

Town of Hamburg
Planning Board Meeting
October 17, 2012
Minutes

The Town of Hamburg Planning Board met for a Work Session, followed by a Regular Meeting, on Wednesday, October 17, 2012 at 6:30 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Stephen McCabe, Gerard Koenig, Daniel O'Connell, David Bellissimo, Sasha Yerkovich and Doug Schawel.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo, Attorney Cheryl McFadden-Zak and Councilman Joseph Collins

WORK SESSION

Chairman Reszka stated that the Russo Development Milestrip Road and the Pleasant Development projects would be tabled at the request of the applicant.

Lake Erie Towing

Chairman Reszka reminded the Board that all businesses that tow for the Town of Hamburg are required to obtain a Special Use Permit and meet all current requirements regarding their properties.

Mrs. desJardins stated that she and the Supervising Building Inspector met with the applicant and have determined that this business does meet all requirements regarding public garages.

Attorney McFadden-Zak stated that she would have to recuse herself from discussion regarding this request.

Mrs. Yerkovich made a motion, seconded by Mr. Koenig, to schedule a public hearing to be held on November 7, 2012. Carried.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to table this item. Carried.

Engineering Department comments have been filed with the Planning Department.

WNY Broadcasting Association Two-Lot Subdivision

Elizabeth Holden from Hodgson Russ, representing the applicant, stated that the applicant is in the process of selling off WNED AM 970. She further stated that part of the sale to Crawford Broadcasting includes the towers and ancillary buildings on the portion of the parcel located on the south side of Cloverbank Road.

It was determined that the applicant has no intention at this time of selling the portion of the parcel located on the north side of Cloverbank Road.

Mr. Reilly stated that the southern portion of the parcel is zoned PUD and the northern portion is zoned R-1. He noted that the only allowed use on the southern portion of the parcel at this time is towers.

Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to schedule a public hearing for this proposal to be held on November 7, 2012. Carried.

Engineering Department comments have been filed with the Planning Department.

Chairman Reszka discussed a proposed new Planning Board policy regarding the submittal of correspondence from the public to the Board in the form of email. He further stated that the intent of the policy will be to make sure that all information intended for the Board is received.

Chairman Reszka stated that the two (2) ways to communicate with the Planning Board will be by attending a Planning Board public hearing (appearing at a meeting other than a public hearing will not be a guarantee that someone will be able to address his or her concerns) and by submitting written correspondence directed to the attention of the Hamburg Town Clerk by the close of business on the Friday immediately preceding the regularly scheduled Wednesday meeting. He noted that if the immediately preceding Friday is a holiday which results in the closure of the Town Clerk's Office, the deadline for submission is the close of business on the preceding Thursday. He further stated that no email submissions will be accepted, regardless of the date received by the Planning Department.

Mr. Reilly stated that at the Board's October 3, 2012 meeting, a gentleman was very upset because he stated that he sent an email to the Planning Board on October 1, 2012 that was not distributed to Board members. It was determined that the gentleman's email was not sent to the correct address and therefore was not received by the Planning Department.

Attorney McFadden-Zak stated that the Board must make sure that its decisions are well reasoned and include all information, and the only way it can do this is by having a procedure in place such as the one proposed by the Chairman.

REGULAR MEETING

Hamburg Recovery & Towing

Mrs. desJardins stated that the applicant had asked that the project be tabled until the Board's next meeting. She noted that the applicant is working with the Engineering Department in good faith.

Willow Woods Subdivision Scoping Session

Chairman Reszka explained that the Planning Board issued a Positive Declaration regarding this proposed subdivision in order to get more in depth information about the proposed subdivision. He noted that the purpose of the Scoping Session is to give the applicant direction regarding what additional information is required to be provided in the Environmental Impact Statement that will be prepared by the applicant.

Mr. Reilly stated that the biggest issue of concern for the Planning Board has been the issue of the previous dumping on this property. He noted that the Planning Board must decide what additional information it needs in order to make a decision on this proposal.

Chairman Reszka stated that he would like the full extent of the dump site delineated so that its size can be determined. He further stated that he would like each of the ridges sampled to determine what is in each one and how far they go.

Rob Pidanick from Nussbaumer & Clarke, representing the applicant, distributed to Board members a drawing depicting the project site, including the dump site and bore holes for tests that have been done to date. He noted that the applicant has had three (3) separate tests performed of this site, the results of which have previously been submitted to the Planning Board.

