

Town of Hamburg  
Planning Board Meeting  
September 18, 2019  
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, September 18, 2019 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman William Clark, Vice-Chairman Augie Geraci, Doug Schawel, Robert Mahoney, Al Monaco, Dennis Chapman, and Kaitlin McCormick.

Others in attendance included Town Planners Drew Reilly and Sarah desJardins, as well as Planning Board Attorney Jennifer Puglisi.

**WORK SESSION**

**Lakeshore Dental Care, PLLC – Requesting Site Plan Approval of a parking lot extension at 5020 Lakeshore Road**

Ellen Kuehlewind, office manager of Lakeshore Dental Care, stated that they would like to extend the existing parking area for patients and add lighting along the driveway to the parking area. She noted that the dental office has been there since the 1950s.

In response to a question from Mr. Chapman, Ms. Kuehlewind stated that the doctor's clientele is getting older, so they would like to designate some handicapped parking spots and also add approximately seven (7) additional parking spots.

In response to a question from Mr. Geraci, Ms. Kuehlewind stated that the lights would only be on until approximately 7:00 P.M., and they will not interfere with the nearby residents.

Mr. Schawel stated that the office really needs more parking.

Mr. Geraci made a motion, seconded by Mr. Schawel, to schedule a public hearing to be held on October 2, 2019. Carried.

**Speedway, LLC – Requesting a rezoning of property located at 4200 Southwestern Boulevard from C-1 to C-2 in order to construct a convenience store with fuel sales**

Jonathan Wocher from McBride Dale Clarion, representing the applicant, stated that Speedway has a contract to purchase 4.1 acres of vacant land at the corner of Big Tree Road and Southwestern Boulevard for the proposed project. He noted that Speedway proposes to construct a convenience store with fuel sales on this property, which would require a Special Use Permit and Site Plan Approval.

Mr. Wocher stated that eight (8) fuel dispenser islands are proposed in front of the building, one (1) driveway onto Southwestern Boulevard and one (1) on Big Tree Road.

Mr. Wocher stated that he believes that C-2 zoning for this site is appropriate as there is C-2 zoning across the street, as well as at the intersection. He stated that given the character of

the area, the commercial uses and the traffic volumes, this would be an appropriate zoning designation for this property.

Mr. Wocher stated that a traffic study is underway, which will be submitted to the New York State Department of Transportation (NYSDOT).

Mr. Chapman stated that he is concerned about the proposed access to both Southwestern Boulevard and Big Tree Road, noting that only right-hand turns out of the site should be allowed at both exits. Mr. Wocher responded that the applicant's intent would be to modify the existing striping on Southwestern Boulevard to allow left turns into the site, and the applicant is currently assessing the possibility of allowing left turns out of the site.

Mr. Chapman stated that he can envision major traffic confusion with the lights in the area, as well as the allowed right turn on red. He further stated that during Bills games, the lights in this area are changed to blinking red, which would make it more confusing.

Mr. Chapman stated that there are several gas stations in the area already, and he does not think that this proposal would fit into the neighborhood because the area would become "gasoline alley". Mr. Wocher responded that the amount of fuel stations that exist in this area is precisely why Speedway is proposing this project – there are high traffic volumes in this area.

In response to a question from Mr. Chapman, Mr. Wocher stated that there is no intent to mislead the Board by calling this project a convenience store with fuel sales, noting that this is simply the terminology used by the applicant. He stated that if the Board wishes to call it a gas station, that would be fine with the applicant.

Mrs. desJardins stated that sidewalks exist on the north side of Southwestern Boulevard that run to the intersection with Big Tree Road, and there are sidewalks on the east side of Big Tree Road from the intersection with Southwestern Boulevard to a point west of the Thruway.

It was determined that input will be sought from the Town's Traffic Safety Advisory Board and the NYSDOT.

In response to a question from Mr. Geraci, Mr. Wocher stated that at peak hours, Speedway sees approximately 20 to 30 customers per hour at its food service counter.

Mr. Wocher agreed to submit to the Board what the average numbers of employees would be.

Mr. Wocher stated that the traffic study done by the Board's next meeting, but he did not think he would have NYSDOT input by then.

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

**REGULAR MEETING**

**Public Hearing - 7:00 P.M., WellNOW Urgent Care Clinic - Requesting Site Plan Approval of an urgent care clinic to be located on vacant land between 4923 and 4885 Southwestern Boulevard**

John Clark from DDS Companies, representing the applicant, stated that the applicant proposes to construct a 3,500 sq.ft. urgent care facility. He stated that the Town Engineer's comments have been addressed.

