

Town of Hamburg
Planning Board Meeting
October 18, 2017
Minutes

The Town of Hamburg Planning Board met for a Work Session at 6:30 P.M., followed by a Regular Meeting at 7:00 P.M. on Wednesday, October 18, 2017 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O'Connell, Vice-Chairman William Clark, Doug Schawel, Augie Geraci, Dennis Chapman, Robert Mahoney and Al Monaco.

Others in attendance included Town Planners Andrew Reilly and Sarah desJardins, Assistant Municipal Engineer Rick Lardo and Attorney Mark Walling.

Chairman O'Connell announced that the Board would not be discussing the Tim Hortons project at the request of the applicant. He stated that there will be a meeting on November 6, 2017 between the applicant and the nearby property owners, and property owners will be notified of the meeting by the applicant.

WORK SESSION

Buffalo-South Motor Inn, Inc. - Requesting Preliminary Plat Approval of a two-lot subdivision to be located on Milestrip Road @ I-90

Chris Wood from Carmina Wood Morris, representing the applicant, stated that the applicant proposes to subdivide out the .063 acre portion of the site for the proposed fueling facility.

Mrs. desJardins stated that the subdivision meets all zoning code requirements.

In response to a question from Chairman O'Connell, Mr. Wood stated that currently there are three (3) curb cuts onto Milestrip Road from this property, and the middle curb cut will be eliminated with the construction of the fueling facility. He further stated that no curb cut for the fueling facility is proposed, but there would be easements between the two (2) parcels for access. He noted that the applicant proposes to subdivide the fueling facility from the larger parcel for tax purposes.

In response to questions from Board members, Mr. Wood stated that a curb cut onto Milestrip Road from the fueling facility parcel would not be possible.

In response to a question from Chairman O'Connell, Mr. Wood stated that when he spoke to representatives of the New York State Department of Transportation (NYSDOT), he was advised to remove the middle curb cut.

Mr. Wood stated that in the future, he plans to return to the Board with a master plan for the entire site. He noted that the existing hotel will probably not be there in the future. He stated that the master plan will have a better reconfigured entrance for the entire site.

Mr. Clark made a motion, seconded by Mr. Chapman, to schedule a public hearing to be held on November 1, 2017. Carried.

Engineering Department comments have been filed with the Planning Department.

Buffalo Fit Meals - Requesting Site Plan Approval of a proposal to operate a commercial kitchen at 6638 Gowanda State Road

Ralph Sardo, applicant, stated that he and his son are proposing to operate a commercial kitchen in a building that is already constructed on his property, which is zoned C-1 in the front and R-A in the rear. He stated that the business would be a health food oriented meal prep company that would deliver affordable nutritious meals.

Mr. Sardo's son stated that currently they have a Home Business designation, and they would like to go to a commercial designation at this time.

It was determined that a majority of the existing building is located in the R-A District, and it was further determined that a determination from the Supervising Code Enforcement Official (Kurt Allen) will be required regarding this issue.

Mrs. desJardins stated that the applicants put a sign (which they received a Building Permit for) on the front of the building, but advertising is not permitted for Home Businesses. She stated that once the Building Department was made aware that the signage was not permitted, the applicant removed it.

Mrs. desJardins stated that as a result of discussion relative to the signage issue, Mr. Allen determined that the applicants must apply for Site Plan Approval of this business.

In response to a question from Mr. Clark, Mr. Sardo's son stated that everything would be "to go", and nothing would be consumed on the property.

In response to a question from Mr. Clark, Mr. Sardo's son stated that the business is not currently in operation.

Mr. Sardo was informed that only one (1) driveway will be allowed on this property because that was a condition of the rezoning approval from the Town Board.

Mr. Clark made a motion, seconded by Mr. Mahoney, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

REGULAR MEETING

Public Hearing, 7:00 P.M. Michael Jablonski - Requesting re-approval of a Special Use Permit to erect a residential wind energy conversion system on property located at 3134 Old Lakeview Road (original Planning Board approval granted on May 18, 2016)

Chairman O'Connell stated that the wind turbine that was previously approved was considered agricultural per New York State Agriculture & Markets standards, but the newly located wind turbine being proposed now is not considered agricultural per the applicant.

