

Town of Hamburg  
Planning Board Meeting  
January 6, 2021  
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting at 7:00 P.M. on Wednesday, January 6, 2021 via Webex. Those attending included Chairman William Clark, Vice-Chairman Doug Schawel, Al Monaco, Robert Mahoney, Dennis Chapman, Kaitlin McCormick and Meghan Comerford.

Others in attendance included Town Planners Sarah desJardins and Andrew Reilly, as well as Planning Board Attorney Jennifer Puglisi and Town Engineer Camie Jarrell.

Chairman Clark thanked the Town Board for reappointing him and allowing him to remain Chairman of the Planning Board. He noted that the Town is in the process of updating its Comprehensive Plan and public input will be solicited in the next few months. He further stated that the Town will be soliciting public input on the Town's Local Water Revitalization Plan, which will be updated, as well as on the rezoning of the property where the McKinley Mall is located and the area on Camp Road where the Thruway exit used to be and possible development in brownfield areas.

**Continuation of Public Hearing – 7:00 P.M, The Broadway Group, LLC – Requesting Site Plan Approval of a new Dollar General store to be located at 6505 Southwestern Boulevard**

Chairman Clark stated that the Planning Board received a good amount of input from the public regarding this project since the Board's last meeting.

Mrs. desJardins stated that she received several emails from residents in the previous few days regarding this project but had not forwarded them to Board members because of the Board's policy regarding communications received after the Friday preceding a meeting.

Chairman Clark stated that any emails received in the few days prior to the meeting will be reviewed by Board members and made part of the record.

Mr. Mark Harlack, 5854 Pinehurst Court, stated the following:

"My name is Mark Harlach and my family and I reside at 5854 Pinehurst Court in Lake View. I am speaking to the Town of Hamburg Planning Board with questions and concerns in regards to the zoning of the land a Dollar General is being proposed to be built upon, located at 6505 Southwestern Blvd.

I am not an adjacent property owner to the proposed building site; therefore I want to establish I am not here to voice objection due to my personal preference of what is being proposed. My purpose of communication is to object to the further consideration of any new commercial use being approved or considered for the land zoned as commercial in the vicinity of and including 6505 Southwestern Blvd until the land can be proven to indeed be legally commercial zoned by the Town of Hamburg as I will further explain.

There appears to be enough reasonable information that The Town of Hamburg could possibly have an error to their zoning maps in this area. Historical usage and County of Erie, NY records indicate many of the properties are residentially zoned and are of residential usage. There were residential properties constructed in that area dating from the 1930's, through and as recently as 1994. I believe it to be reasonable to expect The Town of Hamburg to provide definitive records showing the proper procedures were followed, showing when the land was formally considered commercially zoned despite its residential use history. Alternatively, with the vast number of residential properties within a so-called commercially zoned area, there must be documentation such as waivers or variances on record, at the very least for the modern builds occurring from 1986 to 1994, for the residential structures to have been permitted to be constructed.

In my letter, I supplied some research and my sources for some selected properties, including the land at 6505 Southwestern Blvd of which is classified as 314 Rural Vacant which is defined as being land less than 10 acres in a rural residential area.

6529 Heltz Rd constructed in 1994 listed as a Single Family Residence

Property Class: 210 1 Family Residential which is defined as one family year-round residence, residential

There are additional examples not noted which follow residential trends for the area. These public records as interpreted support the thought of the land's intended usage as being residential. Commercial use structures were only constructed beginning after 2012. The recent erection of commercial structures in this area should also not set any precedence for current and future consideration as I believe they were constructed within improper zoning.

In addition, not noted in my letter, I would like to also point out Southtowns Christian Center located at 6619 Southwestern Blvd built in 1998. This structure is also within the commercially zoned land in question. In review of the Town of Hamburg Code book, adopted in December 1986, within chapter 280 titled zoning:

Within commercial two, permitted use and structures, section A, bullet point one it is specifically noted: no residential housing shall be permitted. There is no mention of religious structures being permitted within the commercial two section. I would also like to point out commercial two is noted as inheriting commercial one usage. Upon reviewing commercial one usage, there is also no mention of churches or other places of worship.