Mr. Schawel read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will hold a public hearing on a proposal by WellNOW to construct an urgent care clinic on vacant land between 4923 and 5885 Southwestern Boulevard. The public hearing will be held on September 18, 2019 at 7:00 P.M. in Room 7B of Hamburg Town Hall."

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

- A member of the public asked if any wetlands exist on the site.

Chairman Clark declared the public hearing closed.

It was determined that the Planning Department will prepare resolutions for the next meeting.

It was determined that the impervious area on the site will be reduced if this project is approved.

Ms. McCormick made a motion, seconded by Mr. Mahoney, to table this project.

Engineering Department comments have been filed with the Planning Department.

**E-ONE – Requesting Site Plan Approval of a +/- 10,000 sq.ft. addition to the existing building at 4760 Camp Road**

Victor O'Brien from C & S Engineers, representing the applicant, stated that the site is located on the corner of Queens Lane and Camp Road. He stated that the addition would be constructed where asphalt already exists.

Mr. O'Brien stated that a side yard setback variance was obtained from the Board of Zoning Appeals on September 10, 2019.

Dan Buchanan from Bammel Architects stated that E-One manufactures emergency vehicles and has been in Hamburg for a very long time. He noted that the addition would be to house the company's manufacturing equipment.

Chairman Clark made a motion, seconded by Mr. Monaco, to schedule a public hearing to be held on October 2, 2019. Carried.

Engineering Department comments have been filed with the Planning Department.

**A L Asphalt Corporation - Requesting Site Plan Approval of a hot mix asphalt plant to be located at 5690 Camp Road**

Mr. Mahoney stated that the Planning Board is not a political Board, is not directed by any politicians or elected officials and is not concerned with their opinions. He further stated that the Board cannot take into consideration the concerns of the public that their property values may or

may not decrease as a result of a project or that an applicant may or may not owe taxes on his or her property. He stated that he heard in the media today that the Planning Board planned to vote on this project at this meeting. He noted that this is not true and that it will be a long and strenuous investigation so that Board members can be sure about how a conclusion is arrived at. He stated that Board members are not directed by any outside entities.

Attorney Corey Auerbach from Barclay Damon, representing the applicant, stated that the applicant received a list of questions from the Planning Department, and his client is happy to answer those questions. He showed Board members an aerial view of the applicant's property with the location of the proposed asphalt plant shown, as well as how trucks would access the site.

Attorney Auerbach asked that the Planning Board classify the action under SEQR and noted that he had submitted several letters to the Planning Board to which he has received no response. He noted that the nature of the letters is representing that this is a Type II Action pursuant to SEQR, which has already been determined by the New York State Department of Conservation (NYDEC) as an action that does not have environmental significance or does not have a potentially significant environmental impact.

Attorney Auerbach stated that it is unusual that 120 days after an application has been submitted there is no classification of the action. He asked the Planning Board to appropriately classify this action.

Chairman Clark stated that the Planning Board preliminarily classified this as an Unlisted Action and will continue to proceed in that direction unless Board members vote otherwise.

Attorney Auerbach stated that a Type II Action is one that is explicitly listed in Section 617.5 of the Environmental Conservation Law. He further stated that 617.5 (c) (9) states that a non-residential structure 4,000 sq. ft. of gross floor area or less that does not require a use variance is a Type II Action as a matter of law.

Attorney Puglisi read Section 617.5 (c) (9) of the Environmental Law as follows:

"Construction or expansion of a primary or accessory non-residential structure or facility involving less than 4,000 sq.ft. of gross floor area and not involving a change in zoning or a use variance and consistent with land use controls but not radio communication or microwave transmission facilities."

Chairman Clark stated that there are a few local laws that this project may be inconsistent with, such as the Town's Comprehensive Plan and the Camp Road Overlay District. He further noted that on August 17, 2019 the Planning Board received a letter from the Supervising Code Enforcement Official, Roger Gibson, indicating that he believes that Town Code Section 280-133 C applies to this project. Chairman Clark stated that he does not believe that the Planning Board can say that this project complies with local land use controls with the information it has and therefore believes this to be an Unlisted Action under SEQR.

Mr. Reilly stated that SEQR timeframes are directory and not mandatory, and it took as long as it did to classify the action because there were questions as to whether it is a Type II Action or not. He stated that this is not a building and therefore does not fall under the section of the SEQR law mentioned by Attorney Auerbach. He stated that this is a use of a property that includes equipment and is an Unlisted Action.

