

Town of Hamburg  
Planning Board Meeting  
August 7, 2013  
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, August 7, 2013 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Stephen McCabe, David Bellissimo, Sasha Yerkovich, Dan O'Connell and August Geraci.

Others in attendance included Andrew Reilly and Sarah desJardins, Planning Consultants, Richard Lardo (Engineering Department), Attorney Cheryl McFadden-Zak and Councilwoman Amy Ziegler.

Excused: Doug Schawel

## **WORK SESSION**

### **Care-A-Lot Day Care**

Mrs. desJardins stated that the applicant received a use variance from the Zoning Board of Appeals in 2003 to operate a day care center in an R-1 zoning district. She further stated that in July 2013 the applicant received another use variance to extend the existing non-conforming use because she wishes to construct a 32' X 34' addition to the day care facility. Mrs. desJardins noted that the applicant also received an area variance for the proposed addition because it would not conform to the exterior side lot line requirements in this zone (40 feet is required and 20 feet is proposed).

Mrs. desJardins stated that the applicant is looking for direction regarding the proposed addition, as well as a proposed new exit from the property onto Juno Drive.

Mrs. desJardins stated that the adjacent resident on Juno Drive is very concerned about the proposed addition, and is also concerned about a dead evergreen tree that she believes is on the applicant's property that should be taken down. The applicant stated that the dead evergreen tree is actually on the adjacent resident's property.

Mrs. desJardins stated that Jerry Giglio, Traffic Safety Advisory Board Coordinator, has indicated that he would like the new driveway to only exit onto Juno Drive (no entrance to the site from Juno Drive).

It was determined that the new driveway from Juno Drive should be placed as far away from the Route 5/Juno Drive intersection as possible.

Mr. DePan, applicant, stated that there is approximately ten (10) feet of natural growth between his property and the adjacent neighbor's property.

Mrs. DePan, applicant, stated that she would like to have a new pull-off area where people can drop off their children.

In response to a question from Chairman Reszka, Mrs. DePan stated that she probably will hire five (5) additional employees if and when the addition is built. She further stated that she will put in additional parking spaces if the Board feels she should, and she would have no problem making the new driveway "exit only" onto Juno Drive.

Chairman Reszka stated that the applicant should have at least one (1) parking space per

employee.

It was determined that Attorney McFadden-Zak will research whether or not this applicant will have to meet the Special Use Permit requirements of the Town Code, even though a use variance was already granted.

It was further determined that the applicant will research the amount of outdoor play area that will be required with the new addition.

Board members agreed that the applicant can move forward with engineered drawings with the understanding that the above concerns raised by the Board will be addressed.

Engineering Department comments have been filed with the Planning Department.

### **Brian Bates (vacant land, north side of North Creek Road)**

Mrs. desJardins stated that Mr. Bates has a contract to purchase a lot that was recently created as a result of the subdivision of property on North Creek Road (DiChristopher Two-Lot Subdivision). She further stated that Mr. Bates proposes to further subdivide the newly created lot into two (2) lots so that he only has to extend the existing water line on North Creek Road a distance of 30 feet in order to construct his new home. She noted that the applicant has indicated that he has no plans for the second lot at this time.

Chairman Reszka stated that he is concerned that this would be creating two (2) flag lots, which almost always brings problems for the property owners, as well as fire fighters.

Mr. Reilly stated that the Town Code encourages the creation of flag lots in this area of Town, rather than standard road frontage lots. He further acknowledged, however, that flag lots do create other problems.

Mr. Brian Bates, applicant, stated that his intention would be to save the rear lot in case one of his children ever wants to build behind him. He further stated that he has no intention to sell the rear lot.

Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to schedule a public hearing to be held on August 21, 2013. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Public Hearing – Dan Howard 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 five-lot subdivision proposed by Dan Howard to be located on the northwest corner of Bayview Road and Big Tree Road. The public hearing will be held on August 7, 2013 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

Andrew Gow from Nussbaumer & Clarke, representing the applicant, stated that the applicant proposes a five-lot subdivision on the corner of Bayview Road and Big Tree Road. He further stated that public utilities exist adjacent to the site, and a small sanitary sewer extension would be required to serve the lots on Big Tree Road. He noted that no wetlands or cultural resources exist on the site.

In response to a question from Chairman Reszka, Mr. Gow stated that the proposed drainage easement would be part of lot # 5, would also run along the rear of lots 1, 2, and 3, and would be maintained by the owners of these lots.

In response to a question from Chairman Reszka, Mr. Gow stated that he has contacted the County directly about the proposed sanitary sewer extension, and the County actually proposed the manner in which the extension would be done.

