

Town of Hamburg
Planning Board Meeting
May 3, 2023 Minutes

The Town of Hamburg Planning Board met for a Regular Meeting at 7:00 PM on Wednesday, May 3, 2023 in Room 7B of Hamburg Town Hall. Those attending included Chairman William Clark, Vice-Chairwoman Kaitlin McCormick, Margaux Valenti, Dennis Chapman, Jeb Bobseine, Cindy Gronachan and Daniel Szewc.

Others in attendance included Town Planner Josh Rogers, Planning Board Attorney Jennifer Puglisi and Town Engineer Camie Jarrell.

REGULAR MEETING

Public Hearing – 7:00 P.M., Benderson Development – Requesting Site Plan Approval on a proposal to demolish the existing vacant Bank of America and construct a new 6,998 sf building at 5334 & 5340 Southwestern Blvd

Matthew Oates from Benderson Development stated that the proposal is to construct a retail/restaurant building on this site in front of the Walmart on Southwestern Boulevard. He noted that as part of the project, the current property line that runs between this site and the adjacent Key Bank property would be modified to allow a portion of the existing green space next to the Key Bank to be utilized for this project (both properties are owned by Benderson Development). He further stated that as part of the project Benderson Development would be maintaining access off the rear driveway into the site and no new access points onto Southwestern Boulevard are proposed.

Mr. Oates stated that a 2,400 sq.ft. 37-seat Chipotle Grill restaurant is proposed on the signalized end cap of the space and the existing lane around the building would be utilized for a pick up lane for the restaurant. He noted that customers would have had to order and pay online and would be simply picking up their food.

Mr. Oates stated that there would be nine (9) dedicated spaces for Chipotle Grill customers in the pick up lane, but based on the use of it as a pick up lane, that is more than enough for what would be needed.

Mr. Oates stated that the remaining space would probably be occupied by retail use. He stated that he submitted a letter showing that there would be sufficient parking for the site. He noted that based on industry standards, the Chipotle Grill would park at one (1) space per three (3) seats and the retail space would park at one (1) space per 200 sq.ft. He stated that based on those calculations 35 spaces would be needed and 44 are proposed.

Mr. Oates showed Board members renderings of the proposed buildings. He noted that the architect has specifically not pulled in the exact materials and design from the Walmart so that the new buildings stands out from the Walmart. He did note that some of the colors of the Walmart were used for parts of the building.

Mr. Oates noted that an outdoor seating area is also envisioned.

Mr. Chapman noted that people driving through the plaza would be looking at a blank wall and he did not think that side of the building looked very nice.

Mr. Oates responded that a bit more articulation and different material types could be added to that side of the building.

Mr. Bobseine and Ms. McCormick agreed with Mr. Chapman's comments.

In response to a question from Ms. McCormick, Mr. Oates stated that there would be a net loss of green space because the existing green space next to the bank would be lost. He noted, however, that there would be green space around the perimeter of the site and in the end islands. He further stated that during the spring and fall months flower beds are added for color.

Ms. McCormick asked Attorney Puglisi if a condition of approval could be that the pick up lane could never be used as a conventional drive-through lane.

Attorney Puglisi stated that she would like to research Ms. McCormick's question but she did not see why that condition could not be placed on an approval.

In response to a question from Ms. Valenti, Mr. Oates agreed to submit average stacking numbers for Chipotle Grill.

Mr. Bobseine read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Benderson Development to demolish the existing vacant Bank of America building and construct a new 6,998 sq.ft. building at 5334 and 5349 Southwestern Boulevard. The public hearing will be held on May 3, 2023 at 7:00 PM in Room 7B of Hamburg Town Hall."

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

- Francine Geyer asked what the Town's current position is on the destruction of green space versus utilizing what is there. She asked why Benderson could not reduce the size of the new building to save existing green space.

Ms. McCormick advised Ms. Geyer to contact the Town Board and the people on the Comprehensive Plan committee regarding her question.

- Laura Podkulski stated that it is often very difficult to exit the plaza onto Southwestern Boulevard.

In response to a question from Chairman Clark, Paul McQuillin, Traffic Safety Advisory Board (TSAB) Coordinator, stated that he received the proposed plan from Mr. Rodgers and then forwarded the plan to the TSAB members and has not heard any negative feedback. He noted that the TSAB's concern would probably be the internal traffic flow. He stated that TSAB would be meeting the next week.

- Via Facebook, Maryanne Eggleston stated "Thanks goodness, finally a restaurant on my end of Town."

Chairman Clark declared the public hearing closed.