Mr. Reilly stated that if there is any question about a project being a Type II Action, municipalities must err on the conservative side and treat it as an Unlisted Action.

In response to a question from Chairman Clark, Attorney Puglisi stated that this project is not consistent with land use controls based on Section 280-133 C of the Hamburg Town Code. She read from Section 280-133 C as follows:

“dissemination of atmospheric pollutants, noise or odor into any other R, C, M-1 or M-2 District.”

Attorney Auerbach stated that this project will do none of the above, and this will be established.

Attorney Auerbach stated that the applicant has provided an odor study, which evidences that odors will not be perceptible beyond the property line, a noise study that indicates that the noise will not be above ambient levels and a traffic study indicating that there would be no potentially adverse impact on traffic.

Attorney Auerbach stated that the project would not create any material detrimental impact on residential values. He further stated that emissions would be an order of magnitude below health thresholds.

In response to a question from Attorney Puglisi, Attorney Auerbach stated that there are health safety standards that are prescribed by the NYSDEC.

Attorney Auerbach stated that the applicant's project is an expressly permitted use in this zoning district, will be harmonious with the community and is consistent with Hamburg's land use controls.

Attorney Auerbach stated that this is a Type II Action as a matter of law.

Chairman Clark made a motion, seconded by Mr. Mahoney, to classify this action as Unlisted Action and assume Lead Agency Status under SEQRA. Carried.

Attorney Auerbach stated that the proposal is a hot mix asphalt plant at 5690 Camp Road, which is a 50-acre site, and the plant would encompass a 160' X 200' area. He noted that the existing curb cuts used for the concrete operation would be utilized. He stated that a traffic study was prepared, and there would be approximately 11 truck trips at peak hour, totaling approximately 70 truck trips per day, which is a reduction of 100 truck trips from the property's historic use.

In response to a question from Chairman Clark, Attorney Auerbach stated that the property's "historic use" refers to the last few years.

In response to a question from Ms. McCormick, Attorney Auerbach stated that when the batch plant was in full operation (approximately three (3) years ago), there were 100 vehicle trips per day.

Attorney Auerbach stated that the Planning Board is required to review this project pursuant to the standards in the Town Code as follows:

1. Whether there is a harmonious relationship between the proposed use and the existing uses

Attorney Auerbach stated that under New York State law, the fact that this is an expressly permitted use in the zoning district is tantamount to a legislative finding that it will be in harmony with the general zoning plan. He noted that emissions would be regulated by a NYSDEC Air State Facility Permit.

2. Whether the vehicular circulation proposed is safe

Attorney Auerbach stated that the project would utilize the existing public infrastructure, and the proposed vehicles routes would be the same as what was used when the concrete plant was in operation at this location. He stated that no new curb cuts, driveways or access are proposed.

### 3. Whether the proposed interior traffic circulation is adequate

Attorney Auerbach stated that the site is approximately 50 acres in size and can be traversed almost entirely by vehicles. He stated that trucks generally drive approximately five (5) miles per hour through the site, and there would approximately five (5) trucks being loaded, which would take between three (3) and four (4) minutes.

In response to a question from Mr. Mahoney, Attorney Auerbach stated that there are three (3) access points to the site (two (2) to Camp Road and one (1) to Elmview Avenue). He confirmed that there would be no access to Sunset Drive.

In response to a question from Ms. McCormick, Attorney Auerbach stated that traffic would be bi-directional, and there is ample room for that.

Rosanne Dipizio, applicant, stated that trucks exit to Camp Road only. She stated that she has never had a problem with trucks turning left on Elmview towards Sunset Drive. She noted that if the Board wanted her to erect signage to insure that trucks do not turn left onto Elmview, she would be willing to do so.

In response to a question from Ms. McCormick, Ms. Dipizio stated that typically there is not a backup of trucks, and there is a no idle policy in place.

### 4. Whether setbacks are adequate

Attorney Auerbach stated that the plant would be located 190 feet from the M-2 District and 175 feet from the adjoining industrial district in the Village of Hamburg.

