

Town of Hamburg  
Planning Board Meeting  
September 16, 2015  
Minutes

The Town of Hamburg Planning Board met for a Work Session, followed by a Regular Meeting at 7:00 P.M. on Wednesday, September 16, 2015 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O'Connell, Stephen McCabe, David Bellissimo, Joseph Collins, Augie Geraci, Doug Schawel and William Clark.

Others in attendance included Town Planner Andrew Reilly, Principal Engineer Rick Lardo and Attorney Ryan McCann.

**WORK SESSION**

**Michael Jablonski – Requesting a Special Use Permit to erect two (2) wind turbines at 3134 Old Lakeview Road**

Mike Jablonski, applicant, stated that he would like to erect two (2) wind turbines because his electric bill for just one (1) of his buildings is over \$800.00 per month, and the wind turbines would reduce his bill by 65%.

Keith DeGraff from United Wind stated that his company would install the wind turbines.

In response to questions from Board members, Mr. Jablonski stated that he owns 30 acres of land, and it is zoned R-A.

In response to a question from Mr. Reilly, Mr. Jablonski stated that he is applying for two (2) wind turbines. Mr. Reilly stated that a variance will be required for the second wind turbine because the new wind turbine law only allows one (1) wind turbine per property. He further stated that the Planning Board cannot review this application unless only one (1) wind turbine is being requested.

Mr. Jablonski stated that the Zoning Board of Appeals (ZBA) Chairman, Brad Rybczynski, informed him that the ZBA will approve a second wind turbine.

Board members informed Mr. Jablonski that Mr. Rybczynski is just one (1) member of the ZBA.

Mr. Reilly informed Mr. Jablonski that if he proves to the Board that his property is defined under New York State Ag & Markets law as a farm and if New York State Ag & Markets indicates that Hamburg's wind turbine law is too restrictive for him to operate an agricultural use and he needs two (2) wind turbines, he should produce correspondence from New York State Ag & Markets to that effect. He further noted that New York State Ag & Markets laws supersede a Town's laws.

It was determined that the applicant will either submit a letter from New York State Ag & Markets or apply for a variance for the second wind turbine.

Mr. Reilly asked the applicant to contact Mercy Flight and advise them of his proposal for the wind turbines. He also advised the applicant to provide a letter from the two (2) adjacent neighbors that would be affected by the wind turbines being too close to their property lines indicating that they do not have a problem with the wind turbines being so close to them.

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

Engineering Department comments have been filed with the Planning Department.

## **REGULAR MEETING**

### **James Grandoni Subdivision (Winslow Road)**

Andy Gow, representing the applicant, stated that one (1) of the previously proposed single-family lots has been removed from the Preliminary Plan, and now the proposal is for two (2) single-family lots and one (1) duplex lot. He further stated that the duplex would be located further away from the top of the bank than the previously proposed single-family home.

Mr. Gow stated that he has been at the site and taken a better look at the bank on Lot 1 that has been a concern to the Conservation Advisory Board (CAB). He stated that the bank is not very steep and is fully vegetated with very old trees on it. He noted that there is no sign of erosion, and the bank is more like a steep hill than a bank.

Mr. Gow stated that he would be willing to meet with members of the CAB to discuss the bank, but he feels that 18 feet is a reasonable distance away from the top of a slope for a house to be placed.

Chairman O'Connell stated that the concern would be for children living in the duplex being that close to the slope.

Mr. Clark asked Mr. Gow to provide a better idea of the actual grade of the slope. Mr. Gow agreed to add contours to the plan to show the difference between the top of the bank and the center of the creek.

In response to a question from Mr. Clark, Mr. Gow stated that he does not know if there are other duplexes in the area of the proposed subdivision.

Mr. Bellissimo made a motion, seconded by Mr. Clark, to schedule a public hearing to be held on October 7, 2015. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Lakefield Subdivision (Lakeview Road)**

Mr. Reilly stated that the Planning Board approved this subdivision in October 2014, and one (1) of the conditions of approval was that perc tests be done at the site. He stated that the perc tests were subsequently done, but they failed, and therefore sand filter or raised bed septic

systems are required. He noted that the Hamburg Town Code does not allow major subdivisions on soil that does not perc, and per the Town Code, four (4) or more lots constitute a major subdivision.

It was determined that the previously approved subdivision had six (6) lots, and the applicant's engineer reduced the number of lots to five (5).

Mr. Reilly stated that Mr. Lardo considers this a major subdivision because five (5) lots are proposed, but Mr. Gow considers this a four (4)-lot subdivision because the easternmost lot is separated from the rest of the property by a lot owned by someone else. He noted that all five (5) proposed lots are part of the same SBL number.

Andy Gow, representing the applicant, stated that lot # 5 is isolated from the rest of the lots by a 250-foot-wide piece of property with a power line running through it. He stated that lot # 5 has essentially and practically already been cut off from the rest of the proposed lots.

Mr. Gow stated that one (1) of the previously proposed lots has been eliminated.

Mr. Reilly stated that the Town of Hamburg considers this to be a major subdivision, but Erie County does not consider it to be a major subdivision because Erie County does not count lots greater than five (5) acres.

Attorney McCann stated that he would like to research the question of whether this would be considered a major subdivision per the Hamburg Town Code, given the fact that one (1) of the lots is isolated from the rest.

Mr. Gow stated that sand filter septic systems are very common in western New York because of the types of soils that are found here.

Mr. Bellissimo made a motion, seconded by Mr. Clark, to schedule a public hearing to be held on October 7, 2015. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Two 19 Sports Inc. (5160 Camp Road)**

At the request of the applicant, this project was tabled.

