

Town of Hamburg
Planning Board Meeting
March 1, 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, March 1, 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

Zak Management – Requesting Sketch Plan Direction on a proposal to construct a 14,781 sq.ft. building on property located at 4090 Jeffrey Boulevard

Attorney Sean Hopkins, representing the applicant, stated that throughout the rezoning request process for a portion of this property, Mr. Kryszak (applicant) has recognized that his first and foremost interest in this property is making sure he can accommodate existing and future growth associated with his business operations. He stated that Mr. Kryszak has a new business opportunity to enter into a long term contract for some military work.

Attorney Hopkins stated that the proposal is to construct a new two-story building that will accommodate this additional work, and the property is zoned properly for this use.

Attorney Hopkins stated that in light of this new opportunity, the project previously proposed on the site that would have required a rezoning has been put on hold.

In response to a question from Mr. Reilly, Attorney Hopkins stated that the reason for the new building would be to expand the current manufacturing facility. He further stated that there would be a storage area in the new building, as well.

Chris Wood from Carmina Wood Morris stated that additional parking is also proposed. He noted that in 2009 the Planning Board approved additional parking on this site, which was never constructed. He stated that there would be a net increase of 43 parking spaces.

Mr. Reilly asked Mr. Wood to submit parking calculations and reasoning why this number of parking spaces is proposed.

Mr. Reilly stated that the Town Board has indicated that either Mr. Kryszak must withdraw the rezoning request currently being considered for a portion of this site or the Town Board will either consider it withdrawn or consider issuing a Positive Declaration.

Attorney Hopkins stated that Mr. Kryszak will withdraw the rezoning request without prejudice.

It was determined that the proposed building would be located in the Ravenwood North Industrial Park, and therefore the applicant will need to complete the Supplemental Findings Statement to confirm that the project is in conformance with the Generic Environmental Impact Statement that was filed in 1992.

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

Attorney Sean Hopkins, representing the applicant, stated that the following revisions have been made to the Site Plan based on input received at the Board's previous meeting:

- The plan has been updated to make clear the fact that the trees along South Park Avenue and Knoll Drive will be preserved.
- Landscaping has been added between the proposed building and South Park Avenue.
- Interior landscaped islands have been added in the parking area.
- Plantings have been added around the perimeter of the proposed building.
- A landscaping plan will be submitted that has been prepared by a Registered Landscape Architect (RLA).
- The building's east and west elevations are being reviewed by the architect for possible upgrades, and revised elevations will be provided before the Board's next meeting.

Attorney Hopkins stated that until recently the applicant planned to allow the current tenant in the home scheduled for demolition to stay until next year, but the applicant has come to an agreement with the tenant, and the tenant will be vacating the home in April 2017.

Attorney Hopkins stated that the conditions of approval he envisions for this project would be as follows:

- A landscaping plan prepared by a RLA must be submitted.
- The building elevation facing South Park Avenue must be upgraded.
- The access easement for the driveway to Park Square Apartments must be obtained.

Mr. Reilly stated that this project falls under the Town's Fair Housing Law, and he asked Attorney Hopkins to meet with Mr. Chris Hull from the Community Development department to discuss this.

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 Peter Liberatore to demolish the existing home and construct a ten-unit apartment building on property located at 5683 South Park Avenue. The Public Hearing will be held on March 1, 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. Monaco, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

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

Chairman O’Connell stated that the public hearing notice for this public hearing did not appear in the Front Page, and therefore the Board could not legally hold the public hearing at this time. He stated that members of the public would be allowed to speak, especially if they cannot attend the Board’s next meeting (March 15, 2017), which is when the public hearing will be held.

Mr. Reilly stated that Planning Board members are in receipt of all of the correspondence received from the public to date.

Chairman O’Connell asked if there was any input from the public. The following people spoke:

- Judith Day, 4491 Grandview Avenue, stated that most of the items on the Planning Board agendas are for development, and they are almost never denied. She stated that developers are destroying this Town because of their greed. She stated that there is no reason this property should be rezoned. She stated that this project will have an impact on the surrounding area, and the Town should be concerned about all of its taxpayers, rather than just a few.