Attorney Auerbach referenced the list of questions from Board members sent to him by the Planning Department on September 10, 2019 and responded as follows:

- Regarding the number of additional trips, a trip generation letter was prepared that indicated that the projected volume of additional trips is 11 during the peak hours, the project will not have any potentially significant adverse impacts on traffic operations within the study area and no further study is warranted or recommended.
- Regarding potential water runoff, this process does not utilize water, is a closed system and operates under an existing State Pollution Discharge Elimination System NYSDEC permit. He noted that this permit will not need to be modified because no grading is proposed.
- Regarding odor emissions into other zoning districts, the Odor Analysis prepared by Orion Environmental, dated August 16, 2019, concluded that odors will not be detectable outside the property boundary. Odors and emissions from vehicles are not regulated by the NYSDEC because they are considered to be negligible.

Mr. William Doeblen IV, Managing Director of Orion Environmental Solutions LLC, stated that the emissions from the odor study are generated based on if one is loading a truck. He further stated that if one assumes that all of the odors are coming out as the asphalt is loaded, there should not be down the road emissions. He noted that there is no way to say how much of that odor comes off as it is loaded or how much residual remains.

Mr. Doeblen stated that the act of loading, where the aggregate is actually falling into the truck, would generate the most odors. He noted that once it is in the truck, there is a much smaller surface area exposed.

Mr. Doeblen stated that once the equipment is up and running, there is very little change in noise level until the equipment is shut off.

In response to a question from Ms. McCormick, Mr. Doebler stated that when he ran the odor modeling he used the highest point in the process, which is the exhaust from the silo, because that puts the odor emitting source as high as possible on the site, which allows it to travel the farthest. He noted that the lower an air or odor source is to the ground, the less chance there is for it to travel off the property.

- Regarding the project is in compliance with the Town's Comprehensive Plan, the Comprehensive plans states the following:

"...the Town has a solid industrial base."

"...the industrial base is very important to the Town, its tax base and employment."

"...the Town is blessed with an established industrial base."

One of the goals of the Comprehensive Plan in Section 3.0 is to "maintain existing industrial development to accommodate Town needs, as well as adaptive re-use and expansion of existing industrial sites". The Comprehensive Plan further states that scattered industrial property throughout the Town "should be maintained, and developments around these properties should take into consideration the importance of the industrial base". The Comprehensive Plan promotes continued industrial use.

- Regarding comments made at the September 4, 2019 public hearing by Dr. Melgar, his comments relate to air pollution generally. The emissions from the proposed asphalt plant would be strictly regulated by an Air State Facility Permit from the NYSDEC. The NYSDEC's emission standards have been established to help prevent the very problems discussed in Dr. Melgar's comments. The NYSDEC thresholds have been established for the protection of human health, and emissions from the proposed plant would be order of magnitude below permitted thresholds.
- Regarding rail transport, the asphalt would not be transported by rail.
- Regarding the distance of the proposed plant from different locations, it would be 582' from a commercial district (Carruba Collision), 996' from a residential district (3972 Staley Drive), 2,400' from the Middle School, 1,385' from the soccer field behind Southtown Allergy, 1,272' from the nearest doctor's office or medical treatment facility (Southtown Allergy), 774' from the nearest restaurant (Alibi Bar & Grill) and 1,460' from Elderwood long term care facility.
- Regarding the Site Plan, the requested items will be added to the Site Plan (additional length of Camp Road and distance to closest neighbors along Camp Road, existing storm water infrastructure, truck/vehicle routes including any new driveways and access road, any truck lineup/parking/staging areas for queued vehicles waiting for filling, any material storage or stockpile areas, any storage structures to house the materials, new electric interconnections and the distance between any parcel boundaries and the proposed project). All of the material storage for the stone aggregate will occur in existing storage areas, and the storage of the asphalt cement will be within the 160' X 200' footprint identified. No new gas lines will be needed, there will be a new NYSEG service installed and no new water interconnections are needed.
- Regarding air quality, Mr. Doebler stated that the odor analysis is based on the material handling side of the project rather than the production side of it. He noted that the production side of the project is the drying of the gravel, which does not generate any odors. He stated that the material handling is when the aggregate has already been mixed with asphalt oil and is being transferred by conveyor, dropped into a truck by conveyor or into the silo by conveyor. He noted that this act of aerating the product has the highest po-

tential for odorous emissions, which is why there is a different emission rate used for odors vs the emission rate for the bag house, which is just for control of the dryer itself.

- Regarding odor control, noise levels and traffic impacts, studies have been submitted addressing these items.
- Regarding how complaints would be handled, they would be handled by the NYSDEC or the local Code Enforcement office.

