

Town of Hamburg
Planning Board Meeting
January 4, 2023 Minutes

The Town of Hamburg Planning Board met for a Regular Meeting at 7:00 PM on Wednesday, January 4, 2023 in Room 7B of Hamburg Town Hall. Those attending included Chairman William Clark, Vice-Chairwoman Kaitlin McCormick, Bob Mahoney, Dennis Chapman, Doug Schawel, Jeb Bobseine and Margaux Valenti.

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

REGULAR MEETING

Continuation of Public Hearing - 7:00 P.M., Matt Jaworski - Requesting Site Plan Approval of a proposal to construct a public mini-storage project at 5661 Camp Road (use variance granted on 11-1-22)

Public Hearing - 7:00 P.M., Matt Jaworski - Requesting Preliminary Plat Approval of a two-lot subdivision to be located at 5661 Camp Road

Chairman Clark stated that the above public hearings would be conducted concurrently because they are related to the same project. Chairman Clark noted that the Phase I and Phase II environmental assessments were conducted, but the results are not yet on the Town's website.

Attorney Sean Hopkins, representing the applicant, stated that a use variance was granted for this redevelopment of the former junkyard property by the Board of Zoning Appeals. He stated that the Conservation Advisory Board (CAB) asked for copies of the Phase I and Phase II environmental assessment reports and he attempted to email them to that board but the file was too large. He noted that he did give a hard copy of the Phase II report to the CAB Chairman and the Phase I report was submitted to the Planning Department previously.

Attorney Hopkins stated that nothing on this site exceeds the New York State Department of Environmental Conservation (NYSDEC) standards. He further noted that there would be no basements associated with this self-storage project and it will be a "cap and cover" situation.

Attorney Hopkins stated that a fairly large portion of this site is jurisdictional wetlands and the U.S. Army Corps of Engineers (USACE) issued a jurisdictional determination. He noted that the project engineer has deliberately designed this project so that the maximum impact to the wetlands is less than .05 acre. He stated that the 4.03 acres including those wetlands will be permanently protected via the recording of a declaration of restrictions at the Erie County Clerk's office.

Attorney Hopkins stated that there are no plans at this time for the 1.1 acres that would be subdivided off the larger parcel. He noted that cross-access is shown on the Preliminary Plat, meaning there will be no additional driveway connections from the 1.1-acre parcel onto Camp

Road. He further stated that there would be a reciprocal easement agreement recorded for access purposes between the two (2) parcels.

Attorney Hopkins stated that additional landscaping has been added to the Site Plan as requested by the Planning Board.

Chris Wood from Carmina Wood Design, project engineer, stated that a standard chain link fence is proposed abutting wooded areas on at least three (3) sides. He noted that a heavy vegetative buffer is also proposed so the fence would be difficult to see and a chain link fence is preferred because one can see through it to the existing vegetation.

Attorney Hopkins noted that the future parcel is labeled "parcel 2" on the Preliminary Plat.

It was determined that no outside storage is proposed.

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 two-lot subdivision proposed by Matt Jaworski to be located at 5661 Camp Road. The Public Hearing will be held on January 4, 2023 at 7:00 p.m. in Room 7B of Hamburg Town Hall."

Chairman Clark declared the subdivision public hearing open and noted that the public hearing on the site plan approval was still open. The following people spoke:

- Mark Lorquet, CAB Chairman, stated that the CAB's concern is that there were some issues found at the site with different types of metals. He stated that the CAB is concerned about what stipulations will be imposed to ensure that those metals or chemicals do not migrate off site in the future.

Chairman Clark asked Ms. Jarrell to provide a second opinion on the CAB's concerns.

Attorney Hopkins noted that there was no evidence of ground water contamination on this site.

Chairman Clark declared both public hearing closed.

Chairman Clark made a motion, seconded by to table this project to January 18, 2023. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing - 7:00 P.M., Public Hearing – 7:00 P.M., DATO Development – Requesting Preliminary Plat Approval of a 96-unit townhome subdivision on vacant land west of Briercliff Drive

Attorney Sean Hopkins, representing the applicant, stated that this site is a portion of the overall Brierwood Planned Unit Development (PUD) and has a long and detailed history back to the 1980s. He noted that the site is part of what was called the Quarry development and this proposal is considerably less dense than what was originally proposed in 1988.

