

Town of Hamburg
Planning Board Meeting
April 19, 2023 Minutes

The Town of Hamburg Planning Board met for a Work Session at 6:30 P.M., followed by a Regular Meeting at 7:00 PM on Wednesday, April 19, 2023 in Room 7B of Hamburg Town Hall. Those attending included Chairman William Clark, Vice-Chairwoman Kaitlin McCormick, Margaux Valenti, Dennis Chapman, Cindy Gronachan and Daniel Szewc.

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

Excused: Jeb Bobseine

WORK SESSION

David Canfield – Requesting Sketch Plan Direction on a proposal to construct a new 2,400 sq-ft storage building at Big Tree Road and St Francis Drive

Mr. Rob Pidanick from Nussbaumer & Clarke, representing the applicant, stated that Mr. Canfield owns a landscaping and snowplow business and proposes to construct this building. He noted that the exact same plan Board members were reviewing was approved by the Planning Board four (4) years ago.

Mr. Pidanick stated that after his plan was on hold because of Covid, Mr. Canfield spoke to Dollar General, which was going to build on the site but eventually pulled out of the deal, so now he plans to build this building for himself.

Mr. Pidanick stated that in 2019 Earth Dimensions visited the site and noted that there are wetlands on the site, but there are none where Mr. Canfield proposes to develop. He submitted a letter from Earth Dimensions to Board members regarding that updated walkover.

Mr. Pidanick stated that the site is 4.2 acres in size and the proposed development area would be .55 acres.

Mr. Pidanick stated that access to the parcel would be from Big Tree Road via a new curb cut, which will have to be approved by Erie County. He further stated that the applicant can comply with all of the comments and requirements issued by the Town Engineer in 2019 regarding this proposal.

In response to a question from Mr. Reilly, Mr. Pidanick stated that the applicant's position is that at this time he does not want to commit to no further development on the site.

Mr. Pidanick showed Board members renderings of the proposed building.

It was determined that a SEQR review is not required, as it was done in 2019 when the project was originally approved.

Ms .McCormick noted that this project will have a lower impact and disturbance relative to the site than the previously approved Dollar General project would have had.

It was determined that this project must be reviewed by the Waterfront Revitalization Committee (WRC).

Chairman Clark made a motion, seconded by Mr. Chapman, to schedule a public hearing on this project to be held on May 17, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

Chuck Backus – Requesting Site Plan Direction and a Special Use Permit on a proposal to construct a 2,883 sq.ft. single family residence at 4188 Lakeshore Road

Mr. Reilly stated that the Acting Supervising Code Enforcement Official, Tim Willard, indicated that there was a miscommunication between him and the applicant's architect. He noted that Mr. Willard has indicated that the applicant must attach the new structure to the existing building in order for the project to be code compliant.

Mr. Chuck Backus, applicant, stated that Board members were given the wrong plans. He stated that the size of the proposed home has been scaled down and his architect will be revising the plans to show it attached to the existing building.

Mr. Backus stated that he will go before the WRC for its review of his project.

Mr. Backus stated that he has to stay 40 feet from the wall along Lake Erie and his plans reflect that requirement.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Matthew Lanfear (Ten Lives Club) – Requesting consideration of a Site Plan Waiver on a proposal to construct a 6,000 sq.ft. building addition at 3741 Lakeshore Drive

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

Engineering Department comments have been filed with the Planning Department.

REGULAR MEETING

Public Hearing – 7:00 P.M., Splash Car Wash – Requesting Site Plan Direction on a proposal to demolish the former TGI Fridays building and construct a new car wash facility at 3701 McKinley Parkway

Chris Wood from Carmina Wood Design, project engineer, stated that the proposed car wash facility would be 4,700 sq.ft. and would replace the existing TGI Fridays building. He stated that the rendering has been revised to show additional landscaping in front of the building and the updated landscaping plan has been submitted showing additional trees and foundation plantings.

Mr. Wood stated that information was submitted on the water reclamation system that will be used as requested by the Planning Board and the site plan has been revised to show a sidewalk along McKinley Parkway in the County right-of-way. He noted that because the applicant is not the owner of the mall property, the sidewalk cannot be extended into the mall area.

In response to a comment from Mr. Reilly, Mr. Wood stated that a County work permit will be required for the installation of the sidewalk.

Chairman Clark 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 Splash Car Wash to demolish the former TGI Fridays building and construct a new car wash facility at 3701 McKinley Parkway. The public hearing will be held on April 19, 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 asked for clarification on how vehicles will enter and exit the site.

Chairman Clark explained that the vehicles will use the same curb cut that was used for the former TGI Fridays.

