.

Mr. Wiess stated that, at the Planning Board's last meeting, Chairman Reszka stated that the issue of the gas wells on the site has been taken care of. He further stated that there is a gas well on the site, noting that he recently showed the Building Inspector its approximate location (near proposed building #12). He stated that if the Planning Board allows construction over a gas well, there could be leaching of gases.

Mr. Reilly stated that he will add a discussion about gas wells on the site to the memo the Chairman read this evening and further noted that he will look for correspondence from NYSDEC regarding this issue. He stated that the resolution for the Board's next meeting will include a condition that if there are any gas wells on this site, they will be capped to State standards.

In response to a question from Chairman Reszka, Christopher Dirr, applicant, stated that this project will not be funded through HUD. He further stated that as part of due diligence, scattered soil borings were done on the site to determine the soil bearing capacity and if anything unusual had come of those soil borings he would have been made aware of it.

In response to a question from Mr. Reilly, Mr. Dirr stated that the project would be funded by the Division of Housing and Community Renewal.

Dan Gross, member of the audience, stated that the Planning Board has previously indicated that it cannot consider the impact of potential residents' income or age when reviewing a project and asked if a specific law can be cited to that effect. Mr. Reilly stated that he would forward to Mr. Gross the federal law that applies.

Mr. Gross asked if the residents of the Brierwood PUD Neighborhood Association and other interested parties can request a meeting with the developer of this proposed project. Mr. Dirr

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responded that he would be happy to meet with the residents.

Mr. Gross asked if a single entrance to the site from Cloverbank Road has been considered.

Engineering Department comments have been filed with the Planning Department.

Mr. Koenig made a motion, seconded by Mr. Bellissimo, to approve the minutes of June 2, 2010. Carried.

Mr. Bellissimo made a motion, seconded by Mr. Koenig, to adjourn the meeting. Carried.

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

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board