Attorney Hopkins stated that area variances were sought on January 3, 2023 because this project qualifies as a townhouse subdivision and the Board of Zoning Appeals will not act on the requested variances until the Planning Board completes the SEQR process.

Attorney Hopkins stated that the Planning Board previously was designated Lead Agency under SEQR but because at that time the Planning Board considered this a Site Plan application and now is considered it a Preliminary Plat application, the Planning Board should initiate another SEQR Coordinated Review.

Attorney Hopkins stated that in 1988 the illustrative plan for this site showed there were 120 apartments (two (2) three-story buildings) and in 2010 a group proposed a 72-unit subsidized housing project. He noted that that project was not particularly well received by the neighbors, which is why the currently proposed project involves units for sale, rather than for rent.

Attorney Hopkins stated that if the applicant chose to propose the exact same project but with rental units or a form of condominium ownership, no area variances would be required.

Attorney Hopkins stated that a topic that has come up repeatedly is the question of whether there is any requirement that a portion of this site or all of the site be designated as permanent open space. He stated that he has reviewed all of the minutes he could find back to 1988 and found the following:

- The Open Space Plan report prepared by Nussbaumer & Clarke in 1992 denotes that out of the overall Quarry development, approximately 27.08 acres of permanent open space should be provided. If one adds up the parcels that have been donated previously to the Briercliff Homeowners' Association (HOA), some additional property that formulated a larger wetland that the U.S. Army Corps of Engineers did not take complete jurisdiction over and the permanent open space being currently proposed for this site, it totals 24 acres.

Attorney Hopkins stated that the Quarry development was described as 107.4 acres.

Attorney Hopkins stated that a letter was submitted to the Planning Board recently by an attorney at Hodgson Russ indicating that maybe some of the previous submissions made to the Planning Board had some inaccuracies. He noted that the Open Space Plan report had two (2) exhibits, neither of which was attached to a copy of the report in the Town's records. He stated that there were two (2) plans (the Existing and Proposed Permanent Open Space and the Heart Trail extension plan). He stated that the Existing and Proposed Permanent Open Space plan is the plan that sets forth the open space requirements.

Attorney Hopkins stated that per the history of this site and the PUD zoning, there is not a requirement that 25% of a portion of the PUD be designated as permanent open space. He further stated that the applicant has exceeded the overall 10% requirement of open space in the entire PUD and the only option the applicant would have if required to provide an additional three (3) acres of open space would be to extend the currently proposed one (1) acre of open space so that it totals four (4) acres and go back to the idea of apartment buildings.

Attorney Hopkins asked the Planning Board and the nearby residents to consider which option they would prefer (owner occupied units in two-story buildings or rental units in one (1) or two (2) apartment buildings).

Board members discussed their options relative to SEQR on this project in the event that the project is revised to include apartment buildings vs the current layout.

Attorney Hopkins stated that the applicant considers this layout (owner occupied units) as a concession to the residents, since they did not seem to care for the previous proposal of rental units. He noted that if the applicant reverted back to what was envisioned in 1988 (120 apartments in two (2) three-story buildings), the Planning Board would have less flexibility from a SEQR perspective.

Attorney Hopkins noted the following information that has been submitted by the applicant:

- Downstream sanitary sewer capacity analysis
- Traffic Impact Study prepared by SRF Associates
- Fully engineered plans and an Engineer's Report
- SWPPP
- Color rendering of what the applicant envisions the two-story four-unit buildings with garages would look like

In response to a question from Mr. Mahoney, Attorney Hopkins stated that the project would be constructed in one (1) phase.

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 96-lot subdivision proposed by DATO Development to be located on vacant land, west of Briercliff Drive. The Public Hearing will be held on January 4, 2023 at 7:00 p.m. in Room 7B of Hamburg Town Hall."

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

- Rafael Pignataro, 5416 Pond Brook Circle, stated that he is employed by Hodgson Russ, which was engaged by the Briercliff HOA, so he was appearing in a representative capacity as well as a homeowner. He stated that Attorney Malcolm from Hodgson Russ submitted a letter to the Planning Board, which the Planning Board confirmed receipt of. He stated that the history of this area goes back many years to 1988 when the PUD was created and at that time 66 acres of open space was earmarked for the entire PUD. He stated that in 1992 the Burkes asked for a recreation fee waiver and the Planning Board asked Mr. Burke where the 66 acres of open space were since he only showed 15 acres. He stated that this is significant because a legal agreement was reached between the Planning Board and Mr. Burke that with respect to the Quarry development, in consideration for the lack of open space that existed, the Planning Board agreed to waive the recreation fee in exchange for a promise of 27 acres of open space.