Chairman O’Connell commented that he noticed that many letters the Board received regarding this project indicated that the property should not be rezoned. He stated that that the property was rezoned, and unless a court indicates otherwise, the Board must continue reviewing the proposed subdivision.

- Jane Johnson, 6411 Boston State Road, stated that she is most concerned about the existing flooding that exists in this area. She stated that the golf course floods and backs up onto her property. She stated that she has lived at this location for 35 years and feels that her concerns for her safety and property should be taken seriously. She submitted photos of flooding of the golf course and the field next to her home.
- Mike Welch, 4437 Valleyview, stated that any approvals granted by the Planning Board while an Article 78 is still being heard would be unethical. He stated that until all legal remedies have been exhausted, it is inappropriate that any action be taken by the Planning Board. He stated that there have been procedural shortcuts taken during the review process, and this is why several residents in the area hired a lawyer.
- Attorney Richard Lippis stated that it was he who filed the Article 78. He stated that he would withhold any substantive comments until the March 15, 2017 meeting. He asked

Board members to consider whether it makes sense to table this project or not make a determination on the proposal until the Article 78 decision is rendered.

- Donna Lawrence, 4548 Newton Road, asked if the homeowners in the area are notified of a public hearing.

Chairman O'Connell stated that the Planning Board is not required to notify nearby homeowners of an upcoming public hearing, but the Town is in the process of changing that policy.

Mr. Reilly stated that there is no requirement in the State Law or the Hamburg Town Code that the Planning Board notifies neighbors, but the Town is considering changing the local law to require notification.

In response to a question from Mr. Clark, Attorney Walling stated that he will research whether the Planning Board can table this project until the Article 78 is resolved.

Chairman O'Connell made a motion, second by Mr. Mahoney, to table this project until March 15, 2017. Carried.

Engineering Department comments have been filed with the Planning Department.

BFG Manufacturing (3949 Jeffrey Boulevard) – Requesting Site Plan Approval of a 25,000 square foot addition to the existing building

A representative of BFG Manufacturing stated that they propose to construct a 25,000 sq.ft. addition on the rear of the existing building on Jeffrey Boulevard. He stated that the addition would be used for the warehousing of parts to supply the lines they currently have at the facility.

In response to a question from Mr. Mahoney, the representative stated that they probably will have to hire additional employees.

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

“Whereas, in accordance with New York State SEQR Law, the Hamburg Town Board, acting as SEQR Lead Agency for the Ravenwood North Industrial Park, issued a SEQR Positive Findings for the development of the Park; and

Whereas, in accordance with SEQR and the Findings Statement, each project proposed within the Park must be reviewed against the Findings Statement to determine if the project is in accordance with those Findings; and

Whereas, the Town Planning Board has received a Site Plan application for the construction of a 25,000 sq.ft. addition to the existing BFG Manufacturing operation at 3949 Jeffrey Boulevard; and

Whereas, the Planning Board has reviewed the proposal against the SEQR Findings issued for the Ravenwood North Industrial Park and held the required public hearing.

Now, Therefore, Be it Resolved that the Planning Board finds the project in substantial conformance with the SEQR Findings document and therefore determines that no further compliance is required, and the Planning Board Chairman is authorized to sign the form.

Be it Further Resolved that the Planning Board issues a Conditional Site Plan Approval of this project with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated March 1, 2017.

2. The landscaping plan shall be reviewed and approved by the Planning Department.

Carried.

Engineering Department comments have been filed with the Planning Department.

Pleasant Creek Subdivision – Analysis of revisions to Phase I

Mr. Reilly stated that this subdivision received Preliminary Plat Approval from the Planning Board, Final Plat Approval was granted for Phase I and the improvements were constructed.