Whereas within Residential 1,2 and 3, permitted uses and structures, it is stated to be inherited from the Residence-Estate district. Within Residence-Estate and also Residential Agriculture, district permitted use, Section A bullet point two, Churches and other places of worship or religious education are mentioned specifically as being permitted.

Some examples of other religious structures which share the same 620 Religious classification as the Southtowns Christian Center are located within residentially zoned land

4999 Mckinley Parkway, Watermark Wesleyan, zoned residential 1

5017 Lakeshore Rd, Wayside Presbyterian Church, zone residential 1

4737 Lakeshore Rd, St Mary of the Lake Church, zone residential 2

2042 Lakeview Rd, St John Paul II Roman Catholic, zone residential 1

This would lead me to believe that the land in question at 6505 Southwestern Blvd, as well as the surrounding properties, are in fact, residentially zoned. This is based on the facts of history and public record.

As of present, I am only aware of The Town of Hamburg offering explanations such as “the land has been zoned as such since our time being here”. This is not acceptable proof of the legality of the zoning and proper documentation should be easily accessible by the Board and made available. I also object to defaulting decisions based on the existing Town of Hamburg zoning map when its accuracy is what is in question. It would be a tremendous disservice to the residents for this to continue without the supporting evidence of legality.

If the satisfactory proof can be supplied by The Town of Hamburg showing the proper procedures have been followed, then I will stand to be corrected, otherwise the land should be strongly considered to be returned to a more appropriate zoning such as residential agriculture, with perhaps automatic exceptions being granted to existing commercial structures erected during error.

Thank you.”

Chairman Clark referred the legal issues raised by Mr. Harlach to the Planning Board attorney and the developer’s attorney to be researched.

Mr. Mahoney questioned whether it is possible that this was a mistake and this area was never zoned commercial, nothing that there does not seem to be any paperwork indicating that it was rezoned.

It was determined that this area of Lakeview was rezoned to commercial in 1974 according to a previous employee of the Town. Mr. Reilly stated that there was much discussion about this area when the 1995 Comprehensive Plan was established, noting that some people wanted all commercial zoning from Lakeview removed and some wanted the commercial zoning for support for the residential neighborhoods. He stated that the compromise made was that there would be no more commercial rezonings in this area.

Kim Jablonski, 6550 Heltz Road, stated that she found an addendum to the 2010 Master Plan from 2007 that has a map in it with zoning, and the only area of Lakeview that is zoned commercial is a motel and the area across Southwestern Boulevard from the motel.

It was determined that Mrs. Jablonski was referring to the Land Use Map in the document she referenced and not the Zoning map.

Chairman Clark stated that several emails, as well as a Change.org petition with many comments and Facebook comments, were received regarding this project.

Ms. Brandi Gerace, 6547 Heltz Road, stated that she created the petition and a lot of good information was received from the individuals who signed it. She stated that many people are concerned about safety in the area and she feels that this store would bring a lot of foot traffic. She noted that this is not the area for foot traffic and that concern has not been adequately addressed.

In response to a question from Attorney Joe Calimeri, Mr. Reilly stated that he spoke to Ed Rutkowski from the New York State Department of Transportation (NYSDOT) who indicated that he would not have a response to the letter sent to the NYSDOT from the Planning Board regarding the location of the access for this project until January.

Chairman Clark declared the public hearing closed.

Chairman Clark reiterated that the Planning Board will continue to accept correspondence regarding this project until a few days before the Planning Board is due to make a decision. He further stated that the applicant will have an opportunity to review and respond to all correspondence received.

It was determined that the following comments were received on the Town's Facebook page regarding this project:

- Scott Russell commented "Let them build".
- Scott Russell commented "Safety issues have been addressed."

Tara Mathias from the Broadway Group stated that she applauds those members of the community and the Planning Board members who have provided input over the course of the several months of review.

