

Town of Hamburg  
Planning Board Meeting  
April 19, 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, April 19, 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, Robert Mahoney, Dennis Chapman and Al Monaco.

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

**WORK SESSION**

**Michael Jablonski – Requesting Sketch Plan Direction on a second wind turbine at 3134 Old Lakeview Road**

Tyler Palmer from United Wind, representing the applicant, stated that the proposed second wind turbine has been moved to a location that meets the Town’s setback requirements. He noted that a use variance will be required for the second wind turbine.

Mr. Reilly stated that the applicant’s first proposed wind turbine was approved by the Planning Board in May of 2016, and the wind turbine has not been constructed to date. He stated that some of the Town’s requirements were waived for this first turbine because it was for agricultural use. He further stated that unless the applicant gets a letter from the New York State Department of Agriculture & Markets stating that the applicant’s second wind turbine falls under its laws, the second wind turbine will have to meet all of the Town’s requirements.

In response to a question from Mr. Clark, Mr. Reilly stated that he received a phone call from a representative of the New York State Department of Agriculture & Markets indicating that it is unclear whether the second wind turbine will also fall under its laws as an agricultural use.

Mr. Reilly stated that the Planning Board must decide whether to do a Coordinated SEQR Review and establish itself as Lead Agency or give that responsibility to the Zoning Board of Appeals ZBA during the use variance review.

Board members agreed that the Planning Board will initiate the SEQR Coordinated Review and seek Lead Agency Status.

Mr. Reilly asked Mr. Palmer to get something in writing from New York State Energy Research and Development Agency (NYSERDA) indicating that the power generated from the two wind turbines will all be used for the applicant’s property. He noted that the power must be used on site and not just sold to the grid.

Mr. Mike Jablonski, applicant, stated that the power generated must be used on the site and not just sold to the grid.

Mr. Jablonski stated that for two (2) years he has been harassed and put through the ringer by the Town’s stupid Building Inspection department.

Mr. Reilly stated that the applicant's first wind turbine was approved a year ago, nothing has been built and the applicant just recently applied for the second wind turbine.

Mr. Jablonski stated that the Supervising Code Enforcement Official has been delaying him by requiring a spot survey. He stated that the Building Department engages in selective enforcement.

Mr. Jablonski was advised to make application to the ZBA for the required use variance.

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

**\*\*\* PLEASE NOTE THAT AT THIS POINT IN THE MEETING, THE TAPE RECORDER STOPPED WORKING, AND THEREFORE THE FOLLOWING ARE HIGHLIGHTS FROM THE ADDITIONAL WORK SESSION ITEMS.\*\*\***

**HITS Foundation, Inc. – Requesting Sketch Plan Direction on a proposed sports complex addition at 3950 McKinley Parkway**

Attorney Peter Sorgi, representing the applicant, stated that the proposal is to operate a sports complex with ice skating rinks. He pointed out the buildings nearby that would not be part of the project. He stated that the applicant is looking for Planning Board input on this project. He further stated that the current Allstate Insurance building will still be a separate business and would not be part of this project.

The Planning Board members had questions concerning parking, access and traffic. Mr. Reilly brought up the possibility of accessing Highland Parkway via a public right-of-way that connects to this site.

The Planning Board suggested that the applicant discuss utilizing the above-mentioned public right-of-way (paper street) with the Town Board.

Board members agreed that in general they like the proposal.

It was determined that the applicant will return to the Planning Board when a Site Plan is ready to be submitted.

Engineering Department comments have been filed with the Planning Department.

**Battery Post (4109 St. Francis Drive) – Requesting Site Plan Approval of an addition to the existing building**

Susan King, representing the applicant, stated that an addition to the business is proposed.

Planning Board members had questions about the Site Plan, specifically the paving outside of the fenced area. Ms. King explained that the applicant needs this space for a truck turnaround area.

It was determined that the truck turnaround area should be labeled "No Parking".

Mr. Lardo stated that the Site Plan was not complete/accurate. Ms. King stated that she was aware of that and is working on an up-to-date plan.