In response to a question from Mr. Mahoney, Mrs. desJardins stated that all property owners within 500' of this site were notified of the request. Ms. Dipizio stated that she spoke to Benzinger Cleaners, a nearby business, because she heard that the owner had some questions. She further stated that two (2) people stopped at her site, and she spoke to them. She stated that she has not reached out to anyone who has not reached out to her.

Attorney Auerbach stated that none of the criteria by which the Planning Board must evaluate this project has to do with how the nearby businesses feel about it. He stated that the studies that have been submitted will reflect that the applicant has met the standard for entitlement.

Chairman Clark stated that the Planning Board is in the process of hiring someone to do studies relative to this proposal, but no one has been hired yet.

In response to a question from Mr. Mahoney, Mr. Doebler stated that the models that were used for the odor analysis took into account approximately 17 years of climate data that is gathered from all around New York State. He stated that the models pull the nearest receptor (probably the Buffalo Airport) and have all of the peaks and valley, highs and lows, averages, etc. and uses that data to calculate the dispersion. He noted that dispersion modeling takes all of the climate data into effect and performs a calculation of how much the pollutants go into the atmosphere and how much they travel based on that data. He stated that it is a mathematic model that does its best to estimate where emissions will go and calculate at what point they will fall out of the atmosphere or continue to travel in the atmosphere.

Mr. Doebler stated that the higher the emissions are, the higher they travel.

Mr. Geraci stated that the weather and winds in Hamburg can be different than the weather and winds at the Buffalo Airport. Mr. Doebler responded that the data used by the modeling does take into effect the swirling action of the wind in this area.

Attorney Auerbach stated that this facility has not been constructed, so the only way to determine what the emissions and odor will be is through generally accepted standards of modeling that are done by the industry.

Attorney Auerbach stated that the Buffalo Airport serves as the base of the modeling, and then there are controls built into the modeling to bring it to the specific facility being analyzed.

In response to a question from Ms. McCormick, Mr. Doebler stated that the modeling that was used is referred to as a screening model, which is the first step. He noted that the screening model is a crude model, so that is why the regional weather stations like the one at the Buffalo Airport are used. He stated that if a screening model is used and a project passes the emissions or odor guidelines at the very crude level, then there is no reason to bring in a more refined model. He stated that if a project fails a screening model, then the modeling goes to the next step, which is the more accurate dispersion model, and emissions always lessen.

Mr. Doebler stated that he can do modeling with data right from Hamburg, and in that case the dispersion will go down.



In response to a question from Ms. McCormick, Mr. Doebler stated that the lower the wind speed, the less dispersion will occur. He noted that the modeling does use low wind speed because it is very conservative. He noted that by using low wind speed, it makes the offsite concentration higher because the emissions do not mix as well, do not travel as far and do not disperse.

Mr. Doebler stated that the higher the wind speed is, the more dilution happens in the atmosphere and the more the odors or emissions disperse in the atmosphere.

In response to a question from Ms. McCormick, Attorney Auerbach stated that no special fire equipment would be needed for this facility.

Attorney Auerbach stated that this facility would be regulated by the NYSDEC through an Air State Facility Permit that allows emissions up to a certain point and regulates those emissions. He noted that the emissions from this facility would be many orders of magnitude below the amount that would be permitted under the permit.

In response to a question from Mr. Geraci, Mr. Doebler stated that there would be annual reports that would have to be maintained, especially for production of material, and the NYSDEC is allowed to visit the site at any time it wants. He noted there typically the NYSDEC makes yearly inspections.

In response to a question from Mr. Monaco, Mr. Doebler stated that the NYSDEC does not regulate vehicle emissions, and there is no good way to model or estimate vehicle emissions. He stated that the odor modeling focuses on where most of the odors can be generated, which is the truck loading process, and uses that as the modeling parameter for odors.

Mr. Doebler stated that, from a surface area standpoint, this is where all of the aggregate and asphalt is being dropped into the trucks and exposed to the atmosphere in the process. He stated that once it is in the truck, 90% of that material is underneath the surface and so one is only limited by the truck bed size regarding what is exposed to the atmosphere. He stated that from an air contact ratio, there is much less surface area once the material is in the truck.

In response to a question from Mr. Monaco, Mr. Doebler stated that if the material is loaded into a 30-yard truck, only 200 sq.ft. of the material would be exposed on the surface although there would be 30 cubic yards of material in the truck. He stated that in that case, 90% of the material would not be exposed.