Mr. Bellissimo stated that he, Mr. McCabe and Mr. O'Connell entered the site from Taylor Road, cut through an open field and entered the dump site. He noted that he photographed the site where there were ridges of cut earth.

Mr. O'Connell stated that the three (3) Board members located the center marker of the dump site and then proceeded easterly, where they noticed what looked like old pharmaceutical bottles, vehicle carcasses and a lot of glass.

Mr. James Yoviene, applicant, stated that the environmental firm dug five (5) holes initially and then dug four (4) additional holes. He further stated that the ground was tested both times. He noted that the environmental firm dug right where the garbage was and tested the ground. Mr. McCabe responded that if the environmental firm was to go out further, why not keep going until no trash is found?

Mr. Yoviene stated that when the Planning Board first asked him to test the area, he paid an environmental firm \$14,000 to do the testing and the firm concluded that there was nothing wrong. He stated that that report was 52 pages long and he submitted it to the Board. He stated that the report was then sent to the New York State Department of Environmental Conservation (NYSDEC) for its review, and someone from that department stated that there was no problem with the site. That representative would not put his opinion in writing, however, because he stated that it was not his job. Mr. Yoviene stated that he then hired SJB Consultants to do the monitoring wells. He stated that he will have them go out and dig again, but he needs to know what specifically the Planning Board wants.

Mr. Pidanick asked what more, given the submission of three (3) separate reports, the project sponsor has to do. Mr. McCabe responded that each of the reports recommended further study and expressed the limitations of the study. He further stated that the full extent of the landfill has not been delineated yet. He noted that contaminants could be migrating from that site toward a place where 49 homes are going to be built.

Mr. Pidanick stated that the monitoring wells that were set up in the rear of the proposed development indicated that no migrating has occurred. Mr. O'Connell responded that there was very little rain so far this year and wondered if the results would be the same if the testing was done at this time.

Mr. Reilly stated that the applicant will have to document the extent of the landfill area and what the contents of the landfill were, as well as prove that there is no contamination of the ground water. He noted that when the ground water was to be tested, there was not enough ground water found. He further stated that a mitigation could be that the applicant will continue to monitor the ground water wells and take a sample every other year. He noted that once the homes are built, perhaps an association should be formed to continue to monitor the ground water wells.

In response to a question from Mr. Koenig, Mrs. desJardins stated that the Village of Hamburg Mayor indicated that there is nothing in the Village's files that would shed any light on the existence of the landfill. The applicant agreed to meet with the Village of Hamburg Mayor and include any information received from him in the Environmental Impact Statement.

Chairman Reszka stated that, because only a few of the ridges in the landfill area have been tested, the Planning Board does not know what exists in the remaining ridges.

Mr. Bellissimo stated that when he walked the property, he found three (3) or four (4) depressions, making it obvious that the ground had been disturbed many years ago. He further stated that nothing is growing in these depression areas.

Mr. McCabe stated that the report from SJB indicated that there is a central point in the landfill area and four (4) points at each point of the compass as shown on the map.

Mr. Yoviene stated that the area was tested in 1995 and he submitted that report to the Planning Board. He further stated that he then had the second report prepared this year at the request of the Planning Board and also had SJB dig the ground water monitoring wells, each of which was tested.

Mr. Koenig stated that if the developer of this property goes on record stating that he would be responsible if contamination leached to the area of the new homes, the Planning Board would not be liable if something were to happen in the future.

Attorney McFadden-Zak stated that the real issue that the Board wants to know is what is there and what happens to it and science will dictate that. She stated that no one on the Board is an expert.

Todd Huber from Building Solutions stated that he was in charge of the excavation work at the landfill site. He noted that there is a very clear fallow that delineates exactly where the rows were. He stated that it is clear that the material was excavated out of the rows with a hydraulic machine, tossed aside, and garbage was placed in the holes, at which point the rows were filled up. He further stated that in doing so, one could very accurately do a bore on either side so that the beginning and the end of each row can be determined.

Board members agreed that they would like what Mr. Huber described done at the landfill site.

Mr. Huber stated that the fallows were excavated and the landfill material was found at a depth of four (4) to eight (8) feet. He asked whether, if the material is found to be non-hazardous and proper substantiation is provided, the applicant would be allowed to leave the material there. Board members agreed that in that case the applicant would not be required to remove the material.