Ms. Mathias noted the following:

- The proposal is for an 8,900 sq.ft. free standing single tenant retail store that would provide a convenient access to the neighborhood to a general variety of every day household goods.
- The store would provide between eight (8) and ten (10) jobs for the community.
- An enhanced building design and landscaping has been proposed that would complement the community.
- Dollar General would be a long term stable tax base for the community.
- Feedback on the project has been received from NYSDOT, the Traffic Safety Advisory Board (TSAB), the Conservation Advisory Board (CAB) and the New York State Department of Environmental Conservation.

Ms. Mathias stated that some of the comments received from the [change.org](#) petition do not apply to the Planning Board's decision process regarding this project. She noted that the description of the project on the petition is misinformation in that it was not fully accurate.

Ms. Mathias grouped the relevant comments from the petition into the following categories and addressed them as follows:

1. Zoning - Based on the information received from the Town of Hamburg, this property is zoned C-2 General Business District, the project complies with the Town's Zoning Code and Comprehensive Plan and is allowed by right. It is understood that the nearby property owners were surprised and not pleased to learn that their properties are zoned commercial, but as the developer and property owner, the applicant is following the rules and in fact has revised the plans and provided concessions to go above and beyond the requirements. The developer has maximized where possible the setbacks to adjoining properties, moved the driveway and provided more buffers and trees. The Comprehensive Plan calls for balanced growth in the area, but it also weighs environmental and other impacts to the community.
2. Community character and aesthetics - The Comprehensive Plan's intent seems to be to keep the area for commercial development in Lakeview tightly contained so that the overall area will still contain the rural residential character while planning for commercial development in prime locations to serve the community. Dollar General stores serve the surrounding community and neighborhoods. There are other non-residential establishments within close proximity to this site. The developer understands that the store would be sharing the community with residential neighbors, but the Comprehensive Plan and the Town Code allow for that. The one-acre site is very similarly sized to other residential properties around it. A privacy fence is proposed on the western boundary of the project site, landscaped buffers are proposed to screen the adjacent uses to the south and east, dark sky compliant lighting is planned and the proposed building with a gabled roof, awnings, decorative lighting, neutral colors, clear see-through windows and a panel and brick facade would compli-

ment the structures that are already in the area. The proposed building is very different from how it is described in the petition.

3. Trees and conservation - The Hamburg CAB indicated that it does not see any impact from removing the existing trees on the property. However, the developer revised the site layout to preserve approximately 20 trees along Heltz Road. The developer proposes to preserve a large amount of trees in the southwestern corner of the site and plant 19 new trees, as well as 77 new shrubs. The CAB indicated that there would be no adverse environmental impact from this development and recommended that an earthen berm be constructed along Heltz Road. A berm is not objectionable to the developer, but the 20 trees that would be saved would have to be removed in order to build the berm. The developer would like guidance from the Planning Board in this regard.
4. Traffic safety - The developer initially proposed access to this site on Southwestern Boulevard, but the NYSDOT advised the developer to move the access to Heltz Road because of its policy for access management involving corner properties. The TSAB advised the Planning Board that access to Heltz Road would be preferable. The developer contracted to have a Traffic Impact Study (TIS) performed, which investigated existing and future traffic counts and presented the most conservative numbers it found. The TIS investigated gap data, the speeds vehicles were traveling, site distance measurements and operational data (the geometry of the intersection of Heltz Road and Southwestern Boulevard). The conclusion of the TIS was that this project with access to Heltz Road will not have any significant impact on the traffic operations for either Heltz Road or Southwestern Boulevard, that there are ample gaps to accommodate the turning movements into and out of the development, that there are good site distances in each direction and no capacity concerns. No mitigating measures were recommended. Ms. Mathias has spoken with the NYSDOT on numerous occasions to try and resolve the question of access, but the NYSDOT has been very consistent and has not wavered in its position that there is no reason to override its policy regarding commercial sites on a corner.
5. Pedestrian safety - There are extremely long site distances and wide clear zones of visibility for pedestrians and motorists in this area and there is not a lot of vegetation growing along Southwestern Boulevard. Therefore, motorists and pedestrians would have the opportunity to see if there are any dangerous conditions heading their way. In this area there is a very wide, flat shoulder that does not drop off into a ditch so it can accommodate those pedestrians who may choose to travel to and from the Heltz Road/Southwestern Boulevard intersection to this site. This site has area street lights on either side of it on Southwestern Boulevard, which adds safety to the situation. A pedestrian would take 10.3 seconds to cross Southwestern Boulevard (36 feet wide). According to the TIS, the number of gaps in both directions 14 seconds or longer turning left from Heltz Road to Southwestern Boulevard during the AM peak hour is 51. During the PM peak hours there were 18 gaps where a pedestrian could cross the road with sufficient time to make it across safely. The gaps of 14 seconds or more occurred during the AM peak hour approximately every minute and during the PM peak hour they occurred approximately every three (3) minutes. In an average hour for Dollar General, 15 to 20 transactions occur. Regarding the question of whether a signalized light could or should be installed at the corner of Heltz Road and Southwestern Boulevard, Ms. Mathias learned that the Manual for Uniform Traffic Devices indicates that a signalized light would be warranted (given the traffic numbers for this project) if 150 pedestrians planned to cross Southwestern Boulevard during the AM peak hour or 90 pedestrians planned to cross during the PM peak hour. The Dollar General project comes nowhere near reaching those kinds of metrics.