Mr. Joe Green, representing the company that would be installing the proposed wind turbine, submitted a letter to Board members written by his company's in-house legal counsel regarding the removal bond that is required by Town Code for a residential wind turbine. He stated that the letter outlines reasons why his company would request that the Board waive that requirement. He noted that his company has installed over 70 such wind turbines in western and central New York, and none has required a removal bond. He stated that his company has been asked to supply a removal bond by some communities, but after having demonstrated how its program works and how the contracts are set up, no governing body has required the removal bond.

Mr. Green stated that if a removal bond were required, it would make this project financially unfeasible for his company and for Mr. Jablonski. He stated that United Wind would maintain ownership of the wind turbine the entire time it is under lease to Mr. Jablonski, and under that 20-year term United Wind would provide a warranty that is good for the entire system, parts, labor and maintenance. He further stated that two (2) types of insurance would be provided by United Wind on the equipment.

Mr. Green stated that at the end of the 20-year term, Mr. Jablonski would be able to either continue to lease the equipment from United Wind for an additional ten (10) years or direct United Wind to remove the equipment from his premises. He stated that if Mr. Jablonski decided to continue leasing the equipment at the 20-year mark, he would have the same two (2) options ten (10) years later.

Mr. Green stated that one (1) of the benefits Mr. Jablonski would get through the wind lease is that United Wind would guarantee the production of the wind turbine. He noted that United Wind would sign up for a certain number of kilowatt hours of electric production during every year of the lease, and if United Wind falls short, it would be responsible to make up the difference and would write Mr. Jablonski a check for that difference.

Mr. Green stated that people who lease these wind turbines do not make money, but rather they save money. He stated that all of the energy that would be produced by Mr. Jablonski's wind turbine would be produced at a lower cost to him, so he would end up saving some money.

In response to a question from Chairman O'Connell regarding what would happen if United Wind goes bankrupt during the 20 years Mr. Jablonski leases the wind turbine, Mr. Green stated that United Wind is headquartered in Brooklyn because its wind lease program leverages some incentives that are available on the market today. He stated that some of the incentives are depreciation on the wind turbines and investment tax credits that are available through the Internal Revenue Service, and United Wind has attracted tax equity partners that have invested in what it is doing because they are attracted to those tax benefits. He stated that if United Wind went bankrupt, those investors would be responsible for maintaining the contracts with people like Mr. Jablonski.

Attorney Walling stated that the above comments by Mr. Green do not eliminate the discussion about a removal bond. He noted that according to Mr. Green, the entities have a stake in the continued success of United Wind, but the issue of the removal bond remains the same.

Attorney Walling stated that the Town Code requires that a removal bond be obtained.

Mr. Clark asked Mr. Green to list the other municipalities in which United Wind put up wind turbines and were not required to obtain removal bonds. Mr. Green stated that Fredonia is one of the municipalities that requested a removal bond and then removed that requirement after hearing how United Wind operates. He noted that he was not aware of which other municipalities did not require a removal bond.

It was determined that Mr. Reilly would investigate whether Fredonia's Town Code requires a removal bond or if requiring the removal bond was something the Town was simply looking into.

Mr. Green agreed to research which other municipalities did not require removal bonds and submit his findings to Mr. Reilly, who will then forward that information to Attorney Walling.

Mr. Clark stated that the Town of Hamburg has a law that requires that a removal bond be obtained, and he would like to follow that law.

Mr. Mahoney asked Attorney Walling if the Board would be setting a precedent by requiring a removal bond for a wind turbine on private property. Attorney Walling responded that it is not an issue of precedent. He noted that if there is a Town statute, and the Board decides not to follow that statute, then that might be setting a precedent for anyone wishing to erect a wind turbine in the future.