Mr. Pignataro stated that when Attorney Hopkins added up the existing 24 acres of open space in the Quarry development, he should not have included the wetland area because that area is undevelopable and per Section 230-21 of the Hamburg Town Code should not count towards the 10% criteria.

Mr. Pignataro stated that he was shocked that the Planning Board was discussing density and whether rental or owner occupied units should be constructed when a legal agreement was reached between the Planning Board and Mr. Burke that still has not been addressed.

Mr. Pignataro stated that out of respect for the Planning Board and on behalf of Mr. Grundtisch and others, there are many homeowners who would have liked to speak at the public hearing who stayed home.

Mr. Pignataro stated that although this site was envisioned as apartments in 1988, on the 1992 map it was listed as only being 6.25 acres developable because there is a roughly three-acre piece of the site that was shown as a recreational space and tot lot.

- Don Grundtisch, 5284 Briercliff Drive, stated that he is the president of the Briercliff HOA, whose members have spent hundreds of hours researching minutes, records, etc. He thanked Mrs. desJardins for all of her help in this process. He stated that the open space requirement has not been met for the Quarry development or the entire PUD. He stated that Saddlebrook was supposed to have wooded green space and the only green space provided was landscaping beds and driveways. He stated that the PUD open space map was approved and accepted by the Town in 1992 and in 2002 Mr. Reilly asked that the developer show all of the existing and proposed trails on the drawing (Heart Trail). He stated that at that time the developer was asked to show a map of the overall PUD indicating where the green space is, which HOA controls it and what trails had and had not been completed. He stated that these questions never were answered.

Mr. Grundtisch stated that eventually the Heart Trail map was produced by the developer, but it was deficient because the trails do not connect all the neighborhoods as was required. He stated that the applicant has not met the green space or trail requirements and the residents hope that the Planning Board requires that these be met.

- Mike Nuermberger, 2777 Christopher Boulevard, stated that he agreed with Mr. Grundtisch's comments regarding the fact that the green space and trail requirements have not been met. He stated that recreational space and trails are very important to the residents and the Town. He stated that by the time the developer was forced to dedicate the trail system, it was 13 years after the trail map was promised and the trails were simply along existing roadways with the exception of some trails that went through some fields. He stated that the trails were never constructed with wood chips as promised on the approved and accepted 2003 Heart Trail map.

Mr. Nuermberger stated that based on the applicant's current proposal, the storm management area would be directly on top of the existing and dedicated Heart Trail. He stated that the applicant cannot build on top of the Heart Trail and it cannot be moved as depicted in the proposal without a Town resolution approving it.

Mr. Nuermberg stated that in 2021 the Planning Board set a precedent by denying David Homes' request to relocate hiking trails in the Waterford Pines subdivision.

- Laura Bickert, 5276 Briercliff Drive, stated that the Heart Trail cannot be moved because the applicant does not have enough room on the site to develop the project as proposed. She stated that contrary to what Attorney Hopkins stated in November 2022, there is a gas well on Parcel K that was capped in 1990. She stated that the existence of the gas well was discussed by the Planning Board in 1998 and it was noted that no dwelling should be built within 500 feet of a gas well. She stated that the NYSDEC website was accessed regarding the capped well and its location was confirmed but indicated that

there is not enough data available on the depth of the well cap. The HOA contacted the NYSDEC and was informed that the NYSDEC expects that the gas well was capped to plow depth, which is four (4) to five (5) feet below grade. She asked how a basement could be dug for a townhouse with a capped gas well below it.