In response to a question from Mrs. Comerford, Gordon Stansbury from GTS Consulting, author of the TIS for this project, stated that the intersection of Heltz Road and Southwestern Boulevard operates at between a level of service C and D during peak hours. He stated that generally for an unsignalized intersection, anything that is a level of service E or better is considered acceptable by NYSDOT standards for the side street approach. He noted that the intersection is well within acceptable ranges.

In response to a question from Mrs. Comerford, Mr. Stansbury stated that capacity does not necessarily correlate to safety. He stated that capacity is operational for "are there enough gaps in traffic for vehicles to get on and off the road". He noted that when one looks at safety, it is more about the issue of sight lines, gaps in traffic, speeds, etc.

In response to a question from Mrs. Comerford, Mr. Stansbury stated that the wait time for someone waiting to turn left from Heltz Road onto Southwestern Boulevard currently is 20 seconds during the AM peaks and 30 seconds during the PM peak. He noted that if someone was at a traffic signal, this type of delay would generally be a level of service C, which most people find an average delay.

Mrs. Comerford asked Mr. Stansbury if the wait time discussed above had been adjusted for Covid. Mr. Stansbury replied that updated traffic counts were collected in December, but he also did comparisons to historical traffic volumes in the area and found that based on 2018 traffic counts, his counts for the AM peak hour eastbound traffic in the morning were approximately 17% lower and the counts for the PM peak hour in the opposite direction were 6% lower. He noted that because of that, he inflated everything including the side street turning movements by 20% in the morning and 10% in the evening.

Mrs. Comerford stated that she is concerned that the data was taken when the schools were closed, which means that the majority of families are working from home to accommodate child care needs, which skewed the traffic results.

Mr. Stansbury stated that he understood Mrs. Comerford's concerns and has been working with County and State agencies throughout the year, and the practices being used to adjust traffic volumes based on historical numbers have been universally accepted throughout the State.

In response to a question from Mr. Mahoney, Mr. Stansbury stated that the TIS did project a small amount of traffic that would make a right out of the Dollar General instead of a left, but given that the project is only projected to generate 15 to 20 cars per hour during the morning and 20 to 30 cars during the evening, the TIS estimates between two (2) and five (5) cars in each direction traveling to the south on Heltz Road per hour. He noted that equates to one (1) car every five (5) to ten (10) minutes.

In response to a question from Mr. Reilly, Mr. Stansbury stated that he did not complete an accident history review, but if he needs to provide it he will do so.