Chairman Clark stated that this project would be tabled so that the Planning Board can review Part II of the Environmental Assessment Form (EAF) at a subsequent meeting.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Board's June 7, 2023 meeting and authorize the planning consultants to have Part II of the EAF ready for review and draft resolutions prepared. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing – 7:00 P.M., Benderson Development – Requesting Site Plan Approval for a drive-thru in McKinley Commons for a Crumbl Cookie at 4154 McKinley Parkway

Matt Oates from Benderson Development stated that Crumbl Cookie would like to occupy the end cap of the existing building at 4154 McKinley Parkway and add a drive-through. He stated that the existing parking lot area would be modified to provide for the drive-through. He noted that there would be five (5) spaces dedicated to the drive-through stacking lane and there would be additional stacking available onsite.

Mr. Oates stated that the two (2) parallel parking spaces previously shown on the Site Plan located next to the drive-through have been eliminated.

Mr. Oates stated that he submitted a letter showing that the site does have sufficient parking. He noted that at one (1) space per 200 sq.ft., the shopping center would require 187 parking spaces and 189 parking spaces would be provided.

Mr. Oates stated that this would be the first Crumbl Cookie drive-through in the area, so Benderson Development does not have numbers regarding average stacking scenarios, but the existing Crumbl Cookie store in Amherst was observed to get between 40 and 60 customers per hour, depending on the day. He stated that if 50% of those customers use the drive-through, that would amount to 30 cars per hour and that allows approximately two (2) minutes per car. He noted that Benderson Development feels that stacking for five (5) cars is sufficient and even if there is a very busy time, there is more than sufficient space on the site to handle any overflow that would not impact the public travel area.

In response to a question from Mr. Chapman, Mr. Oates stated that when a vehicle is exiting the drive-through there would be a Stop sign.

Ms. Gronachan stated that she was concerned about someone leaving the drive-through having to wait until the incoming traffic is clear before turning right. She stated that she does not think turning right out of the drive-through should be an option.

Mr. Oates responded that someone exiting the drive-through would still be able to use the drive lane. He noted that the drive lane width in front of the building would not be modified.

In response to a question from Ms. McCormick, Mr. Oates stated that there would be a net loss of approximately 15 parking spaces with the addition of the drive-through. He further stated that he does not know the peak parking numbers for the shopping center, but Benderson Development has not seen any parking issues or received any complaints from tenants.

Ms. McCormick asked Mr. Oates for the total number of spaces for the shopping center, the total number of handicapped spaces and the different businesses and what their use types are.

Mr. Oates responded that there are 189 parking spaces on the site and nine (9) handicapped spaces.

Ms. McCormick stated that the Planning Board still needs information regarding the different uses in the shopping center and their parking needs at different times.

Mr. Oates described the different ways to access the shopping center.

Ms. Valenti wondered whether a crosswalk either in front of the landscaping in front of the front door or one (1) building down from this business in between the handicapped spaces would be helpful for those accessing this business.

Mr. Oates responded that an advantage of putting a crosswalk near the handicapped spaces would be that it would also serve to be a speed deterrent.

In response to a question from Ms. McCormick, Mr. Oates stated that the hatched area on the Site Plan that runs across the drive-thorough and ties into the sidewalk could be extended across to the parking stalls.

In response to a question from Ms. McCormick, Mr. Oates stated that he believes that Crumbl Cookie is not planning any facade improvements.

In response to a question from Chairman Clark, Mr. McQuillin stated that the TSAB will be discussing this project at its next meeting.

Mr. Bobseine read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Benderson Development to construct a drive-through in McKinley Commons for a Crumbl Cookie at 4154 McKinley Parkway. The public hearing will be held on May 3, 2023 at 7:00 PM in Room 7B of Hamburg Town Hall.”

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

- Laura Podkulski stated that this is a great idea.
- Via Facebook, Jax Java stated : “For Crumbl Cookie!”

Chairman Clark declared the public hearing closed.

Mr. Oates stated that the two (2) crosswalks discussed will be added to the Site Plan, a parking study will be performed and submitted of the existing plaza and the site work will be verified.

Chairman Clark stated that No Parking signs should be added to the Site Plan that will be mounted into the asphalt to discourage drivers from cutting through the drive-through.

Ms. Valenti suggested that a planter be used to discourage drivers from cutting though instead of No Parking signs.

Mr. Oates agreed to add the planter(s) to the Site Plan.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Board's June 7, 2023. Carried.

Engineering Department comments have been filed with the Planning Department.

Benderson Development – Requesting Planning Board Approval of a Special Use Permit and Site Plan Approval of an 802,554 sq-ft, five building warehouse park to be located at 5220 Camp Road

It was determined that the applicant asked for this project to be tabled.

