

Town of Hamburg
Planning Board Meeting
November 7, 2012
Minutes

The Town of Hamburg Planning Board met for a Work Session, followed by a Regular Meeting, on Wednesday, November 7, 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 and Attorney Cheryl McFadden-Zak.

WORK SESSION

Chairman Reszka stated that a new Planning Board policy has been put into effect regarding the submittal of correspondence from the public to the Board in the form of email. He further stated that the new policy is on the Town's website and was in the paper, and the intent of the policy is to make sure that all information intended for the Board is received.

Pleasant Development, LLC Rezoning R-A to PUD/R-3

Attorney Sean Hopkins, representing the applicant (Michael Bevilacqua), stated that the project site is approximately 88 acres in size and is the former Cooper Ridge Nursery. He noted that most of the site was previously cleared in connection with the former nursery and pockets of wetlands exist on the site, as do three (3) ponds that will largely be used for storm water management for the project.

Attorney Hopkins stated that the applicant originally filed an application to rezone this property to PUD because at one point in time there were small commercial elements to the project. He noted that those commercial elements have been eliminated from the project, and the applicant would be amending the request from PUD to R-3. He further stated that he believes that this project is consistent with the recommendations of the Town's adopted Master Plan.

Attorney Hopkins stated that 168 upscale apartments are proposed on the east side of the property along the New York State Thruway and 110 single family homes are proposed on the balance of the property. He noted that of the 110 single family homes, 80 would be traditional R-3 subdivision lots (\$250,000 - \$300,000 in value) and the rest would be estate lots valued at upwards of \$450,000.

Attorney Hopkins stated that the northern section of the property is largely Federal wetlands and will be left in its natural state. He further stated that an informational meeting was held with the nearby residents on November 6, 2012 (approximately 110 invitations were sent out) and between 45 and 50 people attended. He noted that the neighbors raised some concerns that the applicant indicated he would follow up on in terms of drainage, traffic, etc. He stated that the neighbors were assured that Mr. Bevilacqua will follow up on these concerns and reach out to them in the future.

In response to a question from Chairman Reszka, Rob Pidanick from Nussbaumer & Clarke, representing the applicant, stated that the existing ponds on the site are farms ponds and were used by the Cooper Ridge Nursery for irrigation.

Chairman Reszka asked why the Town should rezone this property to R-3 instead of R-1 or R-2. Attorney Hopkins responded that this property is located in the area designated in the Town's Master Plan as appropriate for mixed residential uses. He further stated that the applicant proposes to preserve 36 acres of the site as permanent open space that would never be developed in the future. He noted that a declaration of restrictions would be recorded at the Erie County Clerk's office once the content has been reviewed and approved by the Planning Board's counsel.

Chairman Reszka asked how the apparent access problem would be addressed, noting that the existing intersection at the proposed entrance to the site is already problematic and the fire companies would be looking for a secondary means of egress. Attorney Hopkins responded that the applicant knew that proposing a public roadway connection to any of the adjoining neighborhoods would not be well received. He further stated that a divided entranceway onto Pleasant Avenue is proposed. He noted that the existing Pleasant Avenue/Rogers Road/Wildwood Drive intersection is very strange and the applicant proposes to make it into more of a four-way intersection at almost 90 degree angles. He stated that a traffic study will be performed that will determine whether there is justification for a traffic signal there. He further stated that the applicant will explore a secondary means of egress and would prefer that it be gated and for emergency access only.

In response to a question from Chairman Reszka, Attorney Hopkins stated that the applicant would pay for the realignment of the intersection on Pleasant Avenue, but it would have to be approved by the County. He further stated that the proposed realignment is based on input received from Michael Asklar from Erie County Highway Department.

Mr. Reilly stated that if the property is rezoned to PUD, the plan that is approved would be the only project that could be built. He further noted that if the property is rezoned to R-3 and the applicant decides not to build the project currently being reviewed by the Planning Board, the property would still be zoned R-3 and another applicant could propose an entirely different project in the future that the Planning Board may not like.

Mr. Reilly stated that the Planning Board could recommend that the Town Board rezone a portion of the property to R-3 and a portion to R-2 or R-1. Attorney Hopkins stated that the applicant would certainly consider that.

In response to a question from Mr. Bellissimo, Attorney Hopkins stated that a few people at the informational meeting were initially aggressive, but the applicant stayed afterwards and met with every person who had a concern and it seemed that the neighbors were calm when they left. He further stated that, based on input received at the meeting, the applicant may be making some slight modifications to the proposed plan.