Mr. Geraci stated that he has noticed that the trucks doing the asphalt work on Camp Road recently all had canvas tarps over the asphalt. Mr. Doebler added that the tarps are used because asphalt is a heat-based product, so once it starts to cool it starts to cure and gets hard. He further noted that the tarps help to maintain the heat in the trucks and cut down on any air contact with the asphalt, minimizing odors.

In response to a question from Mr. Mahoney, Mr. Doebler stated the regulations were modified in 2015 that does require dispersion modeling for every new source. He stated that there is not another asphalt plant in western New York that has done that modeling, and none of them would pass it if they did. He stated that the emissions are much lower now, and the existing asphalt plants are grandfathered until they need to renew their permit, and when they have to renew the permit they will have to do the modeling. He noted that a State Facility Permit is good for ten years.

In response to a question from Mr. Chapman, Mr. Doebler stated that the regulations were updated because there was so much push for a determination of what is happening off site, so the dispersion modeling content was added to the regulations. He noted that when asphalt plants

renew their permits, they will have to submit the dispersion modeling to show that there are no off site impacts per New York State Health Department guidelines.

In response to a question from Mr. Mahoney, Mr. Doebler stated that the CO emissions from the plant in West Seneca on Union Road are about double what the applicant's plant would make.

In response to a question from Ms. McCormick, Mr. Doebler stated that using the emissions modeling for odor modeling is the only way he knows to calculate emissions. He stated that there is no standard for odor modeling and no requirement for odor modeling, so what is generally done is to use the emission calculations as a baseline for the generation of odors and use the same dispersion modeling to calculate what off site concentrations will be.

In response to a question from Mr. Reilly, Ms. Dipzio stated that she is not planning to do green asphalt processing.

Attorney Auerbach stated that there is no requirement to do odor modeling, which is why there is no particular standard.

Mr. Reilly stated that the M-3 District does allow the processing and treatment of bituminous product, but it also does not allow the dissemination of atmospheric pollutants, noise or odor into R, C, M-1 or M-2 Districts. He stated that the Planning Board has to prove this standard beyond what is in the Site Plan regulations. He stated that this standard must be met.

Attorney Auerbach stated that there is a list of permitted uses, and when the applicant submitted her Site Plan Approval application, it was determined that her use is permitted or else she would not have been sent to the Planning Board for review. He stated that it is not the Planning Board's obligation to determine whether some other provision of code is violated.

Chairman Clark asked Attorney Auerbach if he agrees that it is the Supervising Code Enforcement Official's job to determine whether some other provision of code is violated. Attorney Auerbach responded in the affirmative.

Attorney Auerbach stated that if the Planning Board wishes to make the determination that the applicant's proposed use is not allowed, it will be exceeding its jurisdiction.

Attorney Auerbach stated that the Planning Board did not respond to either of the letters he sent it (August 27, 2019 and September 10, 2019). Chairman Clark stated that the Planning Board has received hundreds of letters on this proposal, and many of those people did not receive a response from the Board.

Chairman Clark stated that the proposal would be tabled to the Board's October 16, 2019 meeting.

Attorney Auerbach stated that the Planning Board has 62 days from the close of the public hearing to render a decision.

Mr. Reilly stated that if the Planning Board determines that this project is an Unlisted Action under SEQR, there is no time frame until the SEQR process has been completed.

In response to a question from Chairman Clark, Attorney Auerbach stated that asphalt plants generally operate between the months of May and October.

Ms. Dipzio stated that the Planning Board is causing her serious damages, and there are a lot of things that can be done now that should be done now before the operation actually starts. She stated that the foundations have to be put in before the winter because it would cost three (3) times more to do it during the winter months. She stated that the plant should be operational so that it can start in the Spring. She stated that when she started this review process on June 4, 2019 she fully intended that more than 90 days would be enough to be approved and opera-

tional by the end of October. She stated that there are significant damages to a decision not being made.

Mr. Chapman stated that he is skeptical because of what happened with Tonawanda Coke, and that is why the Board is taking its time.

Attorney Auerbach stated that the comparison to Tonawanda Coke was unfair.

Mr. Chapman stated that the NYSDEC said everything was fine with Tonawanda Coke, and the applicant is saying everything is fine with this proposal. Ms. Dipizio responded that the NYSDEC did not say that it was wrong in the situation with Tonawanda Coke, but it has new standards it has established in 2015, and if it was wrong it would have shut down the 16 asphalt plants that are still operating under the old standards.

