

Town of Hamburg  
Planning Board Meeting  
February 15, 2012  
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting on Wednesday, February 15, 2012 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Vice-Chairman Sasha Yerkovich, Gerard Koenig, Stephen McCabe, David Bellissimo, Doug Schawel and Dan O'Connell.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo and Attorney Cheryl McFadden Zak.

**Public Hearing - Crown Court, LLC**

Mr. McCabe read the following public hearing notice:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Crown Court, LLC regarding property located at 5360 Southwestern Boulevard. The applicant proposes to construct a 9,500 square foot retail building. In accordance with the Town of Hamburg site plan ordinance, a Public Hearing will be held on February 15, 2012 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Mr. Bellissimo made a motion, seconded by Mrs. Yerkovich, to remove this item from the table. Carried.

Andrew Gow from Nussbaumer & Clarke, representing the applicant, stated that the proposal is to construct a 9,500 sq. ft. building on the outparcel in front of the existing Wal-Mart store. He further stated that Crown Court, LLC would own the building and Shoe Show would rent one half of the building. He noted that Crown Court LLC is looking for a tenant for the other half.

Mr. Gow stated that the proposed building would be a one-story brick veneer structure and is intended to complement the existing Wal-Mart building. He further stated that he understands that Board members are concerned about the aesthetics of the rear of the building, which would face Southwestern Boulevard, and he is currently working with the applicant to address that concern.

Chairman Reszka stated that this is the first time the Board has been told that there would be two (2) tenants in the building and asked Mr. Gow when this decision was made. Mr. Gow responded that he was informed of this change one week prior to this meeting.

In response to a question from Chairman Reszka, Mr. Gow stated that the number of proposed parking spaces is based on the total square footage of the building, rather than just the part of the building Shoe Show would occupy. He further stated that Crown Court, LLC has an access and parking easement with Wal-Mart in case additional parking spaces are ever needed at the outparcel.

Mr. Reilly stated that if the second tenant is not a retail operation (a restaurant, for example) the applicant would have to return to the Planning Board to determine if the provided number of parking spaces is adequate.

Mr. Koenig asked Mr. Gow if this project will reduce the number of available parking spaces for Wal-Mart. Mr. Gow responded that only two (2) parking spaces would be eliminated from the south section of the Wal-Mart parking area.

Mr. Reilly stated that the architecture of the side of the proposed building (the long blank wall) that would face Southwestern Boulevard is not acceptable at this time.

In response to a question from Mr. Bellissimo, Mr. Gow stated that the building would be 28 feet high.

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

Chairman Reszka declared the public hearing closed.

Chairman Reszka stated that color renderings must be submitted.

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

Engineering Department comments have been filed with the Planning Department.

### **Maple Shade Subdivision**

Mrs. desJardins stated that the applicant provided to the Planning Department a letter from the County indicating that the applicant will not be required to connect to the existing sewer system on Taylor Road. She further stated that no correspondence was received from the Town of Boston regarding this proposal.

Mr. Jeff Skrzpek appeared on behalf of the proposed subdivision.

Mrs. Yerkovich made a motion, seconded by Mr. Koenig, to schedule a public hearing for this project to be held on March 7, 2012. 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.

### **Willow Woods Subdivision**

Andrew Gow from Nussbaumer & Clarke, representing the applicant, stated that the wetlands on the site are all jurisdictional by the State of New York and include a 100-foot buffer. He noted that Don Wilson and the U.S. Army Corps of Engineers looked at another area that was thought to potentially be wetlands on the site and, based upon the hydrology and other factors, it was determined that this is an area of federal wetlands (between lots 13 and 14). He further stated that in order to avoid this area of federal wetlands, lots 11 and 12 were relocated (one lot was added between lots 29 and 30 and the cul-de-sac was extended to incorporate the other lot). Mr. Gow stated that the overall lot count remains 49.

Mr. Gow stated that an environmental report done in 1994 that indicates where the dump on the site was located has been submitted to the Planning Department. He noted that the results of soil testing that was done at the site of the dump are included in the report. He further stated

that the dump was located in the rear of the property away from the area where homes are proposed.

Mrs. Yerkovich asked if the conclusions of a report done in 1994 should be considered relevant at this time and if it is possible that the conditions on the site could have changed since then. She also asked if the study should be updated and more samples taken from the area of the dump.

Mr. McCabe noted that in 1994 only four (4) samples were taken from the property for this report. Mr. Gow responded that those four (4) samples were taken right on top of the dump site and the adjacent stream and wetlands area.

Mr. McCabe stated that it might more productive to have ground water samples taken, noting that if anything is migrating towards the area of the site where development is proposed, the Planning Board would want to know.

Mr. Reilly stated that there are ways to determine which way the ground water is flowing on this site, noting that if it is determined that it is flowing towards the creek it will not impact the proposed development. He further stated that it might be a good idea to take some samples in the area where the homes are proposed, noting that there may be some minor contaminants from the materials that were deposited in the dump over the years.