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

Engineering Department comments have been filed with the Planning Department.

**REGULAR MEETING****Public Hearing - 7:00 P.M., Goddard Development Partners – Requesting Site Plan Approval of a proposed 6,800 sq.ft. Mavis Discount Tire building at 5363 Southwestern Boulevard**

Brian Burri with Bergmann Associates, representing the applicant, stated that the proposal is to construct a 6,800 sq.ft. Mavis Discount Tire building at this location. He noted that the existing vacant house and garage on the site will be demolished.

Mr. Burri stated that the New York State Department of Transportation (NYSDOT) has indicated that the proposed driveway must be moved further away from the traffic signal at the entrance to the Walmart plaza, and the Site Plan has been revised to reflect that.

Mr. Burri stated that landscaping is proposed along the perimeter of the site, and the applicant plans to maintain a minimum of 40 feet in depth of the existing trees along the property line shared with the single-family home on Abel Road. He further stated that evergreen trees would be planted to further buffer that adjacent residential property.

In response to a question from Mr. Reilly, Mr. Burri stated that the entire site would be cleared in order to raise one side of it (balance cut and fill).

In response to a question from Mr. Clark, Mr. Burri stated that a monument sign is proposed along Southwestern Boulevard.

Chairman O'Connell stated that the elevations of the proposed building complement the Walmart building across the street.

Mr. Schawel read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg will conduct a public hearing on a proposal by Goddard Development Partners to construct a 6,800 sq.ft. Mavis Discount Tire building at 5363 Southwestern Boulevard. The public hearing will be held on April 19, 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:

- Don Weiss, Cloverbank Road, stated that it is his understanding that the 2020 Master Plan prohibited any automotive repair facilities beyond Abel Road. He asked how this project can go forward. He stated that he would like to see the proposed buffer areas protected so that the construction equipment does not damage the trees. He stated that he is concerned that there are not enough parking spaces provided for the vehicles that will be left there to be fixed. He stated that the planned second building on the site concerns him because the entrance will be shared between the two buildings. He stated that making left turns out of this site will be difficult. He asked if any traffic studies have been performed. He stated that this project in its entirety will be a major change for the area, and it will be a safety concern. He stated that he would like the business owner to store the vehicles waiting to be repaired behind the building and leave the parking spaces in front of

the building for customers. He questioned whether the location of the handicapped spaces makes sense because they are so far away from the building.

Mr. Reilly explained that the Town Code prohibits automotive sales (not automotive repair) except on Camp Road. He noted that this business would be considered automotive repair and retail, not automotive sales.

Chairman O'Connell stated that the applicant will have to meet the Town and State codes regarding handicapped parking spaces and their location.

Chairman O'Connell declared the public hearing closed.

Mr. Reilly stated that the sewer is going to have to be brought in from Abel Road, and that will require the removal of the trees that are near the property line. He noted that if the Board does approve this project, there should be some kind of condition that the trees that are removed or damaged due to the installation of the sewer be replanted.

Mr. Reilly stated that if there is further development on this site in the future, there should be a cross-access agreement.

Mr. Clark made a motion, seconded by Mr. Chapman, to schedule a public hearing for a Special Use Permit to be held on May 3, 2017. Carried.

Engineering Department comments have been filed with the Planning Department.

**E F Burke – Requesting rezoning of vacant property located on the west side of McKinley Parkway, just south of Lake Avenue, from C-2 to R-3 in order to construct two (2) eight-unit apartment buildings**

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

“In accordance with Section 280-340 B of the Hamburg Town Code, the E F Burke rezoning on McKinley Parkway was referred to the Planning Board for review, comment and recommendation to the Town Board. The Planning Board reviewed the project at its April 5, 2017 meeting and again at its April 19, 2017 meeting. Based on the Planning Board's review of the application materials, the comments received and input from Town departments and from the applicant, the Planning Board offers the following in accordance with Section 280-340 B:

1. The rezoning of this site would allow the logical expansion of the existing apartment complex.
2. The rezoning to R-3 from C-2 fits into the zoning of this area and eliminates the potential expansion of commercial developments towards the existing residential uses.
3. The rezoning is in conformance with the Town's Comprehensive Plan.

