

Town of Hamburg
Planning Board Meeting
September 20, 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, September 20, 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.

WORK SESSION

Randy Schmitz, Eden Valley Brewing Co. – Requesting Sketch Plan Direction on a proposal to redevelop a portion of the previous post office located at 6550 Southwestern Boulevard into a Tim Horton's with a new drive-thru

Attorney Sean Hopkins, representing the applicant, stated that a Tim Horton's is proposed on the corner of Southwestern Boulevard and White Oak Way. He stated that this would be a re-development of the existing building on the property. He stated that Tim Horton's would occupy a portion of the building, and the rest of the building would be retail space.

Attorney Hopkins stated that a lease is currently being finalized for the space not occupied by Tim Horton's.

Attorney Hopkins stated that a drive-thru stacking lane is proposed that more than exceeds the typical requirement, noting that 16 stacking spaces are provided.

Chris Wood from Carmina Wood Morris, engineer for the project, stated that the applicant proposes to eliminate the existing driveway closest to Southwestern Boulevard, and the drive-thru is proposed parallel to both White Oak Way and Southwestern Boulevard.

Attorney Hopkins stated that the applicant, Mr. Wood and he would welcome the opportunity to meet with the surrounding neighbors outside the confines of a Planning Board meeting and then return to the Planning Board based on those discussions.

Mr. Reilly noted that the rear of the property along the existing subdivision is zoned residential. Attorney Hopkins stated that this area would be left as it is. It was determined that an easement exists in this area for access to an adjoining parcel and is to be retained and maintained by Buttermilk Falls, LLC.

Mr. Wood stated that new pavement proposed to make the existing parking area more efficient.

It was determined that the property zoned residential in the rear of the site was originally to serve to access any additional businesses that are built along Southwestern Boulevard.

In response to a question from Mr. Reilly, Mr. Wood stated that the building will be redone. Mr. Reilly asked that the applicant consider the fact that the Southern Overlay District talks about

having buildings blend into the character of the surrounding neighborhood and asked if something different could be done with the design of this building.

In response to a question from Mr. Clark, Mr. Wood stated that there is the 60-foot ingress/egress easement along the rear of the site, and there also is a 20-foot wide sanitary sewer easement in the rear, and he does not know if plantings are allowed in that easement area. Mr. Wood stated that there is a small area between the easement area and the edge of pavement where something might be able to be planted.

In response to a question from Mr. Reilly, Mr. Wood stated that the applicant can continue the existing sidewalk along White Oak Way to the project site so that nearby residents can access the site from the neighborhood.

Mr. Reilly stated that this use is allowed in the C-1 District. He stated that there are landscaping requirements, and the automotive use section of the Code is also applicable.

In response to a question from Mr. Clark, Mr. Wood stated that 18 cars can be stacked in the drive-thru before it backs up onto White Oak Way.

In response to a question from Mr. Reilly, Mr. Randy Schmitz, applicant, stated that he has not determined hours of operation yet. He stated that it would probably shut down around 11:00 P.M.

Chairman O'Connell stated that input from the Traffic Safety Advisory Board (TSAB) is important, as is input from the police department regarding traffic accidents in the area.

A member of the public who resides at 6548 Hackberry stated that his biggest concern has to do with public safety and traffic. He stated that there are at least 20 children between the ages of 1 and 10 on his street. He stated that he is also concerned about noise from traffic, as well as from the drive-thru, loitering, trucks coming in for coffee, the hours of operation of the business and having a commercial business accessed via a residential street. He stated that the post office previously at this location was built in the 1995, and the subdivision was constructed after that. He stated that the homeowners were told by Marrano that only a 9-5 type business could go at this location.

Chuck Fischer, 6554 Hackberry, stated that the entrance on White Oak Way actually will move the traffic closer to the residences on that residential street. He stated that the most convenient exit for the residents of the neighborhood heading north is via White Oak Way. He stated that because Tim Horton's would be open at peak traffic times, traffic on Southwestern Boulevard attempting to access White Oak Way to the Tim Horton's would have to wait in the new center turn lane, which could cause accidents at that intersection.

A member of the public stated that rodents are another concern of the neighbors.

Mr. Walling stated that he will research the Intent section of the C-1 District in the Town Code.