In response to a question from Mr. Reilly about the safety of having access to Heltz Road versus Southwestern Boulevard, Mr. Stansbury stated that the net traffic that the project would be sending on and off Southwestern Boulevard is the same. He stated that from a safety standpoint, he would expect the net number of accidents to be generally comparable.

Mr. Stansbury stated that one of the concerns he has heard has to do with the angle at which Heltz Road comes in to Southwestern Boulevard, which is approximately 45 degrees. He noted that the concern is what that angle does to sight lines turning left from Heltz Road. He stated that the long, flat straightaway of Southwestern Boulevard and the wide clear zone off the road address that concern.

Mr. Stansbury stated that from an overall safety standpoint, he likes to minimize the number of conflict points on a high speed roadway, and coming off of Heltz Road everything is in front of the driver (the side road across the street and the oncoming traffic). He noted that if the driveway is off of Southwestern Boulevard, the driver must look both ways on Southwestern Boulevard to turn left, and if someone has turned right onto Southwestern Boulevard from Heltz Road that the driver does not see, additional conflict will be created.

Mr. Stansbury stated that from an access management perspective, the best practice is to consolidate driveways on the side streets and have primary focused access on the main roads.

Ms. McCormick stated the following:

“The information provided in the traffic study submitted by the Broadway Group for the Dollar General Project focuses primarily on traffic counts and sight distances. While the report acknowledges that the angle of the intersection with Heltz Road is 45 degrees, it does not explain how the specific geometry affects the use of available sight distances. We have not yet received the response from the NYSDOT in response to our request for input. The underlying traffic flow concerns raised in previous meetings have not been fully evaluated or addressed based on the information received to date.

Many of the arguments presented in today’s meeting by the Applicant support that access onto Southwestern could be done safely. It remains critical that the Planning Board engage and receive input on this alternative driveway location from the NYSDOT – particularly with a right turn only exit from the parking lot.

In addition to the traffic flow concerns, the proposed site plan for the Project places the driveway for the Dollar General directly across from a residential driveway where lights from exiting vehicles will shine directly into the residence.

The Project is located directly adjacent to residential properties and site screening and a transitional zone between existing residential uses and the proposed commercial development are critical. The size of the property limits the flexibility to place structures and associated infrastructure to allow the site to be functional. Recognizing these limitations, the distance between the rear of the store and the residence on the neighboring property needs to be the maximum distance possible.

Optimally, the frontage of the property along Southwestern should serve as the location for the driveway. The character and development of a property with frontage and access along southwestern fits with the existing uses along Southwestern which includes a number of businesses that the Applicant has considered in designing the Dollar General. This would then allow for an appropriate vegetative buffer or a berm, as suggested by the Conservation Advisory Board, to be developed along Heltz Road to preserve the existing rural-residential character. It would also allow for increased distance between the Dollar General and the residence to the south.”

Mr. Stansbury stated that there is nothing in the TIS regarding sight distances that would indicate that a driveway onto Southwestern Boulevard would not work. He noted that the applicant initially proposed the driveway there but had to relocate it to Heltz Road because of the NYSDOT policy regarding access. He stated that both locations would operate satisfactorily.

Ms. McCormick stated that looking at the access location from the traffic perspective is one thing but SEQR requires the Planning Board to consider a whole suite of factors. She stated that the Planning Board has to reconcile that with the fact that the adjacent land uses, regard-

less of how they are zoned, are residential pre-existing uses. She noted that she has a very hard time reconciling placing a commercial driveway directly across from a residential driveway with lights shining into people's homes and not maximizing the distance.

Mr. Reilly stated that the SEQR law is clear that if a project may impact the environment, the Planning Board issues a Positive Declaration. He noted that if the project will not impact the environment, the Planning Board issues a Negative Declaration. He stated that the Planning Board cannot be sued over the issuance of a Positive Declaration.