In response to a question from Mrs. desJardins, Chairman Clark stated that he would like whomever the Board hires to prepare his or her own studies rather than just review the studies prepared by the applicant's representative, but it depends upon what kind of budget the Board will get.

Chairman Clark made a motion, seconded by Mr. Monaco, to table this project to the Board's October 16, 2019 meeting. Carried.

**Tarpon Towers II, LLC and Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless – Requesting Site Plan Approval and a Special Use Permit for a proposed cellular tower to be located on land owned by WNY District Wesleyan Church near 4999 McKinley Parkway**

Attorney Rob Brenner from Nixon Peabody, representing the applicant, stated that a letter was submitted on September 13, 2019 addressing the questions raised at the Board's last meeting.

Attorney Brenner stated that he received an email on September 17, 2019 from Mercy Flight indicating that no light is required on the tower.

Attorney Brenner stated that the two (2) proposals the applicant sees as being on the table are both compromises and are as follows:

- A 94-foot monopole tower with a four-foot lightning rod, which is 20 feet below what the applicant feels is necessary from a radio frequency perspective
- A stealth monopine tower constructed with 110-foot antenna centerline, 118-foot top of steel, 124-foot top of branching

Attorney Brenner stated that if the Board prefers the monopine tower, it should be constructed at a height that allows for co-location without modification of the tower.

Attorney Brenner stated that the applicant's preference would be the 94-foot monopole, noting that it can be extended in the future if the Planning Board wishes to accommodate additional parties. He noted that the monopole would not be lit.

Attorney Brenner stated that extra 6-8 feet for the monopine is for the branching that is required to make the crown of the tree. He noted that the lightning rod would be located inside the branching.

In response to a question from Ms. McCormick, Attorney Brenner stated that the intent in the design of the monopole is to allow reserve space for potential co-locaters and to allow it to be at a height that is above the existing tree line and canopy so the signal can propagate.

In response to a question from Mr. Reilly, Attorney Brenner stated that it is not possible to do flush mounted antennas on either tower.

In response to a question from Mr. Reilly, Attorney Brenner stated that he would recommend galvanized steel if the monopole is chosen.

Tom Holden, 4949 Parker Road, stated that the tower would be a major intrusion of his view. He stated that the church will receive money from the cell tower company while the surrounding property owners anticipate losing 20% of their property values because of this tower. He suggested that the surrounding property owners receive some sort of compensation for the loss of property values from Verizon. He quoted from the Bill of Rights of the Constitution.

Attorney Puglisi stated that Mr. Holden's proposal would be a private negotiation between the property owners and the cell tower company.

Chairman Clark asked the members of the public who were present what their thoughts were on the two (2) options for the tower. The consensus of the members of the public was that the monopole would be the better option because it would be less visible.

Attorney Brenner stated that the monopole would be structurally designed to accommodate users below the Verizon centerline, and the Planning Board could scrutinize any requests to increase the tower height for users above the Verizon centerline.

Mr. Reilly stated that the Planning Board has tried to find other appropriate property for the tower and was unsuccessful.

Mr. Geraci made the following motion regarding SEQR, seconded by Mr. Chapman:

**"WHEREAS**, the Town of Hamburg received a Tower Special Use Permit from Tarpon Towers II, LLC and Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless, for the construction of a new telecommunications tower (cell tower) to be located at 4999 McKinley Parkway; and

**WHEREAS**, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law, the Hamburg Planning Board has conducted an environmental review of this application; and

**WHEREAS**, a public hearing was held regarding the proposed project and comments were received and numerous meetings were held on the application, and

**Whereas**, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law, the Hamburg Planning Board has reviewed part 1 of the FEAF and completed part 2 and 3 of the FEAF and reviewed the criteria for determining significance in accordance with Section 617.7 of SEQR.

**NOW, THEREFORE BE IT RESOLVED**, the Hamburg Planning Board, in accordance with the State Environmental Quality Review Act (SEQRA) has determined that the proposed project will not adversely affect the natural resources of the State and/or the health, safety and welfare of the public and is consistent with social and economic considerations and therefore issues a SEQR Negative Declaration in accordance with Section 617.7 of the SEQR regulations, and

**BE IT FURTHER RESOLVED THAT**, the Planning Board Chairman is authorized to sign the Environmental Assessment Form (EAF), which will act as the Negative Declaration."