- Dave Czekaj, 5142 Briercliff Drive, stated that the currently proposed layout is in violation of an April 4, 1989 Town Board resolution, in which it rejected 20' side yards for the entire PUD. He stated that the HOA believes that DATO would need a Town Board resolution to amend the PUD and that neither the Town Board nor the Board of Zoning Appeals can override the 30' side yard requirement.
- Mark Depalma, 5417 Pond Brook Circle, stated that the following challenges are not addressed with the applicant's proposal:
 - The issue of mail delivery is a question because the post office will not deliver to a private street.
 - The location of the centralized mail delivery has safety, traffic and snow removal implications, as well as overall design and safety issues.
 - The method of snow removal from this project has not been addressed. If snow is to be hauled away, it will increase the HOA fees and produce barriers to purchase and the cost of entry will be higher. This will also create safety implications for pedestrians and emergency vehicles.
 - The HOA does not feel that enough parking is provided and this will result in residents parking on the narrow side streets in the PUD, which would cause a problem for emergency vehicles, particularly during snow events.
 - The HOA asks where the community's pressure zone water building would be located, as public water would not be available to the private development.
- Karen Jones, 5280 Briercliff Drive, stated that the applicant has submitted many rounds of plans that included several errors, such as the lack of the 40' setbacks from the tracks, lack of required setbacks, omitting additional parking spaces and recreation area, and not respecting the Heart Trail and the existing sewer easement. She stated that when the proposal for apartments on this site was previously reviewed by the Planning Board, a Supplemental Environmental Impact Statement (SEIS) was being pushed for. She stated that the Final EIS that was approved in 1998 did not reference any specific project for this site, is 24 years old and does not reflect the current conditions.

Ms. Jones stated that this development would be the highest density townhouse ever in western New York and for that reason a Positive Declaration should be issued. She stated that this project should be redesigned for a smaller parcel that is developable.

- Michelle Sacilowski, 5138 Briercliff Drive, stated that although the roads can handle the volume of traffic that would be generated from this development, the addition of two (2) streets into the neighborhood would pose a significant pedestrian danger for its residents. She stated that the residents do not understand why the project cannot incorporate an egress onto Cloverbank. She stated that there are dozens of roads and driveways that are closer to the tracks than where an egress from this development would be

located. She stated that having one (1) egress to Cloverbank and one (1) to Briercliff would not only eliminate the dangerous triple offset intersection but would be much safer than the two (2) entrances onto Briercliff Drive within 150' of each other on a quiet and active community street. She stated that a real study needs to be completed by a licensed engineer in conjunction with the NYSDOT, the Federal Railway Association and the railroad workers themselves.

- Diana Elliott, 5134 Briercliff Drive, stated that the applicant has not addressed the railroad tracks. She stated that the rules on the buffers are vague and have minimums and yet allow the Planning Board to be subjective. She stated that the Planning Board and the applicant need to look to an entity that has a best practice in place like HUD, which states that there needs to be special construction techniques to reduce noise, vibrations, etc. to ensure that the applicant is building the safest townhouse project possible.

Ms. Elliot stated that all previous proposals for this site have had setbacks of between 100' and 160' as opposed to the 50' that the applicant proposes and all previous Planning Boards have strongly advised against close setbacks. She stated that in 1993 Mr. Burke stated that the apartments are 190' away including garages and berms. She stated that HUD states that buildings closer than 100' to a railroad track are often subjected to excessive vibration transmitted through the ground and new construction at such sites is discouraged. She stated that a railroad vibration study may be required. She stated that for new construction application, a noise study found the railroad tracks should be projected out 10 years to cover increased usage of the railway tracks and the traffic on the tracks has increased 500% since 1988. She stated that there are trains that are parked or idle from Cloverbank to Pleasant Avenue all summer.

- Martin Hernik, 2747 Christopher Boulevard, stated that he concurs with all of the previous comments made. He stated that he is concerned that buildings are proposed 50' from the railroad tracks and noted that there has been a definite increase in train traffic in this area over the 19 years he has lived at his current address. He stated that the sanctity of life must be taken into account and he worries about what would happen if a train jumps the tracks. He stated that the Town should be proactive instead of reactive and waiting for something to happen. He stated that he worries about the safety of the property owners who live next to the two (2) proposed entrances to this development. He stated that he is concerned about the added traffic from this project.
- Brian Donahue, 5162 Briercliff Drive, stated that his mother's home is adjacent to the proposed development and she agrees with all of the previous comments. He stated that it seems to him that not all of the green space was transferred by the original developer to the HOA that was originally agreed to.

In response to a question from a member of the public, Chairman Clark stated that the emails sent to Mrs. desJardins in 2021 regarding this proposal will still be on the record.

Chairman Clark stated that the public hearing will remain open until February 15, 2023.

Chairman Clark made a motion, seconded by Mr. Chapman, to table this project to February 15, 2023. Carried.

Engineering Department comments have been filed with the Planning Department.

Frank Russo, Jr. – Requesting Preliminary Plat Approval of a 14-lot subdivision as an extension of Niles Avenue

Chris Wood from Carmina Wood Design, project engineer, stated that as requested he submitted a response letter to the CAB correspondence dated December 1, 2022 and a storm water management design letter.