Engineering Department comments have been filed with the Planning Department.

Public Information Session - Alchemy Shores – Requesting rezoning of property located at 3780 Hoover Road from M-2 (Light Industrial District) to MU1 (Mixed Use District)

Mr. Bob Castle, architect, stated that there have been no major changes to the plan. He noted that the applicant has been meeting with Town officials and representatives from the New York

State Department of Environmental Conservation (DEC) to make sure the project is in accordance with all guidelines.

Ms. Valenti stated that she met with the neighbors and visited the site. She stated that she really wanted to know how the layout would work, noting that the existing building is very close to the south property line and there is a dilapidated chain link fence. She stated that new fencing is needed.

Ms. Valenti stated that the neighbors expressed to her that they are not against this project but they have concerns about noise.

Ms. Valenti stated that the property is very uneven and there is a ditch going around the outside. She stated that she is interested in what earth moving the applicant plans to do to accommodate events. She further stated that there is a very beautiful sand dune that seems to have naturally accreted into about a six-foot fence at the front of the property. She stated that it has lovely grasses growing out of it and is an ecological gem. She stated that she is interested in how the green space will be utilized.

In response to a question from Chairman Clark, Mr. Castle stated that after a wedding is done, the business would have a full staff to clean the property up and items that are taken to the beach for the wedding (chairs, etc) would be brought in nightly. He noted that there would be no permanent structures on the beach outside of what is permitted by the DEC.

In response to a question from Chairman Clark, Mr. Castle stated that he does not believe that the applicants would have any problems prohibiting items such as confetti or glitter outside.

In response to a question from Ms. Valenti, Anne MacIntosh, applicant, stated that if another use is proposed on this site in the future, it will be brought to the Planning Board for review. She further stated that a stone parking lot is proposed with 83 spots for the events center's use.

In response to a question from Ms. McCormick, Mrs. MacIntosh stated that medium size weddings are anticipated with approximately 125 guests.

Chairman Clark stated that the applicant is proposing to utilize half of the existing building for events and the other half for storage.

Ms. McCormick stated that the Planning Board needs more information regarding the number of anticipated staff, catering staff, etc. that would need parking spaces to understand what the applicant's expectation is on the amount of parking needed and whether it balances out with this type of use on the site.

Mrs. MacIntosh stated that there is more than enough space to add more parking spaces for the staff, catering people, etc. behind the building.

Mr. McQuillin stated that parking on Hoover Road will not be allowed and the Site Plan should indicate that.

Chairman Clark stated that that would be a condition of the rezoning if approved.

Ms. Gronachan noted that off-site parking is not allowed in the MU-1 District.

Chairman Clark opened the public information session. He noted that the applicant will respond in writing to all comments and questions voiced. The following people spoke:

- Chris Allen, 3774 Hoover Road, stated that his property is adjacent to the applicant's property, he has been there for 15 years and employs 36 people and operates 24 hours per day, seven (7) days per week. He stated that the applicant's proposed use is very similar to what

exists down the road (the former Dock at the Bay). He stated that the proposed facility will create a large amount of traffic and he does not think it is suitable to be placed adjacent to an operation such as his. He stated that his business constantly receives truck deliveries and it operates vacuum systems, which could be a source of irritation for a business of this kind. He asked why an events center should be allowed to operate in an industrial zone when there is a similar facility right down the road. He stated that he is concerned about the events center's waste disposal, noting that his business supplies materials to the pharmaceutical industry and has a very intense program to control rodents. He stated that he does not want that to be affected by waste from this kind of operation so close to his property line. He stated that he thinks that this area should remain an industrial area only. He stated that he plans to expand his business and he does not want it to be affected by this kind of an operation.

It was determined that Mr. Allen's business is Carbon Activated Corporation.