Mr. Clark made a motion, seconded by Mr. Chapman, to table this project until October 18, 2017. Carried.

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 original wind turbine was approved as an agricultural use, and therefore some of the Town Code requirements were waived because of that.

Mr. Reilly stated that Mr. Jablonski must determine whether the wind turbine currently being requested in a different location will be agricultural or not, because if it is not, the Planning Board will have to consider all of the requirements of the Town Code.

It was determined that the applicant is requesting re-approval of the previously approved wind turbine in a different location.

Michael Jablonski, applicant, stated that he would like to locate the approved wind turbine behind his house. He stated that his total energy consumption needs two (2) wind turbines, and if his meter was just on his house, he could have two (2) agricultural wind turbines through New York State Agriculture & Markets.

Mr. Jablonski stated that the wind turbines will not make him money. He stated that they will reduce his expenses.

Chairman O'Connell confirmed with Mr. Jablonski that he would like to move the approved agricultural wind turbine to the new location.

Mr. Jablonski stated that he missed the Zoning Board of Appeals (ZBA) meeting held on September 12, 2017, so he has been placed on the October ZBA meeting. He stated that the area variance needed is the distance of the newly located wind turbine from his home.

Mrs. desJardins stated that if this newly located wind turbine is considered agricultural, there would be no need for the applicant to obtain the area variance because the Planning Board could waive those requirements, just as it did for the originally approved agricultural wind turbine in 2016.

Mr. Jablonski stated that he needs two (2) wind turbines to make the project work. He stated that one (1) will not generate enough power to take care of his farm.

Mr. Jablonski stated that this wind turbine would not be considered agricultural.

Mr. Clark stated that if this wind turbine is not considered agricultural, the required removal bond will be an issue for him in his decision. Chairman O'Connell concurred.

Chairman O'Connell stated that Mr. Jablonski will have to make a determination whether this wind turbine is agricultural or not.

Mr. Clark stated that even if the Town Board changes the Town Code to allow Mr. Jablonski to have two (2) wind turbines, there is no proposal to change the Town Code requirement of a removal bond.

Chairman O'Connell advised Mr. Jablonski that if he (Mr. Jablonski) determines that this wind turbine is agricultural, a removal bond is not an issue, but if he considers it non-agricultural, then it will be. He stated that the Planning Board does not want a situation where a wind turbine stops working years from now and just sits there.

Mr. Clark stated that he was at the Planning Board meeting when the United Wind representative explained what it planned to do, but the removal bond will still be an issue for him.

Mr. Jablonski stated that the contract with United Wind stated that if, after 20 years, he does not want the wind turbines on his property anymore, United Wind will take them down. He stated that if a wind turbine stops working, it must be back up and running in 30 days or United Wind will have to pay him anyway.

Attorney Walling asked Mr. Jablonski to provide the above information to him for his review.

In response to a question from Chairman O'Connell, Mr. Jablonski stated that he would like the Planning Board not to hold the public hearing.

Mr. Clark made a motion, seconded by Mr. Chapman, to table this proposal. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing – 7:00 P.M., Cherry Cars – Requesting a Special Use Permit to operate an auto sales business at 4670 Camp Road

Michael Deni, applicant, stated that he received a variance from the ZBA for the front yard parking setback. He stated that the pavement will be ten (10) feet from the right-of-way.

Mr. Clark asked Mr. Deni if landscaping is proposed in the grassy area in the front of the pavement so cars cannot be parked there. Mr. Deni stated that he was not planning on that and noted that there is landscaping along the front of the building. He further stated that he will not have a lot of cars to sell, and he will probably have between four (4) and eight (8) for sale at any given time. He stated that he needs people to see the vehicles, and he would not like to put anything in front of them.

Mr. Deni stated that it was his intent to receive the Special Use Permit so he can get moved in, change his address and keep his license active. He stated that he would then reappear before the Planning Board before the end of the year to present an actual Site Plan indicating what he wants to do with the property. He stated that the property will need new pavement, and he will remodel the building, etc.

In response to a question from Chairman O'Connell, Mr. Deni stated that his license will not run out for two (2) years.

Attorney Walling stated that the Planning Board was being asked to do something contrary to its normal procedures.