Attorney Sean Hopkins, representing Pleasant Development, LLC (developer of the subdivision), stated that Phase I consists of 54 lots, and the infrastructure for 34 of those lots has been installed.

Attorney Hopkins stated that this subdivision was subject to a lengthy review process regarding the rezoning of the property from R-A to R-2 for the single family homes and R-3 for the apartment component of the project. He stated that based on the rezoning of this property in 2013, the developer proceeded to the Subdivision Approval process and received Preliminary Plat Approval in 2014.

Attorney Hopkins stated that the issue before the Planning Board currently is an issue pertaining to ownership of the lots that are supposed to be sold to Natale Homes (31 of the 34 lots for which the infrastructure has been installed). He noted that the applicant in connection with the subdivision approval and the owner of the overall site is Pleasant Development, LLC.

Attorney Hopkins stated that during the subdivision review process, Rob Pidanick from Nussbaumer & Clarke submitted the Major Subdivision Information Sheet. He stated that one of the questions on this sheet is the following:

“Will the project involve the formation of a condominium?” He noted that Mr. Pidanick checked the box “no”.

Attorney Hopkins noted that below this question is the following note:

“Condominiums in accordance with the Town Zoning Law are only allowed in the R-3 Zoning District. By application for Subdivision or Site Plan Approval, the applicant hereby waives the benefit of RPTL Section 339 Y and 581.”

Attorney Hopkins stated that regardless of whether the Town can regulate the form of ownership in terms of condominiums, that form signed by Mr. Pidanick remains accurate – Pleasant Development, LLC is not seeking condominium status. He noted that Pleasant Development, LLC owns the entire site and entered into a contract with Natale Homes by which they will be selling them homes. He stated that Pleasant Development, LLC has no control over whether or not Natale Homes chooses to pursue condominium status.

Attorney Hopkins stated that in connection with Phase I of this subdivision, Pleasant Development, LLC has invested \$2,198,310.00 in the engineering fees, PIPs, Plat Map fees, Erie County Sewer fees, Erie County Water Authority fees, the required I & I for Erie County, utility improvements, site work infrastructure and paving, street lights, carrying costs, property taxes, etc.

Attorney Hopkins stated that on March 12, 2015, Pleasant Development, LLC entered into a contract with Natale Homes for the sale of 54 lots. He noted that subsequently, Natale Homes chose to pursue condominium form of ownership, and the Town has taken exception to whether or not Natale Homes has the legal right to do that. Attorney Hopkins stated that this issue is

currently before the Zoning Board of Appeals and is not on behalf of Pleasant Development, LLC.

Attorney Hopkins asked Board members to let the subdivision stay approved for the following reasons:

- The form that was signed by Mr. Pidanick remains accurate regarding asking for condominium status. Pleasant Development, LLC's contract with Natale Homes does not give it (Pleasant Development, LLC) the right to control the form of ownership that Natale Homes seeks.
- If the subdivision approval is rescinded, that will result in tragic consequences to Pleasant Development, LLC because a very large loan is involved on Phase I, and a problem will arise with the lender if no subdivision approval is in place.
- Pleasant Development, LLC has vested rights, meaning that in reliance on the subdivision approval, it installed the infrastructure.
- Pleasant Development, LLC was made aware of this issue of ownership in March 2016 when Sarah desJardins sent Attorney Hopkins a copy of the Subdivision Information Sheet for this project. No one has told Pleasant Development, LLC until now that there is a problem and that the approval for this subdivision may be rescinded because of the form submitted by Mr. Pidanick.

Attorney Hopkins stated that if the Planning Board rescinds the Preliminary Plat Approval, Pleasant Development, LLC would have no choice but to pursue legal action, which is not preferred. He stated that the issue about the condominium form of ownership is hurting his client because his client is now in a "catch 22" in that he is being asked to either cancel the contract with Natale Homes, which is not possible, or accept the rescinding of the Preliminary Plat Approval.