Mr. Schawel stated that he took part in the discussions in 1995 about the Comprehensive Plan and where commercial zoning should be allowed in Lakeview. He stated that there were arguments on both sides regarding whether commercial zoning was preferred in that area.

Chairman Clark asked Board members what their feelings were regarding whether constructing a berm would be more appropriate along Heltz Road than saving the approximately 20 trees in that area.

Ms. McCormick stated that she would be in favor of a berm with landscaping on it because it would block more lights from the parking lot. She further stated that she would prefer that the driveway be placed on Southwestern Boulevard.

Chairman Clark stated that the Planning Board members really enjoy getting correspondence from the public and are reading and listening to all input received.

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

Engineering Department comments have been filed with the Planning Department.

### **Gullo's Garden Center - Requesting Site Plan Approval of an addition to the existing greenhouse at 4767 Southwestern Boulevard**

Mr. Mahoney made the following motion regarding SEQR, seconded by Mr. Schawel:

Whereas, the Town of Hamburg Planning Board received a site plan application from Gullo's Garden Center located at 4767 Southwestern Boulevard for the construction of an addition; and

Whereas, on December 16, 2020 the Hamburg Planning board held the required public hearing; and

Whereas, the Hamburg Planning Board, in accordance with New York State Environmental Quality Review Act (SEQR) has done a thorough review of the project and its potential environmental impacts and completed Parts Two and Three of the SEAF; and

Whereas, the Hamburg Planning Board, in accordance with SEQR, has determined that the proposed addition will not adversely affect the natural resources of the State and/or the health, safety and welfare of the general public and is consistent with social and economic considerations.

Now, Therefore, Be It Resolved that the Hamburg Planning Board hereby determines that the proposed project is not anticipated to result in any significant adverse environmental impacts and a Negative Declaration is hereby issued; and

Be It Further Resolved that the Planning Board Chairman is authorized to sign the SEAF, which will act as the SEQR Negative Declaration." Carried.

Mr. Mahoney made the following motion, seconded by Mr. Monaco:

“The Planning Board, based on its issuance of the SEQR Negative Declaration, review of the project in accordance with Article 56 (Site Plan Approval) of the Town of Hamburg Zoning Code, having received and considered input from Town departments, committees and advisory boards, having completed the required public hearing and having the applicant amend the drawings based on the Planning Board’s comments, hereby grants Conditional Site Plan Approval for the Gullo’s project to be located at 4767 Southwestern Boulevard with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated January 6, 2021.
- The landscaping plan shall be approved by the Planning Department.
- Lighting shall be shielded and dark-sky compliant.
- The owner shall provide proof that the adjoining purchased land has been consolidated into the existing garden center lot.”

Carried.

Engineering Department comments have been filed with the Planning Department.

### **David Manko - Requesting Preliminary Plat Approval of a 67-lot subdivision to be located on the west side of Parker Road**

In response to a question from Chairman Clark, Chris Wood, project engineer, stated that the roadways in the subdivision are proposed to be public.

Attorney Sean Hopkins, representing the applicant, stated that the proposal is for public infrastructure and more traditional lots than the cluster subdivision that was previously proposed. He asked the Planning Board to authorize the commencement of the SEQR Coordinated Review for this project.

Attorney Hopkins stated that a portion of this site is zoned C-3 and is labeled as such on the updated Preliminary Plat. He noted that none of the homes on lots with two zoning classifications will be constructed on property zoned C-3.

Chairman Clark made a motion, seconded by Mr. Mahoney, to initiate the SEQR Coordinated Review and table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

### **OTHER BUSINESS**

Chairman Clark stated that he had made some changes to 2021 as follows:

- Kaitlin McCormick will be Vice-Chairman
- Megan Comerford will be Secretary

Chairman Clark thanked all Board members for their hard work in 2020.

Chairman Clark made a motion, seconded by Ms. McCormick, to adjourn the meeting. The meeting was adjourned at 8:50 P.M.

Respectfully submitted,

Megan Comerford, Secretary

January 15, 2020