In response to a question from Mr. Koenig, Mr. Reilly stated that this is referred to as a "mixed use residential area" in the Town's Comprehensive Plan. He noted that the New York State Thruway is located south of this site, commercial property is located northeast of this site and an existing residential neighborhood is located to the north and west.

Chairman Reszka asked if the applicant would consider a cluster development for the parts of the project that include the single family homes so that they could be located further from the existing homes in the area and more green space could be saved. Attorney Hopkins stated that the applicant could certainly look at this possibility, although he noted that the applicant is already proposing to preserve approximately 40% of the site.

Chairman Reszka stated that he would like to see additional information regarding the possible secondary access to the site, as well as the plans for the realignment of the intersection at Pleasant Avenue. Attorney Hopkins stated that a Traffic Study will be performed and submitted to the Traffic Safety Advisory Board.

Mr. Reilly stated that it is more important that the Planning Board focus on the proposed plan for this site, and the zoning will fall into place if the Board becomes comfortable with the layout.

Mr. Bevilacqua stated that he has spent the last 2 ½ years designing the layout of this project, delineating the wetlands, doing capacity flow studies, etc.

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

E/F Burke (4865 South Park Avenue)

Mr. Brian Burke, applicant, stated that he has owned the existing building for a number of years and the current tenant is Apollo Drywall & Painting. He noted that the tenant uses the building for a warehouse and would like to construct a small addition (800 sq.ft.) to the building for his personal office, which is currently in his home. He further stated that he (Mr. Burke) plans to enhance the corner by improving the parking lot.

Mr. Reilly stated that he likes the submitted plan, as long as that is what is going to be built, because it improves what is currently on the site. He further stated that it appears that vehicles are parked all over the site currently and it would be nice to have a parking lot there.

Mr. Reilly stated that variances would be required for the parking areas because they are too close to both roadways.

Mr. Burke stated that he will have the building configuration changed to accommodate the front yard setback on Bayview Road. He further stated that he will have a full set of plans submitted to the Planning Department that will show proposed landscaping.

Mr. Bellissimo made a motion, seconded by Mr. Koenig, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Sgroi Two-Lot Subdivision (Woodland Drive)

Mr. Eric Krull, representing the applicant (David Stapleton), stated that there is a sewer line and a water line that runs through this property, and he will solicit a letter from both departments (Erie County Sewer Department and Erie County Water Authority) acknowledging that service will be available to both new lots.

Mr. Krull stated that this proposal would require a variance from the Zoning Board of Appeals because there is not enough width at the street line for both lots. He further stated that the

applicant proposes to build a home on sub lot 1, but sub lot 2 may not be buildable because of the presence of wetlands on it, but it cannot be made landlocked so it must have some frontage at the street line.

Mr. Krull stated that Mr. Stapleton proposed this subdivision four (4) years ago but at that time there was concern that the applicant had already begun building a house on sub lot 1 in the buffer zone of the New York State Department of Environmental Conservation (NYSDEC) wetland. He further stated that since that time, the applicant has obtained permits and has constructed wetland mitigation at the Villas at Brierwood.

Mr. Reilly stated that the applicant's application to subdivide this property was withdrawn four (4) years ago because the foundation of the home on sub lot 1 was constructed in the wetland. He further stated that the only road frontage this property has is 60 feet at the end of Woodland Drive, and a variance would be required because each sub lot must have 100 feet of frontage along a public road.

Mr. Reilly stated that the applicant should notify the O'Neills, who own a landlocked piece of property near the end of Woodland Drive, of the proposed subdivision.

Chairman Reszka asked Mr. Krull what will happen to the foundation on the property that was put in without approvals. Mr. Krull responded that the applicant plans to have an engineer check the existing foundation before a decision is made.

Chairman Reszka stated that he would like to see if the variance is granted before moving ahead with this review process.

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

Engineering Department comments have been filed with the Planning Department.

REGULAR MEETING

Chairman Reszka stated that a new Planning Board policy has been put into effect regarding the submittal of correspondence from the public to the Board in the form of email. He further stated that the only type of contact allowed between the public and the Planning Board is in person and in writing. Emails will not be accepted for any reason. Written communication must be addressed to the Town Clerk. He stated that this is to ensure that all public contact and input is properly tracked and delivered to the Planning Board in a timely manner.