Chairman Clark declared the public hearing closed.

Ms. McCormick noted that someone on Facebook indicated that McKinley Parkway is not a public road in that area and asked Mr. Wood to check on that. She further noted that there were comments on Facebook relative to pedestrian access.

Ms. Gronachan stated that it appears that the applicant has provided as much landscaping as possible on the site given its uniqueness.

Ms. McCormick stated that the SEQR Part 3 should note that the applicant has received the approvals and done the analysis for the connection into the existing water and sewer system. She confirmed that the applicant will comply with the New York State Department of Environmental Conservation (DEC) requirements regarding car wash facilities.

Mr. Reilly stated that the Planning Board cannot regulate hours of operation but the applicant has indicated that the car wash will close at 9:00 PM.

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

“**Whereas**, the Town of Hamburg received a special use permit and site plan application from Splash Car Wash to construct a car wash at 3701 McKinley Parkway; and

Whereas, the Hamburg Planning Board held the required public hearing and received comments from the public; and

Whereas, the Hamburg Planning Board, in accordance with the New York State Environmental Quality Review Act (SEQRA), has done a thorough review of the project and its potential impacts, and

Whereas, the Hamburg Planning Board, in accordance with SEQRA has determined that the proposed special use permit, site plan approval and construction of the car wash will not adversely affect the natural resources of the State and/or the health, safety and welfare of the public and is consistent with social and economic considerations.

Now, Therefore, Be It Resolved, that the Town of Hamburg Planning Board hereby determines that the proposed special use permit, site plan approval and construction of the car wash is not anticipated to result in any significant adverse environmental impact and that a Negative Declaration is hereby issued and that the Planning Board Chairman is authorized to sign the EAF, which will act as the Negative Declaration.”

Carried.

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

“**Whereas**, the Town of Hamburg has reviewed the special use permit application from Splash

Car Wash for the construction of a car wash at the site of the former TGI Fridays at 3701 McKinley Parkway, based on a determination by the Town Code Enforcement Officer; and

Whereas, the Hamburg Planning Board held the required public hearing and received comments from the public; and

Whereas, the Hamburg Planning Board, in reviewing the proposed project (special use permit), has determined, in accordance with Section 280-312 and 280-323 (Commercial car washes) that:

1. The project will be in harmony with the purposes and intent of Section 280-312 (Special Use Permits).
2. The project will not create a hazard to health, safety and general welfare.
3. The project will not alter the essential character of the neighborhood, nor will it be detrimental to its residents.
4. The project will not otherwise be detrimental to the public convenience and welfare.

Specifically for commercial car washes:

A. These facilities shall not be located within 200 feet of any residential structure or within 500 feet of another such facility.

B. Architectural features of the car wash buildings and other buildings on the property will be in harmony with the surrounding uses.

C. Visibility from the road will be minimized through proper siting, setbacks, existing topographic features, berming and landscaping features.

Now, Therefore, Be It Resolved, that the Town of Hamburg Planning Board hereby determines that the proposed special use permit is in accordance with the requirements of the Town of Hamburg and therefore a special use permit is hereby issued with the following conditions:

1. It is based on the Site Plan approved by the Planning Board with any conditions attached to that Plan.
2. The applicant has stated that the car wash will not be open after 9:00 pm.
3. Lighting will be as shown on the approved site plan and internal and building lighting will be shielded, dark sky compliant and not neon or flashing colored lights.
4. Landscaping and screening shall be provided as shown on the drawings and the final plan must be approved by the Planning Department. The building will not be more than 24 feet in height.
5. A water conservation system, as described in the letter received from the applicant dated March 16, 2023, will be installed.”

Carried.

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

“The Town of Hamburg Planning Board hereby grants Site Plan Approval for the Splash Car Wash project to be located at the site of the former TGI Fridays at 3701 McKinley Parkway with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated 4/15/23.

2. The landscaping plan shall be reviewed and approved by the Planning Department.
3. Sidewalks on McKinley Parkway are not waived but are conditional upon approval from the appropriate agency.”

Carried.

Chairman Clark made a motion, seconded by Ms. Gronachan, to amend the above motion to indicate that the Engineering Department comment letter is dated 4/14/23. Carried.

Engineering Department comments have been filed with the Planning Department.

716 Storage, LLC – Requesting Planning Board approval of a Special Use Permit and Site Plan Approval of a 71,400 sq.ft. self-storage facility on vacant land located on the southwestern corner of South Park Avenue and Southwestern Boulevard

Chris Wood from Carmina Wood Morris, project engineer, stated that the landscaping plan was revised and resubmitted showing a landscape feature at the corner of Bayview Road and South Park Avenue. He noted that sidewalks have been added to the Site Plan that would be located on Bayview Road to the intersection with South Park Avenue.