Attorney Hopkins asked Board members to let the Zoning Board of Appeals process play out, noting that the Town will not issue any building permits for new homes until that issue is resolved.

Attorney Hopkins stated that his client is very interested in proceeding to the next phase of the subdivision, and Pleasant Development, LLC would be willing to agree that, in connection with the remainder of the site, any contract that is entered into with any third party with respect to any of the future lots will contain language that condominium status will not be pursued by the purchaser of any of the lots.

Attorney Hopkins stated that his client is willing to insert the above language into any contracts going forward because if the issue of condominium status comes up again, it hurts Pleasant Development, LLC and they cannot move forward with the subdivision.

Chairman O'Connell stated that no decision would be made at this meeting. He further stated that he would be tabling this issue until the Board's next meeting (March 15, 2017), at which time it will be discussed further.

In response to a question from Mr. Schawel, Michael Bevilacqua (developer of the subdivision) stated that of the 34 lots in Phase I, 31 lots are part of the 54 contracted to be sold to Natale Homes. He agreed to highlight the lots that are under the contract with Natale Homes and email it to Mrs. desJardins so she can forward it to Board members.

In response to a question from Attorney Walling, Attorney Hopkins stated that the contract with Natale Homes includes a total of 54 lots, and the infrastructure has been installed for 31 of those lots.

Mr. Reilly noted that the public road for the first 34 lots in Phase I has been constructed and dedicated to and accepted by the Town of Hamburg.

Mr. Reilly stated that the Town Code requires developers to identify the form of ownership. He noted that the Planning Board approved this subdivision with the understanding that there would be no condominiums. He further stated that the Town typically requires private roads if the homes are to be condominiums, and the problem is that this public road has already been installed and dedicated to the Town.

Mr. Schawel stated that condominiums are taxed differently, which is concerning to the Town.

Mr. Clark asked if the Town can require the developer to take ownership of the already constructed road. Attorney Hopkins responded that this would not be possible because then it would not be possible to access the rest of the subdivision. He stated that a private road cannot connect to a public road.

Attorney Hopkins stated that he understands why the Town is concerned about the condominium form of ownership with public infrastructure, but Pleasant Development, LLC has no control over that.

Mr. Mahoney asked if Pleasant Development, LLC revealed the fact that condominiums were not allowed in this subdivision to Natale Homes. Mr. Bevilacqua stated that this information was not disclosed to Natale Homes at the time the contract was entered into because he (Mr. Bevilacqua) was not aware of the fact that Mr. Pidanick has signed the form indicating that condominiums would not be pursued.

Attorney Hopkins stated that Mr. Pidanick submitted the Subdivision Information Sheet to Mrs. desJardins as part of the application process, and neither he (Attorney Hopkins) nor Mr. Bevilacqua was aware that that had occurred. He noted that they became aware of it in March 2016 when Mrs. desJardins advised them that this was an issue because of the fact that Natale Homes was seeking condominium status.

Chairman O'Connell stated that what he has a problem with is the fact that Natale Homes entered into an agreement with Pleasant Development, LLC knowing that condominiums are not allowed there and advertising them anyway. He stated that he assumes that Natale Homes knew at the time of the contract that condominiums are not allowed there.

Chairman O'Connell stated that now Natale Homes wants to build condominiums where they are not allowed. Mr. Geraci concurred with Chairman O'Connell's thoughts.

Attorney Hopkins stated that the issue of Natale Homes wanting to build condominiums where they are not allowed is the issue before the Zoning Board of Appeals currently, and it does not affect Pleasant Development, LLC.

Mr. Monaco asked if Natale Homes would consider not attaching condominium status to the single family homes in Phase I.

In response to a question from Mr. Geraci, Mr. Bevilacqua stated that the existing model home for the subdivision is a single family home that will be part of the Natale Homes condominium association.

Chairman O'Connell stated that many developers and builders come to the Town for approvals, and they all know the Town Code inside and out, and they also know that condominiums are not preferred on public roads. He stated that Natale Homes knew the Town Code existed, and he asked if Natale Homes just does not care about the Town Code.

