

Town of Hamburg  
Planning Board Meeting

September 16, 2009

Minutes

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

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

**Public Hearing – Hasenoehrl Minor Subdivision**

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will hold a public hearing on a two-lot subdivision known as the Hasenoehrl Two-Lot Subdivision to be located on the east side of Smith Road on September 16, 2009 in Room 7B of Hamburg Town Hall at 7:30 P.M.”

Mr. Hasenoehrl, applicant, appeared on behalf of the proposed subdivision, stating that his intent is to split a vacant parcel into two lots, noting that he plans to sell the southern lot and that his neighbor, Mr. Lindstrom, has the first right to purchase it if he is interested. Mr. Hasenoehrl further stated that he does not intend to sell the northern lot at this time but he wants his wife to be able to do something with it if something happens to him in the future. He noted that if there is a need to sell the second lot in the future, and his family members are not interested in it, he will make it available for purchase to his adjacent neighbors, as well as the neighbors across the street from the lot.

Chairman Koenig confirmed with the applicant that he was granted a variance on September 1, 2009 from the Zoning Board of Appeals to create two lots that have less area than what is required.

Mr. Reilly stated that the applicant had a perc test performed on each potential lot.

Mr. Reilly stated that the South Central Overlay District gives the Planning Board the power, if it chooses, to increase the bulk requirements for building lots by 50%, meaning that each lot would have to be three acres in size. He noted that the Board has this tool at its disposal so that it can encourage developers to preserve the character of the area. He asked Mr. Hasenoehrl if he would consider placing a conservation easement on certain areas of the lots in order to preserve some of the trees as Mr. Reilly suggested at the last meeting. Mr. Hasenoehrl responded that he would be willing to place a conservation easement on the property.

Mr. Reilly paraphrased the following letter from Mr. Mark Lorquet, Conservation Advisory Board member and Smith Road resident, to the Planning Board:

"The issue we have with this subdivision is that the master plan states that we are to protect and enhance the agricultural opportunities, preserve and conserve the important lands and rural nature. And to discourage suburban development without disregarding economic survival and some growth opportunities. This area of Smith Road is in the middle of the South Central overlay district that was sponsored by Mark Cavalcoli years back, to protect the important Ag district. If the board waives the requirements for this subdivision we will lose trees, habitat for the wildlife that lives in this area and destroy the views for the resident of Smith Road. We cannot continue cutting up the south central overlay district, example the 40 acres at Route 20 and Amsdell Road that was in this district was turned into an ugly PUD development simply for revenue opportunities with disregard for the 2010 master plan and the residents in this town. If we continue to push the farmers out of town we will have lost everything this town has stood for because of the actions of a few on our planning board and zoning board of appeals with total disregard to the 2010 master plan. Maybe it is time to get attorneys involved with the decisions being made by a few that are impacting many residents in our great town."

Mr. Reilly noted that, although the applicant received a variance from the Zoning Board of Appeals to create two 1.7-acre parcels, the Planning Board still has the right to impose the 50% increase in lot area. He further clarified that if the Planning Board does not waive the increase in area, the applicant will not be able to split the parcel and will only be able to sell it as a single building lot.

Mr. Reilly stated that if one of the Board's conditions of approval is that a conservation easement must be placed on each lot, it would be in the name of the Town of Hamburg, meaning that the Town of Hamburg would have the right to enforce the preservation of the trees in the easement area.

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. Jeremy Lindstrom, 50 Sharon Avenue, stated that he is the son of the adjacent neighbor and farmer, Mr. William Lindstrom. He stated that his concern is that this property is located in the South Central Overlay District and he feels that the Board should insist that the size of the lots be increased by 50%, per the Code. He further noted that he is concerned that most of the surrounding neighbors were not notified by the Zoning Board of Appeals of the variance request and did not know about the variance being granted until after the fact. He stated that if the applicant is allowed to split this property, it will affect his family and his father's farm and would like the property preserved as it is today and the character of the neighborhood preserved. He stated that the applicant should have to follow the rules of the Town and questioned why the Board would allow the applicant to infringe on the green space and the intent of the South Central Overlay District. He further stated that he is concerned about the poor drainage in the area.
2. Jim Yeager, 5860 Smith Road, stated that over the last fifteen years, numerous new homes have been built on Smith Road and he would like to see this land remain in its existing state or just one home built on the property. He is

concerned about his property value if two homes are built across the street and about the water table in the area. He is unhappy that he was not notified by the Zoning Board of Appeals regarding the applicant's variance request. He asked what effect two more homes and septic systems would have on the existing water table.