After a lengthy discussion, Planning Board members agreed that the following issues must be discussed in the Environmental Impact Statement:

- History of the site – How long was the site in use? Where did the trash come from that currently fills it?
- Dimensions of the site – The area of the dumping needs to be accurately delineated. (Further test pits to define areas containing garbage; magnetometer survey?)
- Show the location of the dumpsite in relation to the proposed building lots.
- Show the dumpsite in relation to current intermittent streams and surface water tributaries.
- Show the dumpsite in relation to the delineated wetlands on the site.
- Underlying geology – Determine depth to bedrock.
- Identify direction of groundwater flow.
- Impact of the site – Soil and water testing to identify impacts to surface water and groundwater.
- Sample surface water from the intermittent stream flowing out of the dumpsite.
- Sample surface water from down-gradient wetlands that receive the water flowing from the dumpsite.
- Do a bore on either side of the ridges so that the beginning and the end of each row can be determined.

Doug Nichols, Chairman of the Conservation Advisory Board, stated that he is fairly comfortable with all of the data he has seen so far but the problem is, as with any unguarded dumpsite back in those days, there could have been rogue environmental clean-up specialists who were midnight dumpers. He stated that the concern is that material such as perchlorethelene could have been dumped there and when the barrels corrode, if in fact the material is there, the leaching will cause a problem.

Mr. Nichols recommended that bore holes # 2, 3 and 5 be cased and remain as monitoring wells because they are located in the center of the dump area.

Mr. Don Weiss stated that magnetic earth radar is able to check disturbed areas for any underground problems. He stated that using this radar would enable the Board to determine where the ground is disturbed, rather than relying on aerial photographs. He stated that he believes that a study done in 1995 should be considered invalid. He stated that he would like to see someone from the Town accompany the excavator when the holes are being dug.

Mr. Weiss stated that he feels that an entity such as NYSDEC should be involved in this review and noted that the NYSDEC was not involved with the Edu Kids project or the Brierwood quarry project. He stated that PCBs were being dropped in this area when Love Canal was around. He stated that the applicant has spent a large amount of money already and should not be held up any longer.

Mr. Phil Pratt stated that his property (6540 Taylor Road) borders the subject parcel. He stated that he owns a pond and the applicant's property drains into this pond. He stated that at certain times during the year the pond floods and he is concerned about the drainage from the new subdivision. Chairman Reszka responded that if the project is built, Mr. Pratt's drainage problems cannot be made worse by the subdivision.

Mr. Reilly stated that the applicant's information regarding traffic impacts and sight distances, as well as drainage, should be included in the Environmental Impact Statement.

Chairman Reszka stated that the Board should place a public notice in the Hamburg Sun indicating that the Scoping Session will be held again on November 7, 2012 in case any other members of the public wish to speak about the contents of the Environmental Impact Statement.

In response to a question from Mr. Weiss, Mr. Reilly stated that the wetlands on the site have been delineated and the applicant proposes to disturb one (1) acre of federal wetlands, which is regulated by the U. S. Army Corps of Engineers.

Mr. Reilly stated that the Planning Department will put the Scoping document together and Board members will receive a copy to review before the Board's next meeting.

Mr. Reilly stated that once the information is compiled by the applicant and submitted to the Planning Board, the Planning Board may decide to find a company that is expert in landfills and, at the applicant's expense, ask that company to review the information submitted.

Mr. Bellissimo made a motion, seconded by Mr. McCabe, to table this item. Carried.

OTHER BUSINESS

Chairman Reszka made a motion that the Planning Board makes the following new policy regarding contact with the public effective immediately. The motion received a unanimous second. Carried. The new policy is as follows:

Intent:

The intent of this policy is to ensure that all information intended for consideration by the Town of Hamburg Planning Board is received. In order to implement this stated intent, guidelines for contact between the public and the Town of Hamburg Planning Board as well as the proper avenues for that contact are to be established.

Policy:

All contact between the public and the Planning Board shall be in one of the following manners:

1. **In Person**, by appearance at a Planning Board meeting at which a public hearing is being held. Appearance at a meeting at which there is no public hearing does not guarantee that you will be able to address the Board with your concerns.
2. **Submit Written Correspondence** to the attention of the Hamburg Town Clerk by the close of business on the Friday immediately preceding the regularly scheduled Wednesday meeting. If the immediately preceding Friday is a holiday which results in the closure of the Town Clerk's Office, the deadline for submission is the close of business on the preceding Thursday.

No Email submissions will be accepted, regardless of the date received by the Planning Department.

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Mr. Bellissimo made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 8:00 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: October 22, 2012