Attorney Walling stated that the Planning Board's authority is created by the Hamburg Town Board, and therefore the Planning Board is supposed to be following whatever laws Hamburg has. He stated that a requirement can be waived by the Planning Board, but it would have to have a specific reason for doing so.

Chairman O'Connell stated that he believes that the Board is dealing with Mr. Jablonski and not United Wind. He stated that Mr. Jablonski's contract with United Wind is his business. He stated that if United Wind goes bankrupt, he worries that the Town may be stuck with a wind turbine without a removal bond that could rot and eventually fall down.

Mr. Clark stated that Mr. Jablonski can enforce his contract with United Wind, but the Town of Hamburg is not a party to it and cannot do anything if it does not like the way things are going.

Mr. Schawel stated that without a removal bond, the Town would have no "teeth" to make Mr. Jablonski have the wind turbine removed if something happened to it. He noted that if the Town thought the wind turbine needed to come down, it could not force United Wind to take it down because the contract would be between United Wind and Mr. Jablonski.

Chairman O'Connell stated that the removal bond would be for the Town's protection and not Mr. Jablonski's.

Mr. Green stated that to his knowledge, United Wind is the only company in the country that is offering wind turbines under a lease program.

Mr. Clark stated that his concern is that the Town of Hamburg has no ability to enforce the contract between United Wind and Mr. Jablonski. Chairman O'Connell concurred and stated that the Town of Hamburg needs protection, and that is what the removal bond would be for.

In response to a question from Chairman O'Connell, Mr. Jablonski stated that he did notify the property owners within 1,000 feet of his property and noted that there were three (3) property owners affected.

Chairman O'Connell advised Mr. Jablonski that there are 68 property owners within 1,000 feet of his property. He gave Mr. Jablonski a list of the property owners, along with a map showing their properties' locations, that was generated by Mrs. desJardins utilizing the Town's GIS system.

Chairman O'Connell stated that the public hearing would be held and kept open until proof is submitted that the property owners within 1,000 feet have been notified.

Mr. Schawel 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 Michael Jablonski to erect a residential wind energy conversion system on

property located at 3134 Old Lakeview Road. The public hearing will be held on October 18, 2017 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

Chairman O’Connell declared the public hearing open. The following people spoke:

- Attorney Corey Auerbach from Barclay Damon stated that his client, National Grid, owns the property directly to the east of Mr. Jablonski’s property. He stated that National Grid is not in opposition to the proposal as long as the tower is constructed in compliance with the Town of Hamburg’s setback requirements. He stated that if, at any time, the tower height is increased, his client’s expectation would be that the facility will be moved so that it remain in compliance with the setback requirements.
- Michael Jablonski stated that he believed that when Mrs. desJardins ran the GIS program to get a list of property owners within 1,000 feet of his property, she erred because he believed the program probably included the 100 acres he used to own, and now he owns less property.

Chairman O’Connell advised Mr. Jablonski to contact Mrs. desJardins to discuss his concerns.

- Mr. Green asked if there is a form used for notifying nearby property owners and if proof of notification is required.

Chairman O’Connell made a motion, seconded by Mr. Mahoney, to table the public hearing until the Board’s November 1, 2017 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing, 7:00 P.M., 3580 Southwestern Boulevard, LLC - Requesting Site Plan Approval of a parking lot expansion to be located at 4795, 4803 and 4811 Camp Road

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that small modifications to the plans have been made. He stated that the proposed parking lot would be for West Herr to use for the turn-in of leased vehicles.

Mr. Gow stated that the parking lot in front for 90 cars would be paved and landscaped, and another section of parking would be located in the back that would hold 125 cars.

Mr. Gow stated that the large tree on the property that Board members had indicated they would like to be saved is actually 50 feet south of where the parking area and detention would be.

Mr. Gow stated that one (1) existing curb cut would be eliminated, one (1) would be expanded and one (1) would remain to be used for the single-family home on the property.

In response to a question from Chairman O’Connell, Mr. Gow stated that landscaping was added to the front of the site.