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

Engineering Department comments have been filed with the Planning Department.

**Glenn Wetzl – northeast corner of McKinley Parkway and Route 391**

Attorney Sean Hopkins, representing the applicant, reminded Board members that the applicant agreed to eliminate all of the proposed frontage lots, as requested by the nearby residents, which was a big sacrifice. He further noted that the applicant would leave the frontage along McKinley Parkway, Newton Road and Route 391 zoned R-A, which would assure the nearby residents that that area will never be developed for single-family homes.

Attorney Hopkins stated that this project provides nearly 45% more permanent open space than what is required for clustering. He noted that the applicant has made an effort to preserve those areas that are most important environmentally.

Attorney Hopkins stated that additional storm water areas were added to the Site Plan by the project engineer. He noted that the ditches that traverse the site would be diverted into storm water management areas that retain that water and then discharge it at a controlled rate.

Attorney Hopkins stated that the legitimate drainage issues experienced by the Johnsons (6111 Boston State Road) are not attributable to this project site because the water simply passes through it currently. He stated that the applicant is quite comfortable that this project will not make the situation worse, and actually in light of all of the extra storm water management areas proposed that are not even needed for this project, he hopes he can improve the Johnson's situation.

Attorney Hopkins stated that the applicant has made a good faith effort to spend some additional money, both in design and project construction, to accommodate the Johnson's legitimate concerns.

Attorney Hopkins addressed Board members' comments at the Board's last meeting regarding a recommendation to the Town Board as follows:

1. There was a comment made that this project would be better if it was a cluster development with one-acre lots. Attorney Hopkins stated that this project is at nearly 45% more green space than what is required. He stated that clustering with large lots is not what cluster developments are about, and the applicant has made an effort to preserve the integrity of this visual resource. He noted that patio homes are proposed, as opposed to 2 ½ story large homes. He further stated that if this property is developed in accordance with its existing R-A zoning, there would be 14 to 15 lots, and they would be largely frontage lots.
2. There was a concern about the comments in the letter received from the New York State Department of Conservation (NYSDEC). Attorney Hopkins stated that each of the comments contained in that letter are standard comments and do not raise any unique concerns. He stated that none of the steps that the applicant will be required to take relative to the NYSDEC letter can be taken until a SEQR determination has been issued and a decision has been rendered on the requested rezoning.
3. There was a comment made that this site has been identified by the New York State Office of Parks, Recreation and Historic Preservation as being a potentially significant resource in terms of archaeology. He stated that a clearance letter has been received

from the New York State Office of Parks, Recreation and Historic Preservation indicating that this project site will not have any adverse impacts on cultural or historical resources.

Attorney Hopkins stated that a Traffic Impact Study (TIS) was prepared and submitted to the New York State Department of Transportation (NYSDOT) and to the Erie County Department of Public Works, and both entities have concurred that the project will not result in any potentially significant traffic impacts.

Attorney Hopkins stated that it is not clear whether this project is consistent with the Town's Comprehensive Plan. He noted that Section 4 states that the Town should evaluate various options for preserving open space through the establishment of vegetative buffers, conservation easements, preserved areas of habitats, conservation subdivision design, deed restrictions, etc. He noted that the applicant is incorporating these means of preserving open space in the project's design.

Attorney Hopkins stated that the Town's Comprehensive Plan also indicates that conservation subdivision design is appropriate in the southeastern portion of the Town in the areas closest to the Village. He noted that this project site falls into that area precisely.

Regarding the drainage problems residents are having on Newton Road, Attorney Hopkins stated that in 2009, the Hamburg Town Engineer wrote a letter to Tom Reynolds, Erie County Legislator, about the downstream drainage system along Newton Road. He noted that the Town Engineer requested that the Erie County Highway Department undertake appropriate drainage improvements to the Newton Road system in order to correct the deficiencies and alleviate the problems being experienced by residents in that area.

Attorney Hopkins stated the above shows that the Stonebridge Subdivision is in compliance with drainage requirements, and the drainage problems along Newton Road have been there since at least 2009 and are not caused by Stonebridge.

Attorney Hopkins asked that the Planning Board and/or the Town Board write a letter to Erie County asking that the work be completed on the drainage problems along Newton Road.

Chairman O'Connell stated that he would like some time to go over the paperwork submitted by Attorney Hopkins at this meeting.

Attorney McCann stated that the Planning Board must fully state its reasoning for issuing a positive or a negative recommendation to the Town Board on the proposal. He noted that this process must move forward to the Town Board at some point.

Board members agreed to email the Planning Department with their views of the project and whether the project should move forward with a positive or negative recommendation.

Mr. Bellissimo stated that he believes the applicant has addressed a number of the issues that have been raised. He stated that he is now comfortable with the fact that the drainage problems on Newton Road are not caused by the Stonebridge Subdivision.

Mr. Schawel stated that if this project is rejected and a developer decides to construct an R-A subdivision on this property, there will be 2 ½ story homes lining the frontage of McKinley Parkway, Newton Road and Route 391. He noted that in that case, the nearby residents will not have any view at all.

Glenn Wetzl, applicant, stated that the patio homes would be 20 feet high, which is 15 feet lower than what could be built. He agreed to provide the Board with photographs taken from the corner of Newton Road and McKinley Parkway showing what the views are now and what they would be if this project is constructed.

Mr. Reilly agreed to ask the Town Board if it would consider resending the letter to Erie County regarding the Newton Road drainage problems.

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

Engineering Department comments have been filed with the Planning Department.

#### OTHER BUSINESS

Mr. Bellissimo made a motion, seconded by Mr. Geraci, to approve the minutes of September 2, 2015. Carried.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 7:45 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: September 25, 2015