Mr. Lardo stated that the applicant should not be allowed to operate until the Site Plan is submitted and approved.

It was determined that Mr. Deni would return to the Planning Board on October 4, 2017 with a Site Plan.

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 Cherry Cars to operate an auto sales business at 4670 Camp Road, which requires a Special Use Permit. The Public Hearing will be held on September 20, 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. Schawel, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

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

Chris Wood from Carmina Wood Morris, representing the applicant, stated that a fueling station is proposed with six (6) pumping stations that can accommodate 12 vehicles. He stated that a 400 sq.ft. kiosk is also proposed.

Mr. Wood stated that the New York State Department of Transportation (NYSDOT) has indicated that one (1) of the three (3) existing driveways must be removed. He noted that the applicant plans to close the middle driveway.

Chairman O'Connell stated that the Planning Board had not received comments on this project from the Traffic Safety Advisory Board (TSAB).

Mrs. desJardins stated that the TSAB did receive the proposed Site Plan for this project in June 2017. She stated that the TSAB does not always comment on projects it sees that are before the Planning Board.

Mr. Clark made a motion, seconded by Mr. Chapman, to table this project until after the TSAB comments have been received. Carried.

Engineering Department comments have been filed with the Planning Department.

D.E.B. Subdivision – Requesting Preliminary Approval of a proposed nine-lot subdivision to be located on Eckhardt Road

Mr. Dave Supon, 6137 Eckhardt Road, stated that he lives adjacent to the vacant land proposed for development. He submitted the following correspondence:

“Members of the Planning Board: My name is Dave Supon and I reside at 6137 Eckhardt Road, adjacent to the property containing the proposed subdivision. I submit my opposition to the granting of an approval to the applicant. Following is a synopsis of my position on the issue:

Inadequate land management by the applicant/owner has caused actual harm to private and public property adjacent to the proposed subdivision with a negative impact on Town finances and property value.

Applicant's lack of maintenance of the creek and drainage ditches that transverse the applicant's property causes multiple yearly flooding events on adjacent parcels and town property.

Applicant's inaction over the past several years continues to cause monetary damages to my property, loss of use of property which I own and diminished property value.

Applicant's inaction continues to cause deterioration of Town property, namely Eckhardt Road, which leads to higher yearly maintenance and capital improvement costs.

Applicant's inaction continues to cause public safety situations during flooding events when the creek overflows and a large swath of water several inches deep floods over a section of Eckhardt Road. Additionally, this road section is partially hidden from view of northbound traffic.

If applicant/owner is granted approval of the requested subdivision of said property, the results of this inadequate land maintenance will grow in size and scope as additional development by either the applicant or others will undoubtedly spread the flooding and its consequences to an ever growing number of adjacent homeowners.

I suggest to the Board the following to, at the least, mitigate, but hopefully resolve, the continual degradation of property owned by the Town and current and future homeowners adjacent to the applicant/owners' property:

1. Improve the transference and outflow of storm water runoff from owner's property on both the east and west sides of Eckhardt Road in addition to the property south of Schoellkopf Road to enhance the natural drainage provided by the creek.
2. Remove the woody material and sufficient soil from the creek bed of established drainage channels to allow for the adequate handling of the amount of rainwater transported during extreme rainfall events.
3. Require owner to grant an easement to the Town allowing for access to owner's property for purposes of ensuring maintenance for proper drainage as described in 1 and 2 above.
4. Request owner and the Town to enter into an agreement of cooperation, such to plan, fund and execute the results of an engineered remedy to halt the owner's impingement upon the rights and freedoms of adjacent property owners."

Board members discussed Mr. Supon's concerns. Chairman O'Connell stated that someone who builds a home cannot cause someone else's drainage problems to worsen.

In response to a question from Mr. Clark, Mr. Supon confirmed that the problem as he sees it is due to a lack of maintenance, and if the applicant properly maintained the ditch on his property, the existing issue would be potentially resolved.

Mr. Supon stated that this drainage issue is existing and will get worse if the subdivision is approved. He stated that he would like the applicant to clean out the ditch that exists on the applicant's entire parcel.

It was determined that the property owned by the applicant on both sides of Eckhardt Road is the same parcel with one (1) SBL number. It was noted that the property on the east side of the road is the subject of the proposed subdivision, and the property on the west side of the road is vacant and contains a ditch that is not cleaned out and, according to Mr. Supon, is the cause of his flooding concerns.