3. Bob Reynolds, Erie County Legislator and Chairman of the Erie County Farmland Protection Board, stated that one of the Board's objectives is to make sure that at least 50% of the land in this area remains farmable and suggested that the applicant look into land conservation, as timberland is considered agricultural land. He further stated that this property is located very close to an Erie County Agricultural District and noted that Erie County and the Town of Hamburg both have a Right to Farm law.
4. Jason Lindstrom, 6788 Vail Drive, stated that he grew up on the farm adjacent to this property and his father's intent has always been to keep his land as farmland. He would like to see the Hasenoehrl property remain as one lot and not be divided.
5. Art Wind, 5842 Smith Road, stated that he does not want to see multiple homes built on Smith Road and does not want the Town to grant variances for these properties. He also has concerns regarding drainage in the area.

Chairman Koenig declared the public hearing closed.

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

Engineering Department comments have been filed with the Planning Department.

### **Public Hearing - K-Technologies**

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 K-Technologies regarding property located at 4199 Bayview Road. The applicant proposes to expand the parking area and construct a new curb cut onto Bayview Road. In accordance with the Town of Hamburg site plan ordinance, a public hearing will be held on September 16, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall."

Jeff Kryszak, owner of K-Technologies, appeared on behalf of the proposed project, stating that his business is currently located on Abel Road and, because his company has grown substantially, he would like to expand at the Bayview Road location. He further noted that he recently purchased a company in Boston, Massachusetts with 50 employees and he now has the opportunity to either grow the company in Boston or Hamburg. He stated that he looked at 41 different buildings in Hamburg and decided that this building on Bayview Road best suits his needs. He further noted that his business would not occupy the entire building, another company has shown interest in occupying the rest of the building and additional parking spaces

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are necessary to accommodate the number of employees that would be located in the building. He stated that a new curb cut is necessary on Bayview Road so that employees on the south side of the building have better access and that the proposed curb cut is located in the safest area of Bayview Road.

Mr. Reilly stated that this property was part of the Ravenwood North Industrial Park, which was the subject of an Environmental Impact Statement (EIS) several years ago. He noted that when the EIS was done, one of the stipulations in the Findings Statement was that there would only be one access to Bayview Road, which was never installed and is not located where the applicant proposes the curb cut. He stated that the Town Board would have to pass a resolution stating that the condition of the EIS regarding the curb cut onto Bayview Road will be changed and that the applicant's proposed curb cut onto Bayview Road is acceptable to the Town of Hamburg. Mr. Reilly further stated that the Planning Board cannot act on the site plan approval request until the Town Board decides whether or not the curb cut will be allowed where it is currently proposed.

Mr. Reilly stated that, in general, the proposal meets the zoning requirements of the Town, although the covenants and deed restrictions of the Industrial Park indicate that there is to be twenty (20) feet of green area along Bayview Road. The Board discussed who would be involved in researching the deed restrictions for the Industrial Park.

Mr. Reilly questioned the intent of the proposed volleyball courts, noting that the neighbors do not want them used for commercial purposes and that the Town would not allow the courts to be lit for night time use and would want the courts to be simply an amenity for employees.

Chairman Koenig stated that the Traffic Safety Advisory Board (TSAB) did not have a problem with the curb cut as proposed. Mr. Reilly responded that the Town Board has asked that the proposal go back to the TSAB for further review.

Attorney McKenna stated that Attorney Zak has a conflict and therefore will not be able to participate in any research to be done on this project.