Chairman Reszka declared the public hearing open. The following people spoke:

- Councilman Joseph Collins stated that he believes that the drainage easement should go with the title of lot # 5 so that the owner is aware of it.

Chairman Reszka declared the public hearing closed.

In response to a question from Chairman Reszka, Mr. Gow stated that the location of the homes and driveways will not interfere with existing utilities and signage.

The Planning Department was asked to prepare approval resolutions for the Board's next meeting with one of the conditions of approval being that the driveway for lot # 4 must be as far away from the intersection of Bayview Road and Big Tree Road as possible.

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

Engineering Department comments have been filed with the Planning Department.

### **Nidus Development (South Park Avenue)**

Chairman Reszka stated that the project would remain tabled at the request of the applicant.

### **Willow Woods Subdivision FEIS**

Mr. Reilly stated that the applicant prepared a draft Final Environmental Impact Statement (FEIS) and Mr. Norm Wohlabough, expert on landfills, has reviewed the document.

Mr. Wohlabough stated that in May 2013 he was asked to review a document that Empire Geo Services had prepared for the applicant. He stated that upon reviewing the document, he found some outstanding environmental items that the applicant's representatives agreed to address.

Mr. Wohlabough stated that the applicant's representatives re-sampled surface water and sediment, test pitted some high spots on the landfill site he was concerned about, and they installed ground water monitoring wells on the site. He noted that the work was done in May 2013 and the results were received by the Town in July, and he subsequently reviewed them.

Mr. Wohlabough stated that the findings by Empire Geo Services indicate that there is no significant contamination associated with this landfill site, and he agrees with those findings. He noted that the initial work performed indicated that there is mild contamination, which is what would be expected at a site like this, and the subsequent work also shows similar contamination.

Mr. Wohlabough stated that the ground water on the site is quite clean and there are very low concentrations of constituents in the ground water. He further stated that the ground water flows to the west, and the westernmost well is the cleanest of the wells on the site.

Mr. Wohlabough's recommendations for the FEIS are as follows:

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1. The actual landfill should be located on the plot plan.
2. There should be ongoing environmental ground water monitoring for the next five (5) years, and there should be a plan indicating with what frequency the monitoring will be done, as well as which constituents will be sampled (ground water, surface water, sediment, soil, etc.)
3. Depending on how the concentrations are through time, perhaps the monitoring should be continued for another five (5) years, or if there are no increases in contaminant concentrations during the initial five (5) years, the monitoring could be ceased at that time.
4. Signage should be installed around the landfill since there will be residential dwellings nearby.

In response to a question from Chairman Reszka, Mr. Wohlabaugh stated that he would advocate monitoring the site for the first five (5) years and plotting the data annually, and then if there is no change in the data but the Town is still uncomfortable, the site could be monitored every other year for an additional six (6) years. He further stated that if there is an increase in contaminant concentration in any of the vectors, he would recommend that the monitoring continue every year for the subsequent five (5) years.

In response to a question from Mr. Bellissimo, Mr. Rob Pidanick from Nussbaumer & Clarke, representing the applicant, stated that the applicant would retain the services of SJB for a period of one (1) year until the Homeowners' Association is established. He further stated that the monitoring would then be the ongoing responsibility of the Homeowners' Association.

Mr. McCabe stated that cadmium was detected in sediment sample # 2 at 148% beyond the Part 375 SCO. He further stated that arsenic exceeded by 12.5%, copper exceeded by 52%, mercury exceeded by 48% and cadmium exceeded by 380% in sediment sample # 3. He noted that these sediment samples have him concerned because they would be most accessible to the public, children in particular.

In response to the concerns raised by Mr. McCabe, Mr. Wohlabaugh stated that some of the metals referred to by Mr. McCabe were above residential SCO up to commercial, many of them were below, and many mentioned by Mr. McCabe were within background limits.

Mr. McCabe stated that he is most concerned about mercury. Mr. Wohlabaugh responded that when one talks in percentages, 48% sounds bad, but the level is pretty close to the guidance value and is a slight overage. He noted that these levels are what one would expect to see in old disposal facilities, and they are considered to be spurious hits.

Mrs. Yerkovich asked Mr. Wohlabaugh why one would expect any contamination to increase over the next five or ten years when the landfill has been there for 60 years. Mr. Wohlabaugh responded that he is being conservative with his recommendations because there were no records kept for this facility.

In response to a question from Mr. O'Connell, Mr. Wohlabaugh stated that he believes that the Planning Board has done its due diligence regarding the landfill.