Mr. Scott Livingstone from Earth Dimensions stated that in 2020 his firm conducted a wetland delineation on the property and identified a little less than an acre of wetland in three (3) different spots plus a stream. He noted that in 2022 the USACE issued a jurisdictional determination that those wetlands are not regulated under the current regulations and the stream is regulated by the USACE. He stated that the wetlands generally are low quality and heavily encumbered with invasive species.

In response to a question from Ms. McCormick, Mr. Livingstone confirmed that the jurisdictional determination is good for five (5) years.

In response to a question from Ms. McCormick, Mr. Wood stated that the wetland in the rear of the site that abuts the rear property lines of the Abbott Road properties is mainly a closed wetland except for a part that slightly touches the neighbors' properties.

In response to a question from Ms. McCormick, Mr. Livingstone stated that he walked the site with a representative of the USACE and it was confirmed that the stream does not get to the wetlands on the site.

In response to a question from a member of the public, Mr. Wood stated that the water from the roof leaders of the homes will be collected and piped to the storm water management area and the discharge from that storm water management cannot exceed what currently flows from this site into the creek.

Ms. McCormick asked Mr. Wood if the storm water management area could be reduced to reduce its size and scope. Mr. Wood explained that for example, if 10 cubic feet per second (CFS) of water comes off this site currently, then theoretically he should be allowed to discharge 10 CFS. He stated that if six (6) CFS is not going to the storm water management area because it is being diverted elsewhere, then he would only be allowed to discharge four (4) CFS.

In response to a question from Mr. Mahoney, Mr. Wood stated that the result of the project would be that the water that is flowing onto the Abbott Road properties would be cut off and diverted into the storm water management pond and then into the creek.

Mr. Wood stated that the storm water management area will help drainage problems that may be directly downstream of this site.

Ms. McCormick stated that Mr. Wood's statement is somewhat speculative and the Planning Board should be careful about cataloging it as a benefit when that analysis has not fully been done.

In response to a question from Mr. Mahoney, Mr. Wood stated that the applicant cannot develop the northernmost lots unless he impacts the wetlands and that is a unique characteristic of this project. He further stated that the Hamburg Town Code states that the determination of the uniqueness is based on the approval of the project.

Chairman Clark stated that the Planning Board approved this subdivision previously when it did not involve the three (3) new northernmost lots. He stated that the Planning Board must decide if the addition of the three (3) lots changes Board members' opinions on this project. He noted that he would ask the Planning Department to draft resolutions for and against this subdivision returnable on February 1, 2023.

Mr. Wood stated that since this subdivision was previously approved, the cost of building the road has gone from approximately \$600 per foot to \$1,200 per foot, so to recognize any return or to make this project feasible the applicant needs the additional three (3) lots to offset the cost of the road.

Board members reviewed the Part II of the Environmental Assessment Form (EAF) for this project.

It was determined that drainage and wetlands were the potentially moderate to large impacts identified.

Mr. Wood stated that the small wetlands on the northern end of the site do not hold water.

Mr. Reilly stated that just because something is a potentially moderate to large impact does not mean it is necessarily significant.

Chairman Clark stated that if the applicant had built the previously approved Niles Avenue subdivision, which did not include the additional lots along the eastern side of Niles Avenue, and now was proposing the additional three (3) lots that contain the small areas of wetlands, the impact to the wetlands would not be considered "moderate to large" per the SEQR guidelines. He stated that because the previously approved subdivision now includes the additional three (3) lots the wetland impact is being considered "moderate to large" and that does not make much sense to him.

Ms. McCormick stated that it has to do with cumulative impacts and not segmentation.

It was determined that the drainage impacts would be potentially moderate to large.

Ms. McCormick stated that there would be an adverse change to natural resources and there is the potential for erosion, flooding or drainage problems but the Planning Board does have the wetlands summary letter from Earth Dimensions that can be attached to the jurisdictional determination from the USACE, the storm water impacts letter and a SWPPP is coming.

Ms. McCormick asked if the impact on drainage would be considered significant.

Chairman Clark stated that he does not believe it would be considered significant, although if the Planning Board determines that it is not significant he wondered how that would fit with the including of the word "unique" in the Town's wetland protection law.