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. Julianne Eich, 4214 Bayview Road, stated that she maintains Jackson Street (a paper street) and that it is her driveway and access to Bayview Road, noting that the proposed curb cut is across the street from her driveway. She is concerned about the restrictive covenants regarding the Industrial Park and would like them to be adhered to. She is also concerned about the proposed parking spaces along Bayview Road and their proximity to Bayview Road. She stated that there is a petition signed by all of the neighbors, none of whom support the new curb cut. She is concerned about the heavy volume of traffic coming from the Industrial Park.
2. Carole Gillette, 4035 Harwood Avenue, asked if an internal traffic study has been requested by the Planning Board, noting the large number of parking spaces being proposed. She feels that the proposed parking spaces along Bayview Road are too close to the road, as Bayview Road is very narrow and has no sidewalks.

Chairman Koenig declared the public hearing closed.

It was determined that there are no identified wetlands on this site.

It was agreed that Attorney McKenna and Mr. Reilly will research the deed restrictions and restrictive covenants of the Industrial Park.

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

Engineering Department comments have been filed with the Planning Department.

### **Public Hearing – Battery Post**

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 The Battery Post regarding property located at 4109 St. Francis Drive. The applicant proposes to construct an addition to the existing building. In accordance with the Town of Hamburg site plan ordinance, a public hearing will be held on September 16, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall.”

Jeff Logsdon, owner of the Battery Post, appeared on behalf of the proposed project, stating that his business is growing and he needs to expand.

Mr. Reilly stated that the Engineering Department comment letter indicates that the site is not in conformance with the previously approved site plan.

The Board discussed the proposed gate with Don Gallo, engineer for the project, and after discussion, the applicant decided to remove the gate from the site plan.

Regarding whether or not the parking and storage areas were to be paved, Chairman Koenig stated that the applicant’s previously approved site plan indicated that these areas would be paved, but the applicant applied millings instead. Mr. Logsdon responded that the millings that were put down were of a very high quality and have become so solid that he does not feel the areas need to be paved at this time. It was determined that the current site plan indicates that millings will be put down, which is acceptable to the Planning Board.

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. No one spoke.

Chairman Koenig declared the public hearing closed.

Chairman Koenig stated that the Traffic Safety Advisory Board had no adverse comments regarding this proposal.

Mr. Phillips made a motion, seconded by Mr. McCabe, to issue a Negative Declaration and grant Conditional Site Plan Approval for this project, subject to the following conditions:

1. Approval is subject to the Engineering Department comment letter dated September 16, 2009.
2. The gate shown on the site plan will be removed.

Carried.

Engineering Department comments have been filed with the Planning Department.

### **Public Hearing – Sargeant Minor Subdivision**

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will hold a public hearing on a two-lot subdivision known as the Sargeant Two-Lot Subdivision to be located on the southeast side of Sowles Road and Fairgrounds Road on September 16, 2009 in Room 7B of Hamburg Town Hall at 7:30 P.M.”

Mr. Rod Sargeant appeared on behalf of the proposed subdivision, stating that he would like to divide the subject property into two parcels.

It was determined that the property is zoned R-1, no wetlands exist on the site and the proposed subdivision meets or exceeds all requirements per the Town Code.

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. No one spoke.

Chairman Koenig declared the public hearing closed.

In response to a comment made by Mr. Reilly regarding preserving trees on the site, Mr. Sargeant stated that he has had a developer review the site and has learned that most of the trees in the interior of the site are dead and the only trees worth saving are on the exterior of the property. He further stated that he plans to save every tree possible.

Mr. Phillips made a motion, seconded by Mr. Taber, to issue a Negative Declaration and grant Preliminary Approval to this subdivision with the following conditions:

1. Approval is subject to the Engineering Department comment letter dated September 16, 2009.
2. The installation of public sidewalks shall be waived.
3. The filing of a Map Cover shall be waived.

Carried.

Engineering Department comments have been filed with the Planning Department.

### **J. P. Fitzgerald's**

Daryl Martin, architect, representing the applicant, stated that a six (6) foot board on board fence has been added to the site plan and is proposed to be installed from the westernmost point of Attorney Spinner's building east to the property line and then north to the dumpster, which will be enclosed by the fence.

The Board discussed whether signage should be required indicating that left turns will not be allowed from the new driveway onto South Park Avenue.

Mr. Phillips made a motion, seconded by Mr. Reszka, to issue a Negative Declaration and grant Conditional Site Plan Approval to this project with the following conditions:

1. Approval is subject to the Engineering Department comment letter dated September 16, 2009.
2. Signage shall be installed indicating that only right-hand turns are allowed from the new driveway onto South Park Avenue.