Mr. Schawel 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 3580 Southwestern Boulevard, LLC to construct a parking lot expansion on property located at 4795, 4803 and 4811 Camp Road. The public hearing will be held on October 18, 2017 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

Chairman O’Connell declared the public hearing open. No one spoke.

Chairman O’Connell declared the public hearing closed.

Mr. Reilly stated that with the approval of the previous parking lot expansion project for West Herr just north of this site, the Planning Board wanted the vehicles stored by West Herr on the Liberatore property on Southwestern Boulevard removed. He advised Mr. Gow that this con-

cern remains because West Herr does not have permission from the Town to store vehicles at this location.

Mr. Gow was asked to address the above concern with the owner of West Herr.

Mr. Clark made a motion, seconded by Mr. Schawel, to authorize the planning consultants to prepare approval resolutions for this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing, 7:00 P.M., Rolling Ridge Subdivision, Phase V - Requesting re-approval of a Preliminary Plat (previous re-approval was granted on May 21, 2014)

Attorney Sean Hopkins, representing the applicant, stated that this is the final phase of the Rolling Ridge Subdivision. He stated that the applicant received Final Plat Approval from the Town of Orchard Park Planning Board for the one (1) lot and the two (2) lots that are partially located in the Town of Orchard Park.

Attorney Hopkins stated that the layout of Phase V remains the same.

Mr. Schawel read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on the Rolling Ridge Subdivision, Phase V. The applicant is requesting re-approval of the previously approved Phase V. The public hearing will be held on October 18, 2017 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

Chairman O’Connell declared the public hearing open. No one spoke.

Chairman O’Connell declared the public hearing closed.

Mr. Clark made a motion, seconded by Mr. Mahoney, to re-approve the Rolling Ridge Subdivision, Phase V Preliminary Plat. Carried.

Engineering Department comments have been filed with the Planning Department.

Capital Telecomm Holdings, LLC as agent for Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a/ Verizon Wireless - Requesting a Tower Special Use Permit and Site Plan Approval of a cellular tower to be located at 3081 Pleasant Avenue

Attorney Don Cheney, representing Capital Telecomm, stated that a 158-foot monopole is proposed. He stated that he is aware that a moratorium on cellular towers is being contemplated by the Hamburg Town Board and noted that he submitted a letter to the Town Board in that regard. He stated that if there is something in the Town’s current law that the Planning Board does not think it will get from the applicant, the Planning Board should ask for it. He stated that if there is a proposed law that Board members want his client to comply with, it will be done.

Attorney Cheney stated that there is a section in the Town’s cellular tower law that allows the Planning Board to waive certain requirements and asked Board members to consider waiving the requirement regarding the distance a cellular tower must be set back from any building or property line. He noted that the tower would be set back 145 feet from the Thruway Authority property line and approximately ten (10) feet and 54 feet from a pole barn and another barn.

Mr. Reilly stated that Mr. Bill Johnson, RF engineer, would be hired to review the studies submitted by the applicant regarding why this location was chosen and why there are no alternative sites that could be explored.

Chairman O'Connell stated that he will not have an opinion on whether to waive the setback requirements for quite a while. He suggested that the applicant attempt to obtain the necessary variances from the Zoning Board of Appeals (ZBA).

Mr. Reilly stated that the proposed cellular tower would not require lighting under FAA regulations but asked Attorney Cheney to contact Mercy Flight to see if they want the tower to be lit.

It was determined that a SEQR Coordinated Review will be conducted.

Mr. Clark made a motion, seconded by Mr. Chapman, to authorize the Planning Consultants to initiate the SEQR Coordinated Review for this project. Carried.

Mr. Clark made a motion, seconded by Mr. Mahoney, to hire an RF engineer to review this location for the applicant. Carried.

Mr. Clark made a motion, seconded by Mr. Schawel, to table this project until the Board's November 15, 2017 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

Buffalo-South Motor Inn, Inc. – Requesting Site Plan Approval of a proposed gas station to be located at 4344 Milestrip Road

Chris Wood from Carmina Wood Morris appeared on behalf of the applicant.