Chairman Reszka stated that perhaps some borings should be taken in the area of the easternmost lots. Mrs. Yerkovich agreed.

Mr. McCabe stated that he feels that the Planning Board could use the advice of either the New York State Department of Environmental Conservation (NYSDEC) or the Department of Health to determine if there is a risk. He noted that he walked the site earlier that day and took some photos that he distributed to Board members. He noted that some of the photos were taken in the area of proposed lots 46, 47 and 48.

Mr. Reilly stated that he will contact the NYSDEC for advice regarding how to handle this concern.

Chairman Reszka read into the record the following letter from an East Eden resident, Becky O'Brien:

"Dear Planning Board Members,

I am writing out of concern over the proposed 49-lot Yoviene subdivision on Taylor Road. As a fourth generation resident and taxpayer of East Eden Road, I hope you'll take a moment to consider the following points and possibly provide some clarity.

It is my understanding that the property in question is zoned Residential Agriculture which, according to the zoning laws requires home lots to be a minimum of 2 acres with 100 feet of frontage. If I understand cluster subdivisions correctly it appears the Town approves development of smaller lots than the zoning code permits and in exchange, the developer concedes some portion of the total land to conservation. What I do not understand is why land that could not be developed in the first place (i.e. wetlands, 100 feet surrounding wetlands and former dumps) be part of the equation. The developer is conceding nothing, if the land being

offered up to conservation is already deemed unworthy of developing. It would seem more prudent to follow the zoning laws and approve lots that meet the 2 acre minimum and are not located on or within 100 feet of wetlands. While the investment might not be as lucrative for the developer, our community would be better served.

The following are reasons why I believe an additional 49-home subdivision will be detrimental to taxpayers in its vicinity.

- 1) Traffic. Regardless of traffic study results, the impact of that many additional homes is real and significant. Crossing East Eden Road to get to the mailbox has become a challenge as traffic continually increases. Taylor Road residents will experience negative effects from such an increase in traffic as well.
- 2) Safety. The intersection of Taylor Road and East Eden Road is a dangerous one. Drivers regularly roll through the stop sign into oncoming traffic. It has been the site of numerous accidents and will only be made worse by 49 more households.
- 3) Water. Retention ponds in subdivisions are needed because the houses are being built where it is too wet to build. They are not really ponds, but unsightly ditches of stagnant water. In my family's experience, development has caused a backing up of water onto our property regardless of the retention ponds.
- 4) Schools. Union Pleasant Elementary is currently experiencing record class sizes. These lots will be advertised as having a wonderful school district, but our children are attending kindergarten classes with 23 + kids and no improvement in sight.
- 5) Quality of life. After the years of construction dirt and noise, comes the commotion of that many new households. Each of those 49 households will likely have at least one party each summer. It is not an insignificant change to a neighborhood.
- 6) Future of today's "green space." What assurance do today's taxpayers have that the green space that is used for bartering today won't be the 49-lot subdivision of tomorrow?

Some development is inevitable and potentially beneficial to the future of our community; however, this type of development brings benefit to the developer over that of the community. This project should be looked at within the confines of wetlands restrictions and the RA zoning laws just as any project you or I might propose with land that is zoned Residential/Agriculture.

I appreciate your time and consideration to this matter. Thank you.

Sincerely, Becky O'Brien"

Mr. Reilly stated that at the Board's next meeting it will begin to go through the Environmental Assessment Form to make sure that all of the issues raised are being addressed and that it has enough information to make a rational decision regarding SEQRA.

Chairman Reszka stated that he would like the Planning Department to ask the Police Department for a three or four-year report of accidents at the corner of Taylor Road and East Eden Road.

Mr. Reilly stated that based upon conversations he has had with Town Board members, the Town will not be taking ownership of the undeveloped lands (approximately 63 acres) on the southern end of this parcel. He further stated that the Town will get a permanent easement on that land, however, to restrict it from ever being developed in the future. He noted that the Town can place deed restrictions on the undeveloped land or place a conservation easement

on the property.

Mr. Gow stated that the wetland areas on the site were deducted from the acreage before the R-1 layout and the cluster layout were designed.

Dave Radwan, Taylor Road, asked if the traffic study included the traffic generated by the swimming events at Willow Bend. Chairman Reszka responded that it includes all traffic generated in the area.

Mr. Radwan asked what would happen if a problem develops on the undeveloped part of the project (something coming out of the ground) and who would be responsible for taking care of the problem. Chairman Reszka stated that this would be the responsibility of the land owner. Mr. Radwan stated that the proposed retention pond is directly behind his home and he is concerned about the water table and where the water is coming from. He further stated that he is concerned about whether the flow of the water will be altered when the retention pond is installed and he is concerned about whether he will have to deal with contaminated soil and water on his property.