Carried.

Engineering Department comments have been filed with the Planning Department.

### **Tim Horton's**

Robert Bender from Tim Horton's appeared on behalf of the proposed project, stating that the current site plan shows a 1,640 sq. ft. building, 19 parking spaces and a queuing line for 17 vehicles. He further stated that since the Board's last meeting he met with the neighbors to the east and south of the property and had the following to report: Because the neighbor to the south has for years used the property Tim Horton's is proposing to develop to access his property from South Park Avenue, the Tim Horton's project as proposed would eliminate the neighbor's ability to access his property using the Tim Horton's parcel. Mr. Bender stated that in order to accommodate this neighbor, the site plan has been pulled over closer to East Frontier and the width of the drive-thru lane has been reduced by one (1) foot. In addition, Tim Horton's intends to sell the neighbor a sixteen (16)-foot strip of land so that he can continue to have access to his property from South Park Avenue.

Mr. Bender stated that the neighbor to the east of this site has for years enjoyed use of the land east of the existing building (to be demolished), although he does not own this land. Mr. Bender noted that, in order to reduce the impacts of this project on this neighbor, the parking spaces along South Park Avenue have been eliminated, the building has been moved closer to South Park Avenue to get it a bit further away from the neighbor and the site plan has been condensed as much as possible. He stated that Tim Horton's intends to install an eight (8)-foot board on board fence along the east property line, ensure that the lights for the drive-thru do not impact the neighbor, replace or modify certain areas of the neighbor's existing fence and sell as much of the eastern portion of the Tim Horton's parcel to the neighbor so that he can continue to enjoy it.

The Board discussed the fact that a small portion of this property is located in the Town of Hamburg, while the majority of the site is in the Village of Blasdell and what options exist to remedy this. It was determined that the Village of Blasdell will probably annex the Town portion of the property.

Mr. Lardo stated that two (2) 36-inch storm sewers exist in the strip of land Tim Horton's plans to sell to the neighbor to the south and must be shown on the site plan.

Chairman Koenig stated that the Traffic Safety Advisory Board (TSAB) recommends that a northbound deceleration lane be installed on South Park Avenue to prevent traffic stacking on the highway.

Mr. Phillips made a motion, seconded by Mr. McCabe, to forward a positive recommendation to the Village of Blasdell regarding this proposal, noting that the Village of Blasdell should be Lead Agency, a Negative Declaration is recommended and that approval of this project should be granted by the Village. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Old Time Baptist Church**

Chairman Koenig stated that the applicant has asked the Planning Board to table this proposal.

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

Engineering Department comments have been filed with the Planning Department.

### **First Wind**

Josh Bagnato and David Velez from First Wind appeared before the Board to provide an update on the windmill project (Steel Winds II) that was approved by the Planning Board and the City of Lackawanna in March 2008.

Mr. Velez stated that First Wind is a Massachusetts-based company that formed a joint partnership with BQ Energy (which proposed the first windmill project in Lackawanna and obtained approvals for it). He stated that First Wind plans to purchase the Steel Winds II project from BQ Energy and develop, own and operate the project.

Mr. Bagnato stated that the minor changes to the project include the following: The project has been scaled back from five (5) turbines in Hamburg to three (3), the locations of the turbines have been changed slightly and two (2) access roads are proposed instead of one (1).

It was determined that the proposed windmills are further away from residences than the originally proposed windmills were.

Mr. Phillips made a motion, seconded by Mr. McCabe, that, because the changes to the plan are minor in nature and fewer windmills are proposed, Site Plan Approval and Special Use Permit do not need to be reissued. Further, an extension to the original Site Plan Approval shall be granted and the Engineering Department is authorized to review the project under the conditions of the granted Special Use Permit and the Engineering Department review letter. Carried.

Mr. McCabe made a motion, seconded by Mrs. Rogers, to approve the minutes of September 2, 2009 as amended. As there were four (4) ayes and one (1) abstention (Mr. Reszka), the motion carried.

Mr. McCabe made a motion, seconded by Mrs. Yerkovich, to adjourn the meeting. Carried.

The meeting was adjourned at 9:45 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board