- Daniel Bauer, 3790 Hoover Road, stated that he lives adjacent to the applicant's property and he and his neighbors take immense pride in the close-knit, peaceful and family oriented community they have cultivated. He stated that they fear that the decisions before the Town to develop Hoover Road will be made hastily and will be catastrophic to the peace and character of that community. He stated that although they recognize that each developer has the right to develop his or her property as he or she sees fit, they have also seen consequences of short-term thinking and lack of planning in developing this community already. He stated that in 2021 the Shoreline Revitalization Committee surveyed thousands of residents regarding their vision for community growth and found that the two (2) primary concerns were the cultivation and protection of strong and healthy neighborhoods and the protection and enhancement of environmental assets. He stated that they feel that the requested rezoning would undermine those principles. He noted that everyone who would be speaking at this informational meeting would be addressing something different but they stand behind each other's viewpoints wholeheartedly. He stated that he and his neighbors are not looking to impede progress, but rather to ensure that progress proceeds responsibly in a way that protects their homes and lives.
- Margaret VanArsdale, 3782 Hoover Road, stated that the applicant's building is less than three (3) feet from her property line and she is concerned about noise emitted from this business. She asked what can be done to protect her family from this noise. She stated that snow and ice comes off the building onto her property in large amounts and it is dangerous. She stated that she had a good working relationship with the previous owner of 3780 Hoover Road and does not have that now. She stated that she is concerned about raw sewage back ups in her yard, which have happened even with the previous owner only employing a few people. She noted that 3780 Hoover Road does not have its own lateral raw sewer line to the street and its raw sewage is deposited into her lateral sewer line instead. She stated that she is worried that this raw sewage back up will occur often with the large number of people anticipated at the applicant's events. She asked what the future protocol for back ups that may occur would be. She stated that the applicants must be responsible for their own raw sewage. She stated that other neighbors have experiencing the same raw sewage back ups and she asked for a comprehensive analysis of the sewer line on Hoover Road before additional strains are added to it. She stated that privacy and trespassing are a big concern and asked what appropriate action she should take if the applicant's guests go on her property. She asked who will enforce Section 280-7 (H) of the Town Code, which indicates that lots abutting residential districts shall maintain a minimum side yard of 20 feet

adjoining the residential district. She requested that a four-foot high wooden snow fence be placed on the upper beach part of the applicants' lot to ensure this minimal amount of privacy and protect their shared six-foot tall sand dune. She stated that a Western New York DEC official indicated the following; "Existing established vegetation should not be removed. Clean up operations only allow for the removal of garbage, dead vegetation and wooden debris. Some maintenance trimming of existing established vegetation and trees is acceptable as long as it does not hurt or kill the vegetation/trees. The intent is to keep as much vegetation as possible." She stated that there has been blatant disregard for the DEC's directive on the applicant's property. She stated that Town Code Section 107 (11) indicates that the removal or destruction of vegetation or trees which disturb more than 20,000 sq.ft. of ground surface on any parcel or congruous area requires a permit. She stated that more than 20,000 sq.ft. of ground surface has been removed from the applicant's property, which is devastated. She stated that she supports Carbon Activated Corporation and does not want to see it disturbed.

- Jamie VanArsdale, 3782 Hoover Road, stated that he is concerned about drainage, which has been an issue in this area. He noted that the applicant's roof slopes toward his property and he has tried to divert that water but it ends up in his cellar. He stated that he would like to see a plan to divert that water away from his property. He stated that there is a 36" hinged exit door on the applicant's building and he does not think it will be able to be used for emergencies because of the snow that accumulates there. He stated that he does not want to assume the liability for someone from the applicant's building going on his property.
- Lynn Braun, 3784 Hoover Road, stated that she agrees with her fellow neighbors and Mr. Smith. She stated that she is against this rezoning and asked the Planning Board not to move forward with this project until the potential traffic, pedestrian problems and noise have been seriously studied and regulated. She stated that this area is a neighborhood with over 90 homes. She stated that she is concerned about people parking on Hoover Road and trespassing. She stated that she would rather live near a regular 9-5 business than a bar/restaurant event center. She stated that she is not against the applicant's proposal but she wants it done right. She stated that the lake shore is in jeopardy. She asked the Town to add specific guidelines to the MU-1 zoning district. She asked the Planning Board not to allow outdoor music or street parking and to require sound barriers and protection for the lake.
- Nicole Braun, 3790 Hoover Road, urged the Planning Board not to move forward with this project until the environmental impacts have been seriously studied, considered and regulated. She asked the Board to consider specific regulations for lakefront properties near MU-1 properties. She stated that her concerns include light pollution, man made pollution and noise pollution. She stated that she is concerned about the endangered Little Brown Bats that live in this area that are averse to lighting. She asked the Planning Board to formally ban the use of fireworks near the beach. She stated that she is not saying that the applicant should not be able to proceed with the project, but she is asking the Board to consider the future of the ecosystem and set stricter standards and policies in place before the rezoning is approved.
- Francine Geyer, 3792 Hoover Road, stated that she is worried that plastics will end up in the water from the events. She stated that she echoes the concerns of her neighbors. She stated that she is against any and all outdoor music associated with this venue, as well as at 3800 Hoover Road. She stated that the 2021 survey that is included in the Comprehensive Plan Update indicated that Hamburg residents want to protect and enhance its environmen-

tal assets, which includes Lake Erie. She stated that the new MU-1 zoning needs to be addressed regarding outdoor music. She stated that in the past she and her neighbors have asked the Town for protection from the loud noise emitted from the Dock at the Bay and the fact that the noise did not always cease at the required 11:00 PM. She stated that she is worried that they will have the same problem with this applicant. She stated that she is concerned that fireworks will be used at weddings and asked for noise barriers.