Bob Mahoney, Taylor Road, stated that he is concerned about the number of accidents at the intersection of Taylor Road and East Eden Road, as well as the number of vehicles that are ticketed for excessive speed along Taylor Road. He asked if the proposed entrance is the only possible access and noted that he is very concerned about the increase in traffic due to this subdivision.

Mr. Reilly stated that he will find out what the level of service of Taylor Road is.

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

Engineering Department comments have been filed with the Planning Department.

### **Long's Floor Care**

Mr. Reilly stated that a mitigation landscaping plan had been submitted by the applicant because the applicant cleared more trees than he was allowed to in conjunction with the approved site plan. He noted that the plan was reviewed by Wendel Landscape Architects, whose comments are as follows:

- The proposed species are correct and will give the area a naturalized look.
- The proposed trees and shrubs are placed at the proper spacing so that when they fully mature there will be ample room.
- The shrubs could be larger (36") so that they mature at a quicker rate.
- The trees could be of a larger caliper (3").
- Conifer trees could be planted near the parking area to create a better visual barrier.

Mr. Bellissimo stated that he spoke with a nearby property owner whose concern is that the Planning Board make sure the applicant accomplishes the visual barrier of the parking area.

A member of the public, 6440 Schultz Road, stated that her neighbor who lives on Heltz Road near the applicant's property has a significant drainage and erosion problem, which comes from the rear of the applicant's property. She further stated that her back yard is very wet, as well. She noted that she is worried that the work she has had to do to her yard to drain excessive water will be undone with the construction of this project.

Chairman Reszka stated that he feels that the mitigation plan does not go far enough. He further stated that he would like to see additional trees, noting that the property was fully wooded before the applicant cleared the large number of trees. He further stated that he feels that the bushes should be larger so that the area fills in quicker.

Chairman Reszka reminded the Board that one of the purposes of this mitigation plan is to replace the woods that were illegally removed.

Chairman Reszka stated that the mitigation plan should be amended to include 3" caliper trees, conifers to screen the parking area and 36" bushes. Mr. McCabe and Mr. Koenig agreed.

Mrs. Yerkovich stated that she supports the larger bushes and adding the conifers and does not see much difference between 2.5" and 3" caliper trees. Mr. Bellissimo and Mr. O'Connell agreed.

Mr. Schawel stated that he does not see the point in adding too many trees since in the winter time the trees would not screen the parking area. He further stated that he does not believe that passing motorists will notice whether a few trees are missing, as the speed limit is 55 mph. He stated that in order to keep the applicant's costs down, he would support adding the conifers and increasing the size of the shrubs, while not requiring any changes to the proposed tree sizes.

It was determined that the Planning Board will require larger shrubs (36"), additional conifers and larger caliper trees (3").

Chairman Reszka stated that he would like to ask the applicant to provide a performance bond for the mitigation work and noted that the Town Engineer has determined, based on the plan provided, that the cost of the trees, etc. would be \$9,380.00, so that would be the amount of the performance bond. He noted, however, that because the mitigation plan will be revised, the cost of the work and the amount of the performance bond will change.

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

### **Brookview Apartments**

Mr. Koenig made a motion, seconded by Mr. Bellissimo, to waive the Southwestern Boulevard Overlay District requirement of landscaped islands in the parking lot.

**Bayview Road/Route 5 Business Park Pre-Permitted Site Incentive Concept Application**

Mr. Reilly informed Board members that on February 27, 2012 the Town Board would be holding public hearings on the Draft Supplemental Generic Environmental Impact Statement (DSGEIS) and the pre-permitting of the site.

Mr. Reilly asked each Planning Board to provide any comments or concerns regarding the DSGEIS. Comments were as follows:

- Mr. Koenig stated that the document is very well done. He asked why the document states that if development occurs along Bayview Road the distance between driveways must be at least 220 feet.
- Mr. McCabe stated that he has no concerns or comments regarding the document, noting that it is very well done.
- Mr. Schawel stated that he is still digesting the document. He further stated that he is a bit concerned that there are so many restrictions that it might defeat the purpose of the process. He stated that he has concerns about the properties within the project area that are not owned by the applicant.
- Chairman Reszka had questions regarding section 3.7.4 (other utility services), section 5.7 (façade material of and signage for buildings facing Route 5 and Bayview Road), section 7.2.3 (aesthetics of the structures – rooftop mechanics) and section 7.2.9 (green space/buffer areas). He asked if research was ever done to investigate the possibility of installing an exit road parallel to the railroad and coming out onto Milestrip Road instead of an entrance out to Route 5.
- Mr. Bellissimo asked what the height of a required berm would be (section 7.3).
- Mr. O'Connell stated that he is still reviewing the document.

Mr. Koenig made a motion, seconded by Mr. Bellissimo, to approve the minutes of February 1, 2012. As there were six (6) ayes and one (1) abstention (Mr. McCabe), the motion carried.

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

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: February 28, 2011