The Planning Board recommends that the rezoning be approved based on the above information and with the following conditions and additional comments:

1. As depicted on the draft plan, the site will not have a new entrance onto McKinley Parkway.
2. The Planning Board recommends a Negative SEQR Declaration.”

Carried.

**Peter Liberatore – Requesting Site Plan Approval of a proposal to demolish the existing home located at 5683 South Park Avenue and construct a 10-unit apartment building**

Attorney Sean Hopkins, representing the applicant, stated that a setback variance was obtained from the Zoning Board of Appeals. He noted that the applicant has committed to preserving the vegetation along both South Park Avenue and Knoll Drive, and landscaping has been added to the plan along South Park Avenue, around the perimeter of the building and in the parking lot islands.

Attorney Hopkins stated that a screened tote location will be placed on the site for garbage.

Attorney Hopkins stated that this would be a ten-unit building featuring townhome units on each end.

Attorney Hopkins stated that the applicant has committed to no new curb cuts on either South Park Avenue or Knoll Drive and will record an access easement in the Erie County Clerk's office subsequent to receiving Site Plan Approval for the driveway that will be shared with the adjacent parcel owned by an entity controlled by the applicant.

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

“In accordance with the New York SEQR Law, the Town of Hamburg Planning Board has reviewed the Liberatore ten- unit apartment project and accompanying information, which involves the creation of a new ten-unit apartment building at 5683 South Park Avenue, received input from various Town departments and held the required public hearing on the project. Based on this review and input and completion of parts 2 and 3 of the EAF, the Planning Board has determined that the project is not anticipated to result in any significant adverse environmental impacts and that a Negative Declaration is hereby issued and the Chairman is authorized to sign the EAF, which will act as the Negative Declaration.”

Carried.

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

“Based on the information submitted for the Liberatore apartment project, which includes the construction of a new ten-unit apartment building at 5683 South Park Avenue, the Planning Board has issued a SEQR Negative Declaration.

The Planning Board, based on its review of the project in accordance with Article XLIV of the Town of Hamburg's Zoning Code, having completed the required public hearing and having the applicant amend the drawings based on the Planning Board's comments, hereby grants Conditional Site Plan approval for the Liberatore ten-unit apartment building project to be located at 5683 South Park Avenue with the following conditions and waivers:

1. Approval is contingent upon the Engineering Department comment letter dated April 19, 2017.
2. The project has to include at least one (1) unit meeting the affordable housing requirement of the Town, which shall be enforced by the Town's Community Development Department.

3. The Planning Board waives the installation of sidewalks along South Park Avenue as there are no existing sidewalks in the area. “

Carried.

Engineering Department comments have been filed with the Planning Department.

### **Pleasant Creek Subdivision – Analysis of revisions to Phase I**

Mr. Clark made a motion, seconded by Mr. Schawel, to require that Pleasant Creek Development submit the deed restrictions prohibiting condominiums in the Pleasant Creek Subdivision. Carried.

### **Glenn Wetzl – Requesting Preliminary Approval of 45-lot cluster subdivision on vacant land bordered by Route 391, McKinley Parkway and Newton Road**

Attorney Sean Hopkins, representing the applicant, distributed copies of the updated Preliminary Plat for Board members' review that addresses the minor comments made by the Board at its April 5, 2017 meeting as follows:

1. The name of the owner of the site was added to the Preliminary Plat.
2. A revision was made to the Site Data Block regarding the minimum rear yard setback.
3. Conceptual elevations of the proposed homes have been submitted for the Board's review.
4. A standard lot detail has been added to the Preliminary Plat.
5. A note has been added to the Preliminary Plan indicating that pursuant to the Town's Zoning Code, the minimum size of the patio homes will be 1,200 sq.ft.