- Taylor Braun, 3784 Hoover Road, stated that he is concerned about the effect this project would have on the character of the community, its infrastructure, ecosystem and the lake. He asked the Planning Board to mitigate or eliminate the damage that might be caused by the project. He stated that he hopes that the lake shore can be developed in a responsible way that benefits the community at large without negatively impacting the lives he and his neighbors have built on Hoover Road. He stated that he and his neighbors have never had any issues with the light commercial aspect of the street.
- Kevin Cullen stated that he and his wife run the water sports at Sunset Bay and Micky Rat's. He stated that Lake Erie is a world class asset and tourist destination and has world class resources for recreation. He stated that he is in early discussions with the landowner to do paddle board and kayak rentals and lessons and create public access to the lake on private property. He noted that there is a huge lack of that type of access on Lake Erie and the people who come from all around to enjoy the lake also go to the local restaurants, etc. He stated that he has been operating the paddle board and kayak business at Sunset Bay for eight (8) years and Micky Rat's for five (5) and has a great relationship with the neighbors. He stated that the applicant's project can be done with a great relationship with the neighbors and noted that he gives neighbors of Sunset Bay a 20% discount. He stated that he is a staunch environmentalist and he helps get people connected to that environment in his business. He stated that although there are concerns from the neighbors, there is tremendous benefit as well.
- Christian Edy stated that she and Mr. Cullen own their business, which is a multi-recreational guide service and they fully support the requested rezoning because Lake Erie is a world class asset. She stated that they teach kiting and Lake Erie has perfect wind for that. She stated that they understand the concerns but she thinks they could do wonderful things on this site.
- Emily Latacki stated that she is a Hamburg resident and believes there is a need for an event space in the Southtowns. She stated that she previously worked as an event coordinator at the Botanical Gardens and couples are looking for a beautiful outdoor wedding summer venue. She stated that couples are having to look elsewhere to get married because of the high demand and they are also interested in sustainability. She stated that this project would provide couples with a serene and unique venue that would also provide employment and a source of income for bartenders, caterers, etc. She stated that the applicant has a reputation for being a good neighbor in the Village of Hamburg and takes pride in the ways she has enhanced the neighborhood and she knows the applicant wishes to do the same with the lake shore neighbors.
- Via Facebook, Rachael DiPasquale stated "I think this is great in that they are willing to repurpose an old warehouse and not using up more green space in Hamburg to build a new facility."

Chairman Clark concluded the public information session.

It was determined that Ms. Jarrell will address and comment on the sewer issues raised by Mrs. VanArsdale.

It was determined that the applicant will provide a written response that itemizes the concerns and comments expressed and a response to each one of the concerns and how it would be addressed.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Board's June 21, 2023 meeting. Carried.

Liberatore Management – Requesting Site Plan Direction on a warehouse development project to be located at Burke Parkway

It was determined that the applicant asked that this project be tabled.

Engineering Department comments have been filed with the Planning Department.

Aspen Dental Management Inc. – Requesting Site Plan Direction on a proposal to construct a dental clinic to be located at 3497 McKinley Parkway

Eric Dreskowski from Excel Engineering, representing the applicant, stated that the existing Pizza hut building is ten (10) feet from the eastern property line. He stated that the Planning Board indicated that it would like sidewalks along Milestrip Road and McKinley Parkway. He questioned the need for sidewalks along Milestrip Road, noting that there are no sidewalks along that roadway in that area and it would require NYSDOT permitting.

Chairman Clark advised Mr. Dreskowski that the homes on the east side of this site access Milestrip Road further east of the McKinley Parkway intersection and those homeowners currently have no way to walk to that intersection. He stated that installing sidewalks along the south property line of this site would begin to bridge that gap, although it will not solve the problem.

Mr. Dreskowski stated that an eight-foot high vinyl fence has been added to the Site Plan along the site's eastern property line as requested by the neighbors.

Mr. Dreskowski stated that any building that is proposed on this site would likely require setback variances. He stated that Aspen Dental reviewed various ways to rotate the building in order to not need variances and determined that what is proposed is what it prefers and what it thinks makes the most sense regarding internal traffic flow.