MS. McCormick made the following motion, seconded by Mr. Chapman:

**“WHEREAS**, the Town of Hamburg received a Tower Special Use Permit from Tarpon Towers II, LLC and Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless, for the construction of a new telecommunications tower (cell tower) to be located at 4999 McKinley Parkway; and

**WHEREAS**, based on the information submitted for a Tower Special Permit, as well as the Full Environmental Assessment Form (FEAF), the Planning Board has determined that the proposal to erect a cellular tower at 4999 McKinley Parkway will not result in any significant adverse environmental impact and a SEQR Negative Declaration was issued; and

**WHEREAS**, the Planning Board, in reviewing this proposed Tower Special Permit application, has determined, in accordance with Section 280-334, that:

- The tower is proposed in an R-1 District, which is the least favorable site preferred by the Town of Hamburg. However, the applicant has indicated that there is a gap in cellular coverage (provided information that was reviewed by the Town’s RF consultant) and there are no other preferred locations available and no existing towers were available for use, therefore this property was chosen. The Town and applicant have researched utilizing different sites and found those sites unusable based on wetlands, other site problems, nearness to residential uses, etc.
- The tower will be approximately 94 feet in height and is the minimum necessary to meet the applicant’s requirements (confirmed by independent RF Engineer).
- The tower is located a minimum of 1000 feet from any adjoining residential uses and zoning districts.
- The tower is being located on the site (in a flat area) to minimize impacts to adjoining land uses. The site includes trees adjoining the location.
- The applicant has shown that he has made good-faith efforts to co-locate on an existing tower or other available and appropriate structures and/or to construct the new tower near existing towers in order to consolidate any visual disturbances.
- The applicant has submitted the materials required in Section 280-333 and 334 of the Hamburg Zoning Code.
- The tower is designed and sited so as to avoid application of FAA lighting and painting requirements.
- The tower has been reviewed in accordance with the aesthetics requirements of the Code. The tower is to be located at the corner of the site near the tree line, and the bottom of the tower and equipment will not be visible from surrounding residents. The top of the tower will extend above the tree line and will be visible from some areas per the balloon test and visualizations completed by the applicant.
- The applicant has submitted a copy of its policy regarding co-location on the proposed tower with other potential future applicants.

**Now, Therefore Be It Resolved**, based on the SEQR Negative Declaration, the information submitted and the Tower Special Permit discussion, the Planning Board approves the issuance of a Tower Special Permit with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated September 18, 2019.
2. To reduce the visible impacts of this tower in this residential area, the tower shall be a maximum of 94 feet tall (monopole) with a four foot high lightning rod.
3. The color of the tower shall be finalized with the Planning and Engineering Departments.
4. The tower shall not contain any signs or advertising devices. A small sign shall be placed on the fencing to identify the ownership of the facility.
5. Access to the site shall be maintained and free from obstructions and one parking space shall be provided to assure adequate emergency and service access.
6. The tower shall be enclosed by a fence not less than eight (8) feet in height as shown on the drawing.
7. The applicant shall remove the tower if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for 12 consecutive months. The applicant shall provide a demolition bond in an amount as determined by the Town for purposes of removing the telecommunications facility in case the applicant fails to do so as required by the Town law.
8. Every three years after the tower is constructed, the applicant shall provide a certification from a qualified professional engineer certifying that the tower meets applicable structural safety standards.
9. The tower shall be maintained in good order and repair.
10. The tower company will properly maintain the area around the tower, the driveway leading to the tower, the area immediately adjacent to the driveway and the entrance area of the driveway to Parker Road.
11. Preconstruction road photographs will be taken and filed with the Town, which will file them the Highway Department. Any damages caused by the applicant's equipment will be repaired by the applicant."

Carried.

Chairman Clark made a motion, seconded by Mr. Schawel, to grant Site Plan Approval with the following condition:

- Approval is contingent upon the Engineering Department comment letter dated September 18, 2019.

Carried.

**OTHER BUSINESS**

Board members agreed that a Site Plan Waiver is appropriate for the proposal at 3405 Big Tree Road to add a walk-in cooler to the building. Board members further agreed that the following conditions should be imposed:

- The existing dumpster must be enclosed.
- The rear fence must be repaired.
- A nautical theme must be incorporated on the site.

Chairman Clark made a motion, seconded by Mr. Chapman, to approve the minutes of September 4, 2019. Carried.

Mr. Schawel made a motion, seconded by Mr. Mahoney, to adjourn the meeting. Carried.

The meeting was adjourned at 9:45 P.M.

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Respectfully submitted,  
Doug Schawel, Secretary  
September 26, 2019