It was determined that the applicant's representatives will make the first set of changes to the FEIS, submit the document electronically to the Planning Board, and the Planning Board will then make any additional changes.

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

### **Sherwood Meadows Apartments**

Mrs. desJardins stated that the SEQR Coordinated Review time period (30 days) has elapsed and the Planning Board received correspondence from the New York State Department of Environmental Conservation, Erie County Department of Environment & Planning and Mr. Charles Cox. She further stated that all Planning Board members had been sent a copy of all of the correspondence.

Mrs. desJardins stated that the Planning Board should declare itself Lead Agency for the purpose of SEQR.

Mrs. Yerkovich made a motion, seconded by Mr. O'Connell, that the Planning Board declare itself Lead Agency under SEQR. Carried.

It was determined that no new correspondence regarding the Coordinated Review had been received.

Chairman Reszka stated that a public hearing would be scheduled for August 21, 2013. He noted that a public hearing was held early in the review process because of the amount of interest shown in the project. He stated that another public hearing will be held now that all of the information about the project, as well as correspondence from interested agencies, has been received.

Mr. Charles Cox made the following statement for the record:

"The residents of Roundtree Village have been patient throughout this process and it has been a learning process for all of us and I think that you will see that we have many interested neighbors in the Roundtree development who are vehemently opposed to this project. From the very beginning going back to last December, we expressed concern about the proposed change of use and the detrimental impact it will have on the character of our neighborhood. We said early on that it didn't take a genius to figure out that an extra 250 or more vehicles traveling through Roundtree Village would put our neighborhood's children at risk. DATO Development's SEQR submission would have you believe that there will be no impact on traffic. We disagree. We told you that our streets are deteriorating and the prospect of an extra 250 or more vehicles traveling through Roundtree Village would exacerbate these conditions. Pictures of the crumbling roadways were shared with the Planning Board. DATO Development's SEQR submission, however, would have you believe that the streets within Roundtree Village are in "good" condition. We disagree with that. We told you that the change in use would be in direct conflict with the Town's Comprehensive Plan, by your own admission the Town Planning Board's bible. Specific sections of the Comprehensive Plan have been cited on numerous occasions to demonstrate how the change of use falls well outside of the Comprehensive Plan. DATO Development's SEQR submission, however, would have you believe that the change of use is consistent with the Town's adopted Comprehensive Plan. Again, we vehemently disagree. Without a doubt, DATO Development's submission was designed to depict this project in the most favorable light, but a clear objective view of the planned apartment complex is needed, and that can lead to only one conclusion. The project must be rejected. According to Erie County's response to DATO Development's submission, the Department of Sewerage Management cited the need for a capacity analysis given the increased number of housing units compared with the prior approved 56 townhouse project. Residents of Roundtree Village previously raised concerns about the capacity of these lines. The County also stated in

response to the project that it would generate additional traffic onto the local street network. The County said that although capacity on the roads may exist, the impact of said traffic on the residential neighborhood should be addressed during the SERQ process... 'Single family houses, pedestrians, children at play and other features common in such subdivisions will be affected by the heavier volume.' The residents of Roundtree Village have been all over the issue of safety concerns for our neighborhood's children and increased traffic. Unfortunately, to the best of our knowledge, the Town's own traffic board has not commented on the Traffic Impact Study for this proposed change of use. The time has come for the Town of Hamburg and its Planning Board to do the right thing for the residents of Roundtree. This project will adversely change the character of Roundtree, the project will increase traffic, put the children of Roundtree at risk and further deteriorate our streets and is completely not consistent with the Town's Comprehensive Plan. We are appealing to your sense of doing what is right for the residents of Roundtree and ask that the project be rejected. In addition to this, we have some unfinished business with the Planning Board. You may recall that we have been searching for proof that the land for this project was changed from Residential Farmland to R-3. We have searched, we understand that members of the Planning Department have searched and no one has been able to show us how or when the change occurred, and we believe the Town needs to provide this proof. With your permission, I'd like to briefly have our legal counsel address the issue of the matter of the zoning."

Attorney Francis Amendola stated that he has been retained by various residents. He stated that it is his understanding that this property was zoned RF (Residential Farming) before it was R-3. He noted that the only thing the residents have been able to find with respect to the change in zoning is the zoning maps, and there should be documentation of the change in zoning. He stated that it is the Town's burden to clarify this before the project goes any further. He further stated that if it cannot be proven that the zoning is in fact R-3, then an application for rezoning would have to predate this proposal.