Mr. Dreskowski stated that additional plantings have been added to the Landscaping Plan along the property's eastern and northern property lines.

Mr. Dreskowski explained the site's drainage plan, noting that it would not make nearby properties' existing drainage problems worse and would actually improve them. He noted that the amount of impervious surface on the site would be reduced.

In response to a question from Mr. Chapman, Mr. Dreskowski stated that Aspen Dental has corporate standards for buildings and there are not many buildings that would fit on this site without requiring relief from the required setbacks. He stated that if the Town waits for a building that fits on this site, it will have to deal with the existing Pizza Hut building that looks the way it does.

Board members discussed their opinions regarding how to move this project forward knowing that variances will be sought for this project on June 6, 2023 from the Board of Zoning Appeals (ZBA).

Mr. Dreskowski stated that the applicant would prefer that the Planning Board approve the project contingent upon it receiving the requested variances on June 6, 2023.

Chairman Clark asked Board members to weigh in on whether the Planning Board should send a memo to the ZBA indicating that it supports the variances requested, it does not support the variances requested or that it will leave the decision to the ZBA without any recommendation.

Ms. Gronachan noted that at the Board's last meeting she recommended that the applicant re-search a smaller building that would need smaller variances. She noted, however, that based on the fact that the applicant has addressed the drainage and buffering concerns voiced by the neighbors she feels the Planning Board can support the requested variances.

Ms. McCormick stated that redeveloping and repurposing a site is a good thing and she would support the applicant's variance request.

Mr. Szwec, Mr. Bobseine and Ms. Valenti agreed with Ms. Gronachan and Ms. McCormick.

Ms. Valenti stated that she is willing to support the variance because of the difficulties of the lot but she is not sold on the statement that the building cannot be changed.

Chairman Clark made a motion, seconded by Ms. Gronachan, that the Planning Board acknowledges that the building as currently proposed will be the final position of it when the Board votes on the project and that the Planning Board recommends that the ZBA consider the requested variances as presented as has no additional negative comments as a Board and that the Planning Board recommends that the variance be granted to allow an eight-foot high fence.

As the vote on the motion was six (6) ayes and one (1) nay (Mr. Chapman), the motion carried.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Board's June 21, 2023 meeting and authorize the Planning Department to draft conditional resolutions. Carried.

Engineering Department comments have been filed with the Planning Department.

AL Asphalt - Proposed DEIS received 4/5/2023

Chairman Clark stated that members had resolutions for and against moving forward with the SEQR process. He noted that the applicant was asked to make changes to the DEIS and the applicant has responded that it is not necessary to make those changes. He stated that the Board must take action at this time.

Chairman Clark stated that the Planning had two (2) options:

1. Move forward with the SEQR process despite the fact that the applicant did not make the requested changes, which would give the applicant the chance to do that in the future
2. Indicate that the Planning Board is not accepting the DEIS

Ms. McCormick stated that if the Planning Board takes on the responsibility of preparing the Final EIS without the applicant revising the DEIS, there would be additional costs and effort that the Planning Board will have to take on. She stated that she believes the applicant was asked about a potential cost share.

Attorney Kim Nasson from Philips Lyle stated that there have been exchanges of correspondence between the Planning Board and the applicant with respect to the deficiencies. She stated that originally there were 19 deficiencies noted when the DEIS was first rejected in September 2022 and that number was reduced to seven (7) by the Planning Board while reserving the Planning Board's rights on the remaining deficiencies for the public comment process if it is ever arrived at. She stated that the version of the DEIS submitted on April 5, 2023 is the first revised DEIS the Planning Board has received and it did address two (2) of the seven (7) identified deficiencies. She stated that the Planning Board looked at those responses.

Attorney Nasson stated that at its last meeting the Planning Board discussed holding off on the public comment or moving forward to public comment understanding that there are still a number of deficiencies the Planning Board has identified as the Lead Agency that will need to be addressed in the Final EIS.

Attorney Nasson stated that a letter was sent to the applicant on Monday that summarized the Planning Board's concerns with taking on those deficiencies while also wanting to work cooperatively and move to public review because the Planning Board recognizes the importance of the public comment process.

Attorney Nasson stated that attached to the letter sent to the applicant was a draft reimbursement agreement to outline how the Town would cover some of those costs that the Town is taking on the responsibility of. She stated that the letter asked for a willingness to enter into that agreement or discuss the agreement further. She noted that to date there has been no response.