Mr. Reilly stated that SEQR has its own criteria and the Planning Board will have to determine whether the subdivision proposal meets the Town's wetland protection law.

It was determined that the potential for erosion, flooding or drainage problems is not significant because the plan was amended to include an oversized storm water pond.

Board members discussed what would be included in Part III of the EAF and authorized the Planning Department to prepare a SEQR Negative Declaration and Part III based on the conversation at this meeting.

Chairman Clark stated that Board members need to determine if the subdivision complies with the local law that includes the word "unique".

Ms. Valenti stated that the applicant must prove to the Planning Board that this project is unique.

Mr. Reilly stated that the layout of these lots cannot be changed and the road needs to go where it is proposed.

Chairman Clark stated that Board members must decide what they think the definition of "unique" is.

Chairman Clark made a motion, seconded by Mr. Bobseine, to table this project to January 18, 2023 and authorize the Planning Department to draft a Negative Declaration, as well as competing resolutions for Preliminary Plat Approval to be available to Board members for review before the next meeting. Carried.

Ms. McCormick stated that none of the four (4) northernmost lots would be functionally buildable without having to fill most or all of the wetland area. She stated that most of the wetland on lot #14 is in the side yard setback.

In response to a question from Ms. McCormick, Mr. Wood stated that 28 street trees would be provided (two per lot) and that on Lot # 4 the land from the sewer easement to the corner of the lot could be deed restricted.

Engineering Department comments have been filed with the Planning Department.

David Manko – Requesting Site Plan Approval of Phase 4 of the Mission Hills development located on the east side of Camp Road

Attorney Sean Hopkins, representing the applicant, stated that in 2022 the Planning Board determined that what is proposed is consistent with the original Findings Statement relative to this development. He noted that the proposed layout remains unchanged since the Board last reviewed it.

Chairman Clark made a motion, seconded by Mr. Mahoney, to schedule a public hearing on this project to be held on February 1, 2023. Carried.

Engineering Department comments have been filed with the Planning Department.

Planning Board to review the submitted draft Scoping Document for the subdivision proposed by David Manko to be located on the west side of Parker Road, south of Big Tree Road

Chairman Clark stated that a Scoping Session would be held on January 18, 2023 and a Final Scoping Document will be issued by the Planning Board on February 1, 2023 per the SEQR regulations.

Attorney Sean Hopkins, representing the applicant, stated that the Wetzl rezoning request that was before the Planning Board at the same time as this subdivision is also still being proposed and a draft Scoping Document for that project will be submitted shortly.

Mr. Chapman stated that as he recalled, the Planning Board indicated that it would discuss the idea of this being a cluster subdivision last year and asked why the Scoping Document refers to a cluster subdivision when it is supposed to address a regular subdivision.

Mr. Reilly stated that the Planning Board issued a Positive Declaration last year because the applicant wants to construct a cluster development.

Ms. McCormick stated that both options will need to be evaluated because the applicant must discuss alternatives.

Mr. Chapman stated that he thought the idea of a cluster subdivision was a dead issue.

Mr. Reilly stated that based on the Environmental Impact Statement (EIS), the Planning Board will decide whether a cluster development will be authorized.

Mr. Chapman stated that the Supervising Code Enforcement Official did not like the idea of a cluster subdivision because of all the problems it would create down the road regarding accessory uses on the lots and there not being enough room on the lots for them.

Chairman Clark stated that the Code Review Committee has had many discussions about cluster subdivisions and the requirements that relate to them and plans to propose that in those subdivisions the homes cannot be more than a certain percentage of the square footage of the lots in order to alleviate the problems Mr. Chapman referred to.

Mr. Chapman stated that the Town Code has not been amended yet so this subdivision would fall under the current regulations.

Ms. McCormick stated that she agreed with Mr. Chapman and noted that the resolution to authorize cluster did not receive a second last year, but she noted that at that time the Planning Board indicated to the applicant that he could make a case as part of the SEQR process that a cluster subdivision is appropriate in this situation. She further stated that both the as of right and the cluster alternatives will be discussed in the EIS.

Mr. Chapman stated that he does not agree with the draft Scoping Document because a cluster is not mitigated.

Chairman Clark stated that the applicant is proposing a cluster subdivision as a way to address the issues raised in the Positive Declaration. The applicant is indicating that a cluster subdivision is an alternative that addresses those particular issues.