Chairman Reszka stated that he received a letter written by Todd R. Falkiewicz received on June 27, 2013 (letter included as an attachment to these minutes). He further stated that he does not want the public to think that he is blaming all of the Roundtree Village residents, but the letter was directed to him (Chairman Reszka) and insinuates that the members of the Planning Board are not upright and doing what they are supposed to do.

Chairman Reszka addressed the comments made in Mr. Falkiewicz's letter. He stated that he found the letter offensive to himself, as well as the entire Planning Board.

Councilman Joe Collins stated that he objected to Chairman Reszka's comments. He stated that the Chairman had compromised himself by issuing a personal statement, and should recuse himself from being involved in this issue.

Chairman Reszka stated that Councilman Collins should not be speaking at a Planning Board meeting as a member of the Town Board. Councilman Collins responded that he was speaking as a resident. Chairman Reszka noted that Councilman Collins did not say that before he spoke.

Mr. Dennis Chapman, resident, stated that just as the Chairman objects to the referenced letter, the residents object to the proposed project. He further stated that the applicant's property is not being maintained, and the grass is very high.

Mr. Reilly outlined for the residents how the review process will proceed after the public hearing is held.

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Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to schedule a public hearing to be held on August 21, 2013. Carried.

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

Engineering Department comments have been filed with the Planning Department.

**OTHER BUSINESS**

Regarding the minutes of July 24, 2013, Chairman Reszka stated that there was no second to Mr. McCabe's motion under Other Business, and therefore it should be stricken from the record.

Chairman Reszka also stated that the Board agreed that after a project has been tabled twice in a row, it will not be placed on a subsequent agenda until new information is submitted. He asked that this be added to the minutes under Other Business.

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to approve the amended minutes of July 24, 2013. As there were six (6) ayes and one (1) abstention (Mrs. Yerkovich), the motion carried.

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to adjourn the meeting. The meeting was adjourned at 8:25 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board

Date: August 12, 2013

June 24, 2013

Peter Reszka, Planning Board Chairman  
Hamburg Town Hall  
6100 South Park Avenue  
Hamburg, NY 14075

RECEIVED

JUN 27 2013

TOWN OF HAMBURG  
PLANNING DEPT.

**RE: Sherwood Meadows – Heatherwood Drive, Hamburg, New York**

Dear Chairman Reszka:

My name is Todd R. Falkiewicz and I reside at 3663 Woddhaven Circle. This is my second letter to you regarding my **strong opposition** to the Sherwood Meadows Apartment Project proposed by Dato Development LLC (David Burke). After attending the Hamburg Town Board meeting June 10, 2013, I realized how many of my surrounding neighbors in the Roundtree development are also opposed to this project.

I realize your position as the planning board chairman is appointed and Mr. Walters appointed you. I also know your obligation to Supervisor Walters. This is apparent through the contributions that your wife donates to Mr. Walters campaign on a regular basis. And I'm sure you haven't forgotten that your position on the planning board was created for you even though there wasn't a need for it at the time!

Sadly, our situation is one that you are familiar with. Our research has uncovered minutes in a planning board meeting back in 2012 where your wife presented herself in front of the planning board (which you were on) about a project in your neighborhood. The proposed driveway expansion of a certain developer was denied because of the way it adversely effected the integrity and quality of life in **your** neighborhood concerning appearance, traffic, and pollution. Do you remember this? It is upsetting to me that you have no problem using your appointed position to protect your own personal gains and interests, meanwhile you give us the run around that you have to follow the guidelines of the planning manual without exception. I do not believe you on this matter and I feel you are taking advantage of your position and not protecting the best interests of the citizens in this town.

The Sherwood Meadows Apartment Project should not be a "precedent" setting issue as Mr. Walters said at the town board meeting on June 10, 2013. The thought of putting a 128 apartment complex in the middle of a residential neighborhood with no ingress/egress other than the residential side streets is absurd at best. No city, town or village resident should have to be inconvenienced like this, because we know you wouldn't be Mr. Reszka, you've already proven that. It is not our fault Mr. Burke's intended use of this lot failed and it is not our responsibility to put something there that succeeds. I understand it his property and he is a developer trying to make money, however, the people in the Roundtree development shouldn't have to sacrifice anything to bail out Mr. Burke. All we ask is you do the right thing by saying, "thank you" to Mr. Burke for his interest, "but no thank you – our **voting, tax paying** residents value their property and quality of life too much in the Roundtree development."

Thank you for your time,



Todd R. Falkiewicz

cc: Steven J. Walters, Supervisor  
Joseph A. Collins, Councilman  
Amy Ziegler, Councilwoman