Attorney Hopkins also submitted to Board members a letter detailing everything that has been submitted relative to this project, including the wetland permit, the Preliminary Plat, the minutes, the Negative Declaration, the zoning conditions, water quality certification, the letters from the New York State Department of Transportation (NYSDOT) and Erie County Department of Public Works, etc.

Attorney Hopkins stated that 24.28 acres of the 29.29-acre site is zoned PRD, pursuant to the Town Board's approval on December 14, 2015. He noted that a Negative Declaration was issued by the Town Board at that time. He stated that PRD zoning is not a blank zoning, meaning that the applicant can do whatever he wants on the site, but rather the zoning is based on a specific project. He stated that the resolution that was adopted by the Town Board on December 14, 2015 references the plan that was prepared by Chris Wood from Carmina Wood Morris dated September 1, 2015 and states that development must be in accordance with that plan.

Attorney Hopkins stated that the Preliminary Plat currently before the Planning Board is in exact conformance with the PRD zoning and as such that is the only layout the applicant is permitted.

Attorney Hopkins stated that the applicant has addressed the many issues that have come up during the review process, and drainage is probably one of the most important issues. He stated that Chris Wood has submitted numerous letters addressing the fact that the applicant will more than exceed the New York State Department of Environmental Conservation's (NYSDEC) requirement in terms of storm water quantity and quality.

Attorney Hopkins stated that the applicant has been in contact with Erie County Department of Public Works regarding the culvert replacement on Newton Road. He stated that while in the past it has been suggested that the drainage problems on Newton Road relate to the applicant's previous project (Stonebridge), this is not the case. He noted that there is documentation that precedes the applicant's project that demonstrates that those problems are long standing.

Attorney Hopkins stated that the applicant has agreed to pay for the culvert replacement on Newton Road, and Chris Wood is in the process of securing the necessary highway work permit.

Attorney Hopkins stated that the applicant has received a wetland permit from the U.S. Army Corps of Engineer to impact .47 acres of wetlands on the site. He noted that the remaining approximately 3.5 acres of wetlands will be preserved and will be subject to a conservation easement required by the U.S. Army Corps of Engineers.

Attorney Hopkins stated that pursuant to one of the zoning conditions imposed by the Town Board, the 17.1 acres of permanent open space representing 58.4% of the project site must also be subject to a conservation easement, which will be recorded subsequent to the applicant receiving approval of the project.

Attorney Hopkins stated that in connection with the Coordinated SEQR Review done by the Town Board, the Town Board solicited comments from the NYSDEC regarding any endangered species or plant types on the site. He noted that the NYSDEC did not identify any endangered species or plant types. He further stated that the applicant's representatives also checked the NYSDEC's database, and there are no incidences of rare, threatened or endangered species or plant types on the site.

In response to a question from Mr. Reilly, Attorney Hopkins stated that the development's roads would be private, a gated emergency access connection is proposed onto McKinley Parkway and there would never be any additional roadway connections (pursuant to the rezoning conditions). Chris Wood, engineer, stated that the sewer would be public and would tie in directly to the pump station on Boston State Road. He stated that the water line would be private.

Attorney Hopkins stated that Chris Wood prepared a very detailed Downstream Sanitary Sewer Capacity Analysis that was submitted to the Erie County Division of Sewerage Management, which issued a letter stating that adequate downstream sanitary sewer capacity exists.

In response to a question from Mr. Reilly, Attorney Hopkins stated that no trails or sidewalks are proposed on the private roads.

In response to a comment from a member of the public, Mr. Reilly stated that when the Town Board was reviewing the rezoning request, it took into consideration the vistas and views area residents currently have of the Boston Hills, which is why no homes are proposed along McKinley Parkway. He noted that area residents will see the tops of the new homes, but the vistas and views will still be there.

Attorney Hopkins stated that the applicant would agree to a condition that only one-story homes with an option for a loft would be allowed.

Mr. O'Connell noted that when this subdivision first was proposed, there were 2 ½-story homes lining both McKinley Parkway and Newton Road. He stated that those were removed as a result of public input.

Attorney Hopkins stated that the density of this subdivision would be 1.54 units per acre.