Mr. Chapman asked how Natale Homes did not know what our Town Code says about condominiums and why Natale Homes did not check that condominiums were allowed before entering into the contract to purchase the lots.

Attorney Hopkins stated that Natale Homes has only purchase two (2) lots (lot # 1 and lot # 46) and has not closed on the remainder of the lots.

Attorney Walling asked Attorney Hopkins when Natale Homes learned that condominiums are not allowed in the R-2 District. Attorney Hopkins speculated that it was sometime after March 2016 when he (Attorney Hopkins) was made aware. He noted that he made Natale Homes aware after he was sent the form submitted by Mr. Pidanick.

Mr. Chapman asked if Natale Homes thinks the Town will continue the public road where the condominiums are proposed.

Mr. Reilly stated that the Town notified the parties in March 2016 that the condominium issue was going to be a problem. He noted that the Town did not delay things between then and now – it was up to the developer and the builder to decide in which direction to go from there.

Mr. Monaco stated that he is concerned that allowing these condominiums will create dissention among the homeowners who eventually live in the subdivision who are not getting the tax break the condominiums are getting.

In response to a question from Attorney Walling, Attorney Hopkins stated that the existing public road that has been dedicated to the Town would serve 34 of the 54 lots Natale Homes plans to construct.

Mr. Monaco stated that it would be wrong for a public road serviced by the Town to be built to service the remaining 20 lots Natale Homes plans to build condominiums on.

Attorney Walling asked Attorney Hopkins how he would react if the Planning Board decided to not allow a public road to service the remaining 20 lots in Phase I. Attorney Hopkins responded that that would be mandating that every home in the subdivision be a condominium. He stated that a public road cannot connect to a private road.

Attorney Walling asked Attorney Hopkins if he is asking the Planning Board to allow a public road to be constructed beyond what is existing in order to service the remaining 20 lots Natale owns regardless of whether they ultimately are considered condominiums. Attorney Hopkins responded that his client would like to move beyond the 54 lots in question and proceed with the next phase of the subdivision.

In response to a question from Mr. Chapman, Attorney Hopkins stated that his client needs the road to be completed in order to proceed with the next phase.

Chairman O'Connell asked what would happen if the remaining 20 lots in Phase I were serviced by a private road. Attorney Hopkins responded that his client would have to speak to the prospective purchaser (Natale Homes) about that.

Rob Pidanick from Nussbaumer & Clarke stated that public utilities have already been installed in the area where the remaining 20 lots in Phase I will be constructed.

Mr. Walling stated that the Zoning Board of Appeals has tabled the request from Natale Homes to review the Supervising Code Enforcement Official's interpretation of the Town Code regarding condominium form of ownership until the Planning Board acts on the issue currently before it.

Mr. Geraci questioned whether it is fair to change the status of these homes from single family to single family condominiums without getting input from the surrounding residents who did so when the subdivision was originally approved.

Attorney Corey Auerbach from Barclay Damon, representing Natale Homes, asked Board members to allow the Zoning Board of Appeals process to play out because it will help define the issues more clearly. He stated that the Zoning Board of Appeals is waiting for the Planning Board, and the Planning Board is waiting for the Zoning Board of Appeals.

Chairman O'Connell stated that the Planning Board does not tell the Zoning Board of Appeals what to do, and the Zoning Board of Appeals does not tell the Planning Board what to do. He further stated that the Planning Board is not waiting for the Zoning Board of Appeals.

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

OTHER BUSINESS

Mr. Schawel made a motion, seconded by Mr. Mahoney, to approve the minutes of February 15, 2017. Carried.

Mr. Schawel made a motion, seconded by Mr. Geraci, to adjourn the meeting. The meeting was adjourned at 8:10 P.M.

Respectfully submitted,
Doug Schawel, Secretary
Planning Board

Date: February 22, 2017