Attorney Nasson stated that the SEQR guidance indicates that at this stage if the Planning Board feels that the deficiencies have not been addressed, it can continue to reject the DEIS or, if the Board feels that certain bare minimum requirements with respect to project details, impacts, mitigation, etc. are included in the document it can move forward to public review and ask the public to comment on all those deficiencies in addition to commenting on the substance of the DEIS itself.

Chairman Clark stated neither of the Planning Board's options will be inexpensive for the Town going forward, noting that both options have risks and benefits.

In response to a question from Ms. McCormick, Attorney Nasson stated that once the Planning Board accepts any DEIS for public review, if a public hearing is held it must be held within 60 days. She stated that when the Notice of Completion is issued, the public hearing does not have to be immediately scheduled. She stated that the SEQR regulations require that the public comment period be kept open for at least ten (10) days after the public hearing is closed.

Attorney Nasson further stated that when a Notice of Completion is issued, the Lead Agency must indicate what the public comment period is. She stated that the way the Notice of Completion is drafted indicates a 75-day public comment period beginning May 6, 2023, which would allow the Planning Board to schedule more than one (1) public hearing date if needed and still have the statutory required ten (10) additional days for comments after the public hearing is done.

Chairman Clark stated that the public hearing should probably be held less than 60 days from the Notice of Completion so there is enough time to have all comments in by July 19, 2023 (end of the 75-day comment period).

Ms. McCormick asked when the Planning Board would have to have the FEIS completed if the comment period ends on July 19, 2023.

Attorney Nasson responded that the SEQR regulations require that the FEIS be completed within 45 days of the close of the public comment period, but there is also an explicit provision in the regulations that would allow the Planning Board to take more time.

Ms. McCormick stated that she is concerned that the Planning Board would be taking on a huge volume of work with a 45-day timeline. She asked how much longer the Planning Board could reasonably take to complete the FEIS beyond 45 days.

Attorney Nasson responded that that is significantly dependent upon the number and content of public comments both on the DEIS and the deficiencies themselves.

Attorney Nasson stated that the correspondence from the Planning Board to the applicant indicated that if the Planning Board moves forward with the SEQR process at this point, it would be looking to the applicant to assist both in revisions to the DEIS and responses to public comments.

Board members discussed its (2) alternatives.

In response to a question from Chairman Clark, Attorney Nasson stated that it is not typical for an applicant to refuse to participate in this process, but it has happened before, which is why the guidance explicitly addresses it.

Chairman Clark stated that Ms. Valenti has recused herself from this project.

In response to a question from Ms. Gronachan, Attorney Nasson stated that the Planning Board would be binding itself to a comment period in the Notice of Completion.

In response to a question from Ms. McCormick, Attorney Nasson stated that the Planning Board has the option to adjust the 75-day timeline but it is always a balance of how much time the Planning Board is going to take understanding that part of its responsibility as Lead Agency involves needing time to address all of the public comments.

Board members discussed moving the July 19, 2023 date to July 28, 2023.

Chairman Clark polled Board members regarding which option they feel the Planning Board should pursue as follows:

Mr. Chapman stated that the Planning Board should begin the public review of the DEIS.

Mr. Bobseine concurred with Mr. Chapman.

Ms. McCormick stated that the Planning Board should declare the DEIS incomplete.

Mr. Szewc concurred with Mr. Chapman.

Ms. Gronachan concurred with Mr. Chapman.

Chairman Clark made the following motion, seconded by Ms. Gronachan:

“Whereas, the Town of Hamburg Planning Board (**“Planning Board”**) received a Site Plan application from A.L. Asphalt Corporation (**“A.L. Asphalt”** or **“Applicant”**) in June 2019 for the construction of a Hot Mix Asphalt Plant (**“Project”** or **“Plant”**) and related accessory uses at 5690 Camp Road in the Town of Hamburg (**“Town”**); and

Whereas, the Planning Board reviewed the application, initiated a Coordinated Review under the State Environmental Quality Review Act (**“SEQRA”**), declared the Project an Unlisted Action, received input from various Involved and Interested Agencies and Town departments and subsequently established itself as Lead Agency; and

Whereas, the Planning Board, in accordance with SEQRA, determined that the proposed approval of a site plan and construction of the Plant may include the potential for at least one significant adverse environmental impact and issued a Positive Declaration on November 4, 2019; and

Whereas, the Planning Board received a draft scoping document from the Applicant on March 6, 2020, held a public scoping meeting, received input from other Involved and Interested agencies and its consultants and Town departments and issued a final scoping document on April 29, 2020; and