Mr. Supon stated that the property to be subdivided on the east side Eckhardt Road takes the flow of the flood waters from a parcel owned by the Town, as well as the vacant parcel owned by the applicant.

Mr. Wood stated that if the drainage ditch is cleaned out as Mr. Supon requests, the flooding may be increased in his area.

Mr. Clark stated that Mr. Supon's solutions are not something the Planning Board can suggest based on what is in front of it.

In response to a question from Chairman O'Connell, Mr. Supon stated that he has not ever gone to the Town to report that his property is being flooded by property the Town owns.

Chairman O'Connell stated that if the downstream flooding problem Mr. Supon has is caused by a property the Town owns, he (Mr. Supon) should make the Town aware of that.

In response to a question from Mr. Supon, Chairman O'Connell stated that when someone builds a home on a piece of property, that development cannot by law adversely affect someone else's drainage.

Chris Wood from Carmina Wood Morris, engineer for the subdivision, stated that if the subdivision is approved and someone requests a Building Permit to construct a home on one of the lots, a drainage plan for that home must be submitted to the Town of Hamburg. He further stated that he would have to submit a drainage plan for the entire subdivision to the Engineering Department, as well.

Mr. Reilly suggested that a condition of approval be that the applicant must clean out the ditch that runs through his property on the west side of Eckhardt Road.

Mr. Wood stated that if the applicant does clean out the ditch that runs through his property on the west side of Eckhardt Road, that might create a bigger problem downstream.

Mr. Supon stated that the flooding that occurs in the area is deteriorating Eckhardt Road.

Mr. Reilly stated that the Town is considering a Code revision that would require notification of all residents within a certain distance of a proposed subdivision.

Mr. Clark made the following motion regarding SEQR, seconded by Mr. Mahoney:

"Whereas, the Town of Hamburg received a major subdivision application from John Becker to subdivide property located on the north side of Schoellkopf Road and the east side of Eckhardt Road; and

Whereas, the Planning Board has reviewed the project and the Environmental Assessment Form in accordance with 6NYCCR Part 617, SEQR.

Now, Therefore Be It Resolved, that the Town of Hamburg Planning Board hereby determines that the proposed subdivision is not anticipated to result in any significant adverse environmental impacts and that a Negative Declaration is hereby issued. The Planning Board Chairman is authorized to sign the EAF."

Mr. Clark made the following motion, seconded by Mr. Mahoney:

"Whereas, the Town of Hamburg received a major subdivision application from John Becker to subdivide property located on the north side of Schoellkopf Road and the east side of Eckhardt Road into nine (9) lots; and

Whereas, the Planning Board has reviewed the Preliminary subdivision plan and held the required public hearing on this proposed subdivision on September 6, 2017; and

Whereas, the Hamburg Planning Board has determined that the proposed subdivision will not result in any significant negative effect on the environment and has issued a Negative Declaration;

Now, Therefore, Be It Resolved, that the Hamburg Planning Board hereby approves the Preliminary Plat for the D.E.B. Subdivision with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated 9-20-17.
- The filing of a Map Cover shall be required.
- Recreation fees in lieu of land will be required.
- The installation of sidewalks is hereby waived.
- The ditch between lots # 2 and # 3 and continuing across Eckhardt Road will be cleaned out to allow appropriate drainage subject to the approval of the Town Engineering Department.”

Engineering Department comments have been filed with the Planning Department.

Glenn Wetzl – Requesting Sketch Plan Direction on a proposed senior apartment project on Southwestern Boulevard in front of the Brookview Apartment complex

Attorney Sean Hopkins, representing the applicant, stated that this project was first presented to the Planning Board in early 2016 for Sketch Plan Direction. He stated that an updated jurisdictional determination from the U.S. Army Corps of Engineers has been completed and submitted to the Planning Department. He noted that the outcome of the jurisdictional determination was that the relatively large potential wetland area was determined to be non-jurisdictional as a result of the fact that there is no ecological or surface connection to the creek that crosses the project site.

Mr. Hopkins stated that a setback variance will be required for one (1) of the proposed buildings.