Public Hearing – Lake Erie Towing

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing for a Special Use Permit for Lake Erie Towing to operate a public garage at 5173 Southwestern Boulevard. The public hearing will be held on November 7, 2012 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

Mr. Reilly stated that businesses that tow for the Town of Hamburg Police Department are now required to hold a valid Special Use Permit under the Public Garage section of the Town Code. He noted that this business meets all of the requirements for public garages.

Chairman Reszka declared the public hearing open. No one spoke.

Chairman Reszka declared the public hearing closed.

Mrs. Yerkovich made a motion, seconded by Mr. Koenig, to direct the Planning Department to prepare resolutions for the Board's next meeting to approve the Special Use Permit for this applicant. Carried.

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

Engineering Department comments have been filed with the Planning Department.

Public Hearing – WNY Broadcasting Association Two-Lot Subdivision

Mr. McCabe read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a two-lot subdivision, known as the WNY Broadcasting Association Two-Lot Subdivision, to be located on the north and south sides of Cloverbank Road on November 7, 2012 at 7:00 P.M. in Room 7B of Hamburg Town Hall."

Mr. Reilly stated that the property is already split by Cloverbank Road and the applicant plans to sell the southern parcel, which is zoned PUD. He noted that the northern parcel is zoned R-1 and could be developed if the applicant wanted to apply to the Town for approvals of a subdivision for single family homes.

Chairman Reszka declared the public hearing open. No one spoke.

Chairman Reszka declared the public hearing closed.

Mrs. Yerkovich made a motion, seconded by Mr. O'Connell, to issue a Negative Declaration based upon the review of the Environmental Assessment Form, the recommendation of the Planning Department and no adverse comments from the Engineering Department. Carried.

Mrs. Yerkovich made a motion, seconded by Mr. McCabe, to grant Preliminary Plat Approval for this two-lot subdivision with the following conditions:

1. The filling of a Map Cover is waived.
2. The installation of sidewalks is waived. This issue will be reconsidered if any development occurs in the area.

Carried.

Engineering Department comments have been filed with the Planning Department.

Hamburg Recovery & Towing V/F

Mrs. Susan Volbrecht, applicant, stated that it was brought to her and her husband's attention that the original plan submitted had an incorrect property location map, and that has been corrected on the latest site plan. She further stated that the existing green area on the property between Camp Road and the parking spaces was not labeled as such, and that has also been corrected on the latest site plan. She also noted that the original site plan showed parking spaces within the required 35 feet of green area, and they have been removed on the latest site plan.

Mr. Eric Volbrecht, applicant, stated that he will have the existing parking spaces on the property striped, including the handicapped space, and he will fence the entire property.

Mr. Volbrecht stated that his towing agreement with the Hamburg Police Department stipulates that the impound lot must be visually screened and secure. He further stated that the developer of Mission Hills has constructed a ten-foot high berm in the rear of his (Mr. Volbrecht's) property and therefore that meets the Police Department's requirements for screening.

Mr. Volbrecht stated that if a fence is required by the Planning Board along the rear of his property in the area of the berm, he will make appropriations for that.

Mr. Reilly stated that a Special Use Permit was granted in 2003 for this business, and now the Planning Board is trying to ensure that the site is in accordance with the Town Code's Public Garage requirements and also in compliance with what was approved previously.

Mr. Lardo stated that in 2003 the applicant was told to show a fence encompassing the entire site, but the plan was never revised.

Mrs. Volbrecht stated that when they bought the property it was completely fenced, but then Mission Hills took down the fence in the rear (247 feet), which was actually on Mission Hills property, and constructed the berm.

Mr. Lardo stated that the 35 feet of green area shown on the latest site plan in the front of the property does not exist. He further stated that the existing green area must be extended so that it is 35 feet from Camp Road, as shown on the latest site plan. Mr. Volbrecht agreed to extend the green area to bring it into compliance.

Mr. Volbrecht stated that the existing fence in the front of the property is wood, clean and standing straight and true. He noted that it is an eight-foot picket fence that is washed annually and a coat of sealer is put on it. Mr. Lardo stated that in his opinion, no repairs are needed to the existing fence on the property.

It was determined that the Town Code requires that a public garage be completely enclosed by a solid wall or fence at least eight feet in height. Therefore, the applicant must install the fence along the rear of the property.

Mr. Volbrecht stated that he will ask the developer of Mission Hills to put the fence back up that was taken down.

Mr. Reilly stated that the only place the applicant is allowed to store vehicles is inside of the fence that encompasses the entire site. He further noted that this will ensure that the property does not resemble a junk yard.