Mr. Chapman stated that he feels that the Planning Board is offering the applicant an alternative. He further stated that when a developer comes to the Planning Board with a development, the Planning Board should not offer him with alternatives.

Ms. McCormick stated that the developer came to the Planning Board with both alternatives originally.

Attorney Hopkins stated that once the Positive Declaration is issued, alternatives must be evaluated per the SEQR regulations. He further stated that the applicant is not saying that the Planning Board approved the use of cluster. He noted that the Planning Board is reviewing the as of right plan, the clustering plan and the no action alternative.

Chairman Clark made a motion, seconded by Ms. McCormick, to schedule the public scoping session to be held on January 18, 2023. Carried.

Engineering Department comments have been filed with the Planning Department.

Town Board referred to the Planning Board for an advisory report on a proposed Local Law #12 and proposed Local Law #13

Ms. Valenti stated for the record that she is recused from this conversation.

Chairman Clark stated that the Town Board had asked the Planning Board to consider a law that removes asphalt plants from the Town Code as a permitted use in the industrial zones and a separate law that bans asphalt plants in the Town of Hamburg. He noted that ultimately this is a Town Board decision but because the Planning Board deals with this topic on occasion, its input is requested.

Chairman Clark stated that the Code Review Committee considered this issue at two (2) separate meetings and is in favor of the new laws.

Mr. Chapman stated that because the Planning Board has a proposal for an asphalt plant coming back for review, he wants to make sure it is not violating anything by recommending this.

Attorney Puglisi noted that this would simply be an advisory opinion and not a decision. She noted that the Town Code requires that the Town Board get an advisory opinion from the Planning Board in order to close its public hearing regarding this topic.

Mr. Bobseine stated that it is his understanding that the Planning Board has two (2) distinct functions - one being considering particular projects that come before the Board and the other being making recommendations as required under the Town Code.

Chairman Clark stated that the Town already has a law prohibiting industrial emissions from traveling to other zoning districts and that law has a significant impact on where asphalt plants can be placed. He noted that there may be industrial areas of the Town where an asphalt plant could be placed that would abide by that Town law, but because of the new Comprehensive Plan and some of the things being done with brownfield opportunity areas, those regions where an asphalt plant could have been placed will be gone. He stated that there are different uses the Town sees for those areas.

Ms. McCormick stated that a large portion of the former Bethlehem Steel plant falls under the Coastal Zone Consistency and the Town's Local Waterfront Revitalization Program. She noted that this eliminates a number of potential industrial uses that are not water-dependent or water-related from any consideration.

Attorney Puglisi stated that the Comprehensive Plan conversations have been going on for several years at the same that there was nothing happening with the asphalt plant proposal and in fact the Town was under the impression that the project had been abandoned.

Attorney Puglisi stated that while the proposal for an asphalt plant is still pending and will still be before the Planning Board and receive its due process, this discussion is happening at the same time and has been happening for several years in relation to the new Comprehensive Plan.

Attorney Kim Nasson from Phillips Lytle stated that the new Comprehensive Plan discussions have been going on for several years and the Town Code requirement that requires the Town Board to send these proposed local laws to the Planning Board for an advisory opinion specifically requires the Planning Board to evaluate their consistency with the Comprehensive Plan.

Mr. Reilly stated that at the Town Board's last meeting, it authorized the adoption of the new Comprehensive Plan.

Ms. McCormick stated that it is important that whatever decision the Planning Board makes is clearly distinct on the laws on their own merit as proposed and not anything related and it is clearly segmented from and independent of the matter that is proceeding in front of the Planning Board. She stated that the proposed laws are about the entire Town and multiple zoning districts.

Attorney Puglisi stated that the Planning Board's role in the local laws ends with its advisory opinion.

Chairman Clark made a motion, seconded by Mr. Chapman, to table this discussion to its January 18, 2023 meeting. Carried.

OTHER BUSINESS

Mr. Lorquet stated that at the last CAB meeting a representative from the Waterford Pines subdivision asked the CAB to approve a waiver of the tree planting requirements. He noted that that the CAB did not approve waiving that requirement but suggested planting street trees, but after discussing that with the Highway, Engineering and Building Departments it was learned that those departments do not support the planting of street trees.

Mr. Reilly noted that the Town Code requires the planting of street trees so if that is to change, the Town Code should be changed accordingly.

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

The meeting was adjourned at 9:30 P.M.

Respectfully submitted,
Jeb Bobseine, Secretary

Date: January 17, 2022