Whereas, the Planning Board received a draft Environmental Impact Statement prepared by the Applicant on August 5, 2022 (“**DEIS**”), and the Planning Board, with assistance from its consultants and other Town departments, reviewed the DEIS and determined in accordance with Section 617.9 of the SEQRA regulations that the DEIS was incomplete and not ready for commencing public review and by resolution dated September 21, 2022 the Planning Board requested the Applicant make certain revisions to the DEIS and attached a copy of the scoping document checklist that was created to review the DEIS and a document entitled “Inadequacies/Deficiencies of the A.L. Asphalt DEIS” to assist the Applicant with the completion of a revised DEIS (the “**Listed Deficiencies**”); and

Whereas, to further aid the Applicant with the completion of a revised DEIS, the Planning Board sent a letter to the Applicant dated November 10, 2022 stating that each of the Listed Deficiencies is a matter contained in the Final Scoping Document or is otherwise proper under 6 NYCRR 617.9(a)(2) and 6 NYCRR 617.8(f), but the Planning Board would significantly reduce the number of Listed Deficiencies in an effort to work cooperatively with the Applicant and by additional letters dated January 5, 2023 and February 21, 2023, the Planning Board reiterated the same to the Applicant (together the November 10, 2022, January 5, 2023 and February 21, 2023 letters to the Applicant are the (“**Deficiency Correspondence**”)); and

Whereas, more particularly the Deficiency Correspondence provided a reduced set of the Listed Deficiencies that the Planning Board would require be addressed in any revised DEIS document prior to accepting the same for public review including reiterating its prior requests for revisions to Sections 4.2, 4.3, 4.4, 4.5.1, 4.5.6, 4.5.10, as specified in the Deficiency Correspondence, along with the Planning Board’s express reservation of its rights to address any or all of the Listed Deficiencies in any future public comment period notwithstanding the abbreviated set of core deficiencies identified in the Deficiency Correspondence as an accommodation to the Applicant; and

Whereas, the Planning Board received a revised draft Environmental Impact Statement prepared by the Applicant and submitted on April 5, 2023 (“**Revised DEIS**”) and the Planning Board, with assistance from its consultants and other Town departments, reviewed the Revised DEIS and in accordance with Section 617.9 of the SEQRA regulations has determined to accept the Revised DEIS for public review, subject to the Listed Deficiencies and with those rights it reserved in the Deficiency Correspondence, consistent with the Notice of Completion attached hereto; and

Now, Therefore, Be It Resolved, the Planning Board has determined in accordance with Section 617.9 of the SEQRA regulations to accept the Revised DEIS for public review, subject to the Listed Deficiencies, and with its rights as reserved in the Deficiency Correspondence; and

Be It Further Resolved, that the Planning Board directs the Planning Board’s staff to file the attached Notice of Completion with the Department of Environmental Conservation, Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750 and provide the same to Supervisor Hoak at Town Hall, other Interested and Involved Agencies, A.L. Asphalt as Applicant and

to any person who has requested a copy of the Revised DEIS, and to otherwise make the Revised DEIS available to the public consistent with 6 NYCRR 617.12(b) including at the Planning Board's website, and by providing a physical copy of the Revised DEIS for review at the Hamburg Town Hall at 6100 South Park Avenue, Hamburg, NY 14075; and

Be It Further Resolved, that the Planning Board has determined in accordance with 6 NYCRR 617.9(a)(4) that it will schedule a public hearing regarding the Revised DEIS for a date to be established during the public comment period, which will last from filing of the attached Notice of Completion to July 28, 2023, and the Planning Board shall file a Notice of Hearing at least 14 days in advance of the public hearing in accordance with 6 NYCRR 617.12(c). Further, the public hearing shall conclude at least 10 days prior to the expiration of the public comment period."

As the vote on the motion was five (5) ayes, one (1) nay (Ms. McCormick) and one (1) abstention (Ms. Valenti), the motion carried.

Ms. McCormick asked Chairman Clark to begin blocking out space on future Planning Board agendas for the A L Asphalt SEQR process until the Planning Board finalizes the FEIS.

Chairman Clark made a motion, seconded by Mr. Bobseine, to table this subject to the Planning Board's May 17, 2023 meeting. Carried.

OTHER BUSINESS

Ms. McCormick stated that in the April 19, 2023 minutes the word "public" should be changed to the word "State". She made a motion, seconded by Mr. Szewc, to approve the April 19, 2023 Planning Board minutes with that correction. As the vote on the motion was six (6) ayes and one (1) abstention (Mr. Bobseine), the motion carried.

Mr. Szewc made a motion, seconded by Mr. Chapman, to adjourn the meeting. Carried.

The meeting was adjourned at 10:10 PM.

Respectfully submitted,
Jeb Bobseine, Secretary

Date: May 11, 2023