Chairman Reszka stated that if this Special Use Permit is granted, it should be provisional and run no more than 120 days. During the 120 days, the parking area and green space must be brought into compliance as depicted on the approved site plan. If this is done, the Special Use Permit will be granted for another 120 days provisionally on the installation of the fence and bringing the entire site into compliance with the approved site plan. If this is accomplished within the 240 days, it will become a permanent Special Use Permit. If any of the deadlines are not met by the applicant, the Special Use Permit will be immediately revoked.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to schedule a public hearing for this project to be held on November 21, 2012. Carried.

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

Engineering Department comments have been filed with the Planning Department.

Willow Woods Subdivision

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to remove this item from the table. Carried.

In response to a question from Chairman Reszka, Mrs. desJardins stated that no correspondence had been received from the public regarding the proposed Scoping Document.

Chairman Reszka asked if anyone in the audience wished to speak on the Scoping Session for the subdivision. No one spoke.

Planning Board members agreed that there were no revisions required to the Scoping Document.

Mr. Reilly stated that the draft Scoping Document was sent to the New York State Department of Environmental Conservation, the Erie County Health Department, etc. and he is awaiting input from these agencies. He further stated that he is planning to contact a gentleman who has expertise in landfills who may be asked to review the Environmental Impact Statement that will be submitted by the applicant.

Mr. Reilly stated that the Planning Board will adopt the final Scoping Document at a subsequent meeting.

Rob Pidanick from Nussbaumer & Clarke, representing the applicant, stated that he and Andrew Gow met with Dave Steiner from SJB to review the proposed Scoping Document.

Mr. Gow stated that before any test pits would be conducted in the landfill area, the area around the outside limits of the disturbance area would be excavated. If the excavation showed that there was refuse, the test pits would be moved further outside and another excavation would be performed and this would go on until no refuse is found. He stated that once the perimeter of the landfill area is established, then the test pits would be done in a pattern as depicted on a plan submitted to the Planning Board.

Mr. Gow stated that there will be test pits at the outside corners, as well as densely in the middle of the landfill area, and there will also be surface water sampling points along a tributary that runs in the vicinity of the other sampling points.

Dave Steiner from SJB stated that, once the exact dimensions of the landfill have been determined, monitoring wells will be placed at the middle of each of the four (4) sides, which will determine what kind of soil is there and the depth to bedrock. These monitoring wells will also interpret the ground water flow direction. He further noted that ground water samples will be taken out of these wells.

Mr. Steiner stated that the five (5) most recent test pits in the furrows found very similar conditions in each one in terms of the content, depth to the bottom, thickness of the garbage found and the soil that was put back on top of the garbage. He further stated that he feels that the testing that has been done, in addition to the additional proposed testing, will cover the landfill area very thoroughly.

In response to a question from Mr. McCabe, Mr. Steiner stated that the additional test pits will test for volatiles, semi-volatiles, metals, cyanide and PCBs.

Regarding surface water, Mr. Steiner stated that two (2) of the sampling points would be spaced far enough apart to show if there are any differences, and the other sampling point would be placed not too far into the wetland area.

Regarding ground water monitoring wells and who would be responsible for monitoring them, Mr. Pidanick stated that a Homeowners' Association is not planned for this subdivision. Mr. Reilly stated that if the Planning Board does its due diligence and determines that there is no problem with the soil or water at this time, but then in the future a problem does arise, it needs to be determined who would be responsible at that time.

It was determined that the applicant plans to retain ownership of the landfill area and therefore would be responsible for it.

Mr. Gow stated that after all of the test pits have been conducted, each one will be surveyed and its location, elevation and the topography of the surface and bedrock will be documented. He noted that wherever the limits of the landfill are, the pattern presented by the applicant's engineers will be the pattern they will be working with as far as the sampling is concerned.

Mr. Pidanick stated that if any dangerous materials are found, they will be removed.

Mr. Gow agreed to provide to the Planning Board with the aerial photograph of this area from the 1950s that showed the furrows, with the proposed test pits overlaid over the photo.

Mr. Reilly stated that the Planning Board will probably have someone with expertise in landfills review the submitted Draft Environmental Impact Statement, and the applicant will be responsible for any charges incurred for the review.

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to table this project. Carried.

OTHER BUSINESS

Mr. Koenig made a motion, seconded by Mrs. Yerkovich, to approve the minutes of October 3, 2012 and October 17, 2012. Carried.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 8:15 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: November 15, 2012