Mr. Schawel made the following motion, seconded by Mr. Geraci:

**“Whereas**, the Town of Hamburg has received a subdivision application from Glenn Wetzl to subdivide the property bordered by Route 391, McKinley Parkway and Newton road into forty-five (45) clustered single family home lots, as depicted on the attached preliminary plat prepared by Carmina Wood Morris dated 7/25/16 and revised 4/13/17; and

**Whereas**, the project was the subject of a rezoning to PRD, which was approved with conditions by the Town Board on 12/14/15; and

**Whereas**, the Town Board, acting as SEQR Lead Agency, in accordance with the New York SEQR law and the SEQR Regulations contained in 6 NYCRR Part 617, issued a Negative Declaration on 12/14/15 for this project and the Planning Board, as an Involved Agency, also issued a SEQR Negative Declaration on 2/1/17; and

**Whereas**, the Hamburg Planning Board, following the Town of Hamburg procedures for subdivision approval has held the required public hearing on March 15, 2017, and received comments from the public; and

**Whereas**, the Hamburg Planning Board has reviewed the Subdivision Application and materials submitted by the applicant against the subdivision requirements of the Town, the approved overall PRD development plan, the conditions placed upon the rezoning, the input received from various agencies and the public, and the Negative Declaration that was issued; and

**Whereas**, based on these reviews the Planning Board has determined the following:

The project meets the conditions of the rezoning; conservation easements and deed restrictions to protect the open space and prevent future development, one publicly accessible roadway to Boston State Road and one gated entrance to McKinley, an enhanced storm water system, split rail fence and improvements at the Newton road/ McKinley Parkway and McKinley Parkway/ Boston State Road intersections and the Preliminary Plat only includes single family detached homes; and

**Whereas**, the Hamburg Planning Board, based on these reviews and revisions made

throughout the project review, and input received from Town departments, has found that the proposed Subdivision is in accordance with Town Subdivision requirements and the purposes of Chapter 230 of Hamburg Town Code, and therefore wishes to approve the preliminary subdivision plan.

**Now, Therefore, Be It Resolved,** that the Hamburg Planning Board hereby issues Preliminary Subdivision Approval in accordance with Chapter 230, with the following conditions:

1. Approval is contingent upon the Engineering Department memo dated April 19, 2017.
2. The Planning Board has determined that the subdivision will impact recreation in the Town but no additional suitable lands are available at the site and therefore will require a recreation fee in lieu of dedicating land to the Town.
3. In accordance with Town Subdivision requirements, sidewalks shall be waived on McKinley Parkway and Newton Road but will be required from Boston State Road to McKinley Parkway.
4. Conservation easements and deed restrictions (to be approved by the Town of Hamburg Legal department) in the name of the Town of Hamburg shall be finalized in accordance with the rezoning conditions and put in place at the time of Final Plat approval.
5. The roadway to be constructed for this subdivision, as depicted on the preliminary plat shall not be a public road and will not be offered for dedication to the Town of Hamburg.
6. In accordance with the Town's subdivision regulations and as stipulated by the Hamburg Traffic Safety Advisory Board; all required traffic signage and control devices shall be installed at the cost of the developer, utilities shall be underground and two street trees per lot shall be planted.
7. The homes will be no higher than one story with an option for a loft (maximum height of 21 feet).

**Be It Further Resolved,** that the Hamburg Planning Board Chairman is authorized to sign the Preliminary Plat, once the Town Engineer signs off on the Plat.”

As the vote on the motion was four (4) ayes (Mr. Schawel, Mr. Geraci, Mr. Monaco and Chairman O'Connell) and three (3) nays (Mr. Clark, Mr. Chapman and Mr. Mahoney), the motion carried.

Engineering Department comments have been filed with the Planning Department.

**Bill Barrett – Planning Board to review the ice cream facility at 4904 Lakeshore Road**

Mr. Reilly stated that the Health Department has determined that Mr. Barrett will have to tie into the existing sewer in order to operate the business going forward.