Mr. Reilly stated that he spoke with Mr. Ed Rutkowski from the NYSDOT, who indicated that the NYSDOT has required that one (1) of the three (3) existing curb cuts be eliminated. Mr. Reilly stated that it is very difficult accessing this site from McKinley Parkway.

Board members discussed having one (1) of the curb cuts be used for entering and the other be used for exiting the site.

Mr. Wood stated that when a master plan is prepared for this entire site, one (1) of the existing buildings will be gone, and there will be a central driveway and proper turn lanes.

Mr. Reilly stated that he would call the NYSDOT on October 19, 2017 and set up a meeting (or request a letter from the NYSDOT) regarding the issues of traffic and access to the site.

Mr. Clark made a motion, seconded by Mr. Chapman, to take this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Glenn Wetz - Requesting Site Plan Approval of a proposed senior apartment project on Southwestern Boulevard in front of the Brookview Apartments complex

Attorney Sean Hopkins, representing the applicant, stated that the applicant did receive the necessary setback variance on October 3, 2017 and asked that the Planning Board schedule the required public hearing for November 15, 2017.

Attorney Hopkins stated that a traffic impact study will be presented to the Traffic Safety Advisory Board at its November 9, 2017 meeting.

Mr. Clark made a motion, seconded by Mr. Geraci, to schedule a public hearing for this project to be held on November 15, 2017. Carried.

South Shore Community, LLC - Requesting rezoning of a new Planned Unit Development designation for a mixed use project to be located at 5076 Southwestern Boulevard

Kevin Curry from David Homes, applicant, stated that he and Chris Wood, engineer for the project, have met with Mr. Lardo, and he and Attorney Hopkins met with Mr. Reilly as well. He stated that the applicant plans to advance the plans in conjunction with the feedback received from Mr. Lardo, Mr. Reilly and Mr. Clark (regarding green space).

Mr. Curry stated that the applicant plans to move away from the proposed community center and more towards an alternative plan that likely would not have as much of a community center aspect. He stated that the applicant is willing to help the Town with a community center if it feels that it is the right thing for the Town, but if the community center is not meant to be, the applicant will come forth with an alternative plan that will incorporate the comments received.

In response to a question from Mr. Geraci and Mr. Clark, Mr. Curry stated that there would be a community center/activity area for the residents of this development, as well as for the general public.

Attorney Sean Hopkins, representing the applicant, stated that there could be green space that remains privately owned but publicly accessible.

In response to a question from Mr. Chapman, Attorney Hopkins stated that the main entrance to the community would be from Camp Road opposite Howard Road.

Mr. Curry stated that they have been in touch with the NYSDOT and are putting some finishing touches on the traffic study. He stated that they will be working with the NYSDOT on an ongoing monitoring and mitigation plan.

In response to a question from Mr. Chapman, Attorney Hopkins stated that anticipated build-out of this project is ten (10) years, so the applicant's engineering firm (SRF) has come up with some mitigation measures, including two (2) possible signals. He noted that the NYSDOT will not allow a signal to be installed until the traffic warrants have been met, so the applicant will need to decide how often to update the traffic study so that there is a justification for the installation of a signal.

Mr. Reilly stated that when he met with Mr. Curry and Attorney Hopkins, they discussed process, and his recommendation was to not have a large parking lot along Southwestern Boulevard.

Chairman O'Connell stated that Sowles Road is less than 100 yards from the Camp Road/Southwestern Boulevard intersection. He asked if the NYSDOT would ever consider a signal at Howard Road and Camp Road, since that would be the main access in and out of the community. Mr. Reilly stated that the traffic study will probably answer that question.

Mr. Clark made a motion, seconded by Mr. Monaco, to take this project. Carried.

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Mr. Schawel made a motion, seconded by Mr. Chapman, to approve the minutes of September 20, 2017 and October 4, 2017. Carried.

Mr. Schawel made a motion, seconded by Mr. Geraci, to adjourn the meeting. The meeting was adjourned at 8:20 P.M.

Respectfully submitted,
Doug Schawel, Secretary

October 25, 2017