In response to a question from Mr. Geraci, Attorney Hopkins stated that the proposed senior apartments would be upscale.

Mr. Reilly stated that per the Town’s Fair Housing Law, 10% of the senior apartment will have to be affordable as determined by the Law.

In response to a question from Chairman O’Connell, Attorney Hopkins stated that 116 apartments are proposed.

Mr. Chapman wondered how the Brookview Apartments residents, along with the senior apartment dwellers, would exit onto Southwestern Boulevard in rush hour. Attorney Hopkins stated that during peak am and pm hours, senior housing generates far less traffic than any other land use.

Mr. Geraci stated that the traffic in this area of Southwestern Boulevard is extremely high during morning rush hour.

Attorney Hopkins stated that the project would be constructed in phases.

It was determined that a traffic study will be required for this development, along with elevations of the buildings.

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

Engineering Department comments have been filed with the Planning Department.

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

Attorney Sean Hopkins, representing the applicant, stated that the Town Board initiated the SEQR Coordinated Review process in June 2017, and none of the involved agencies notified objected to the Town acting as Lead Agency, nor has any of them expressed any concerns about potentially significant adverse environmental impacts.

Attorney Hopkins stated that because this property was formerly utilized as a golf course, the Erie County Health Department issued a comment letter indicating that, given that pesticides and herbicides were used in connection with the maintenance of the golf course, soil testing will be required. Extensive soil testing has been done, and what was found is that there is contamination that the applicant will have to take care of, generally limited to the tees and the greens, but it is generally superficial. The type of contamination found is arsenic, mercury, zinc, etc.

Attorney Hopkins stated that the applicant understands that the contamination must be cleaned up and has not yet decided whether to enter the “brown field program”.

Attorney Hopkins stated that a letter was submitted to the Planning Department that summarizes the storm water requirements that apply.

Attorney Hopkins stated that the application is to amend the concept/development plan for the existing PUD (Planned Unit Development).

Mr. Reilly stated that he believes this is an application for a brand new PUD. Attorney Walling concurred.

Attorney Hopkins stated that, for purposes of the environmental review, what is proposed is not an exact, precise layout of what the plan could be, but the applicant is comfortable saying that the plan will not be more in terms of the magnitude. He noted that if the recreational center ends up not being included in the plan, an alternate plan is proposed that shows that area being infilled with residential units.

Attorney Hopkins stated that a wetland delineation performed by Eric Krull was submitted for the Board’s review that indicates that there are four (4) very small wetland areas that total less than .4 acre, and none of those areas is jurisdictional because they lack any connectivity to a navigable waterway.

Attorney Hopkins stated that a letter from Eric Krull to the U.S. Army Corps of Engineers was also submitted for Board review confirming that the wetland delineation report has been submitted. He further stated that a traffic impact study is being prepared, and the applicant hopes to have it done and submitted to the Board before its next meeting.

Attorney Hopkins stated that he hoped that the Planning Board would consider making a recommendation to the Town Board at the next Planning Board meeting.

Mr. Lardo stated that he has never received a plan to review. He stated that the plan as presented this evening is nowhere near meeting Town Code for street layout. He wondered how a traffic impact study can be conducted with a layout that does not meet Town Code.

In response to a question from Mr. Clark, Mr. Reilly stated that the Planning Board could recommend to the Town Board that there be a rezoning with the condition that at some point in the future, a park would be required.

Board members agreed that before the Planning Board makes a recommendation to the Town Board, the applicant must decide whether the Town will own the portion of the property where the recreational center is shown on the layout. Board members agreed that a plan they are all happy with must be presented before any recommendation is made.

Kevin Curry, representing the developer, stated that if the Town decides it does not want to move forward with a recreational center at this location, the developer would still look to pursue a recreational facility for the public that would be on a smaller scale and privately funded.

Mr. Lardo stated that the possible recreational facility should be addressed in the traffic impact study.

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

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Mr. Schawel made a motion, seconded by Mr. Geraci, to approve the minutes of September 6, 2017. Carried.

Mr. Schawel made a motion, seconded by Mr. Chapman, to adjourn the meeting. The meeting was adjourned at 9:00 P.M.

Respectfully submitted,
Doug Schawel, Secretary

October 10, 2017