Mr. Reilly stated that the issue is whether this is a transient merchant or a permanent structure. He noted that because the Planning Board has treated this as a permanent structure, it has been determined that it must have its own sewer service.

Mr. Reilly stated that the Waterfront Revitalization Committee reviewed this business and issued an email indicating that it did not like the project. He advised the Committee that it must use the Coastal Assessment Form to review the project, which they did, and it was submitted to the Planning Board for its review.

Mr. Barrett stated that he is willing to tie into the existing sewer, but he will not do that unless he knows he can conduct his business at this location. He stated that he will be happy to pay to have the sewer work done as long as the Planning Board does not subsequently rescind his approval.

Mr. Chapman stated that if he had been a member of the Planning Board when this project was originally proposed, he never would have approved it.

Chairman O'Connell stated that he wants the applicant to install an awning on the ice cream facility.

Mr. Clark stated that if the applicant agrees to tie into the existing sewer, that would satisfy most of the Waterfront Revitalization Committee's concerns as outlined on the Coastal Assessment Form.

Mr. Reilly stated that in its email to him, the Waterfront Revitalization Committee did have concerns about the aesthetics of this facility. He further noted that when this project was originally proposed, the Traffic Safety Advisory Board did have concerns about access to the site and whether enough parking spaces were provided.

Mr. Barrett asked if there were any reports of problems regarding access to the building or the number of parking spaces provided. Chairman O'Connell responded that there were none, to his knowledge.

Mr. Reilly stated that the complaints received from the public had to do with the aesthetics of the facility and potential safety issues with children crossing Route 5.

Mr. Monaco stated that the photos the applicant showed the Board do not depict what the applicant put in. Mr. Barrett responded that that is because he was encouraged not to put in what he had originally shown the Board. He noted that the Code Enforcement Officer advised him that it would be better if the structure was not mobile because that would raise a concern that it really is a food truck. He noted that he was advised to build a shed or put something more fixed there, so that is why he built what is there now.

Mr. Reilly stated that Mr. Barrett must tie into the existing sewer before he opens for business this year.

Mr. Geraci stated that at the time this project was originally approved, the Board understood that something akin to a food truck was being proposed, but what was ended up being put there is not what Board members were expecting.

Mr. Reilly advised Mr. Barrett that if he ever puts another use in the building, he will have to return to the Planning Board to make sure the parking requirements are met.

Mr. Clark made a motion, seconded by Mr. Chapman, to reaffirm the Site Plan Approval granted in 2016 for this project with the following conditions:

1. The applicant must meet all of the identified requirements of the Department of Health and Erie County.
2. The applicant may only sell ice cream products and soda. Any additional use will require a separate approval by the Planning Board.
3. The applicant shall improve the aesthetics of the facility by adding an awning and making additional improvements.

Carried.

Mr. Barrett asked how the Planning Board can dictate what he can and cannot sell on his property. He stated that he was approached by a gentleman who would like to sell kettle corn on this property. He further stated that he probably will not be running this business on his own this year.

Mr. Geraci stated that the Health Department may have different requirements if Mr. Barrett intends to sell something other than ice cream.

Mr. Clark stated that if Mr. Barrett wishes to sell products other than ice cream, he would have to return to the Planning Board for review.

Mr. Schawel asked Attorney Walling who would be the arbitrator if the applicant decides he wants to sell something that does not come under the definition of "ice cream". Attorney Walling responded that the Board can impose any conditions on the approval it deems appropriate.

Mr. Clark amended condition # 2 of the above motion to read as follows:

"The applicant may only sell ice cream products and non-alcoholic beverages. Any additional use will require a separate approval by the Planning Board."

Mr. Chapman seconded the change, and all members voted in favor of the amended motion. Carried.

## **OTHER BUSINESS**

Mr. Chapman made a motion, seconded by Mr. Mahoney, to approve the minutes of April 5, 2017. As the vote on the motion was six (6) ayes and one (1) abstention (Mr. Schawel), the motion carried.

Mr. Chapman made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 8:30 P.M.

Respectfully submitted,

Doug Schawel, Secretary

April 28, 2017