In response to a question from Mr. Reilly, Mr. Wood stated that he has not had any success placing plants in bio-retention areas because the plants like water and in the summer time there usually is no water in the bio-retention area and the plants usually do not survive.

Mr. Reilly stated that the original Generic Environmental Impact Statement (GEIS) that was done for the Burke Business Park did not have any thresholds for impervious surface.

Mr. Wood stated that this proposal exceeds the Town’s requirement that no more than 85% of the site be impervious surface.

Board members reviewed and discussed the original Findings issued when the Burke Business Park was approved and agreed that this project is consistent with the original GEIS Findings.

In response to a question from Ms. McCormick, Mr. Wood confirmed that the landscaping plan was prepared by a licensed Landscape Architect and there will be no outdoor storage areas.

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

“Whereas, the Town of Hamburg received a site plan application from 716 Storage, LLC to construct a new self-storage facility at the northwest corner of South Park Avenue and Southwestern Boulevard; and

Whereas, the Hamburg Planning Board has reviewed the plan and held the required public hearing; and

Whereas, the project is located in the Hamburg Business Park, which was the subject of a GEIS and Findings were issued by the Town Board; and

Whereas, the Hamburg Planning Board, in accordance with the New York State Environmental Quality Review Act (SEQRA), as an Involved Agency, must issue its own Findings for the first project that needs to be approved by the Planning Board within this Business Park; and

Whereas, the Planning Department and Planning Board have utilized the Town Board Findings Statement to create a Findings document for the Planning Board; and

Whereas, the Planning Board has reviewed the project against the SEQR Findings Form created by the Planning Board; and

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

Now, Therefore, Be It Resolved, that the Town of Hamburg Planning Board hereby issues the attached Positive SEQR Findings indicating that the project is not anticipated to result in any significant adverse environmental impact; and

Be It Further Resolved that the Planning Board Chair is authorized to sign the SEQR Findings Form, which will act as the documentation for conformance to the Findings.”

Carried.

Chairman Clark made the following motion regarding Site Plan Approval, seconded by Ms. Gronachan:

“The Planning Board, based on the issuance of a SEQR Positive Findings, review of the project in accordance with Article XLIV (Site Plan Approval) and the C-2 Zoning district requirements of the Town of Hamburg’s Zoning Code, having received and considered input from Town departments, committees and advisory boards and having completed the required public hearing, hereby grants Conditional Site Plan approval for the 716 Storage project to be located at South Park Avenue and Bayview Road with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated April 14, 2023.
2. The final landscape plan will be approved by the Planning Department and shall include the updated landscaping plan dated March 28, 2023 and presented on April 19, 2023.
3. Lighting shall be shielded and dark sky compliant as shown on the plans.
4. Neon/flashing/colored lighting shall not be utilized in the building or outside of the building.
5. No outdoor storage will be allowed.
6. The construction of sidewalks is required on Bayview Road.
7. The construction of sidewalks is waived on South Park Avenue and Southwestern Boulevard as there are existing sidewalks on those roadways.
8. The construction of sidewalks along the south side of Riley Boulevard is waived.”

Carried.

Engineering Department comments have been filed with the Planning Department.

Park Grove Realty – Requesting Site Plan direction on a proposal to construct a 70-unit multi-family development, west of Riley Boulevard

Chairman Clark stated that this site was rezoned recently by the Town Board and prior to that the Planning Board reviewed the request extensively and issued a report to the Town Board.

Mr. Tim Crilly from Park Grove Realty, representing the applicant, stated that the applicant has worked hard to incorporate feedback from the Planning Board received in February 2023 into the proposed project.

Mr. Cole Overhoff from Passero Engineering stated that the following revisions were made to the project based on feedback received from the Planning Board at its February 2023 meeting:

- A landscaped buffer is proposed between this project and the existing Tractor Supply business across the street.
- The amount of dedicated recreation space has been increased to 35,400 sq. ft., which satisfies the 35,000 sq.ft. recreation requirement and within that recreation space a community garden and playground are proposed.
- The buildings and the clubhouse were shifted to provide for the increased green space and landscaping.
- An exercise trail was requested by the Planning Board and the applicant feels that providing sidewalks throughout the site fills that need. The proposed internal pedestrian loop would be approximately 1/4 mile long and the outermost loop, which includes the front sidewalk along the property, would be approximately 1/3 mile long. The advantage of the sidewalk along the front of the site versus having a walking trail behind the building is that the sidewalk pathway would be well lit and would not affect the required drainage swales that would be located behind the buildings.
- The applicant intends to pursue a connection between this project and the adjacent school, but the existing 60-foot easement that separates the two (2) properties does not allow any improvements or encumbrances to it. The applicant has had discussions about this with the school district, which had indicated that it wants that area untouched, which the applicant will respect.
- The sidewalk along the front of the site would provide access to the edge of the school property, as well as to the adjacent vacant parcel.
- Access to the stormwater management area has been provided.
- An eight (8) cubic yard dumpster has been added to the Site Plan in order to reduce the frequency of garbage pickups.
- The applicant was asked to justify the number of proposed parking spaces, which is 105. 105 spaces amounts to 1.5 spaces per unit for .75 spaces per bed. A parking analysis was performed on four (4) similar projects that have been built and it was determined that its ratio for parking spaces to beds and parking spaces to units is very comparable to those four (4) projects, none of which have any parking space issues.

Mr. Crilly showed Board members renderings of the proposed buildings, as well as renderings of other projects the project architect has designed.

In response to a question from Mr. Chapman, Mr. Crilly stated that the tenants would take their garbage from their units to the dumpster and a private hauler will empty the dumpster. He noted that in the winter months, the sidewalks will shoveled so that tenants can easily walk to the dumpster. He agreed to research the possibility of having a pickup truck take tenants' garbage to the dumpster when there is snow on the ground.

In response to a question from Ms. Gronachan, Mr. Crilly stated that there would be two (2) dumpsters for trash and one (1) for recycling.

Board members discussed the fact that there currently are no sidewalks along Bayview Road.

In response to a comment from Mr. Chapman, Mr. Crilly agreed to look into where school buses would pick children from this development up and if that location is on Reilly Boulevard whether a shelter can be added to the Site Plan so the children are out of the weather while waiting.

In response to a question from Mr. Szewc, Mr. Crilly stated that he believes there is a NFTA bus stop off of Bayview Road, which is less than 1/4 mile from this development.

Chairman Clark made a motion, seconded by Mr. Szewc, to schedule a public hearing to be held on May 17, 2023. As Mr. Chapman was not present when the vote on the motion was held, the motion carried by a vote of 5-0.

Engineering Department comments have been filed with the Planning Department.

Hutton ST 21, LLC – Requesting a Special Use Permit for and Site Plan Approval of a car wash facility to be located at 5363 Southwestern Boulevard

Chairman Clark noted that the public hearing for this project was held in March 2023 and public input was received at that time.

Mr. Jason Atkas from Stonefield Engineering and Design, project engineer, stated that the following changes have been made to the project since this project was last reviewed by the Planning Board:

- No changes were made to the site layout and design of the car wash, but more landscaped buffering along the southern and westerly property lines was added. At least two (2) full rows of evergreen trees are proposed there.
- One (1) additional street tree was added along Southwestern Boulevard and additional shrubs were added in the landscaped island in the parking area.
- Renderings were submitted showing what the site would look like from Southwestern Boulevard.

Mr. Atkas stated that his firm looked into changing the color of the car wash building to match the Mavis and Walmart buildings as requested, but the applicant decided to stay with the previously submitted elevations, which is consistent with its corporate branding.

Chairman Clark noted that correspondence was received on April 18, 2023 from Attorney Jay Pohlman and it was determined that the applicant did not receive a copy of that correspondence.

Mr. Reilly stated that the Building Department was asked to provide a list of the property owners who were notified of the requested variances granted by the Board of Zoning Appeals (ZBA) for this project and it was provided to the Planning Department.

Attorney Frank Pavia from Harris Beach, representing the applicant, stated that he had not seen the correspondence from Attorney Pohlman and the applicant stands by its application, meets all the Town's required criteria and was granted the setback variances.

Mr. Chapman stated that he understands that the setback variances were granted by the ZBA, but he reminded Attorney Pavia that he was asked to see if the building could be moved or re-configured in order to be located further from the adjacent residential homes on Abel Road.

Mr. Chapman stated that he feels that this project would be a real imposition on those nearby neighbors.

Attorney Pavia noted that this is a very difficult site because of its configuration and the setback requirements. He stated that quite a number of additional trees have been added to the plan.

Mr. Chapman asked Attorney Pavia if he looked at the lot before the plan was put together and realized how close this facility would be to the homes on Abel Road and that setback variances would be necessary. Attorney Pavia responded in the affirmative.

Mr. Chapman stated that if someone wants to build something, he or she should make sure the project will fit on the lot without requiring large variances.

Attorney Pavia noted that this site is located in a commercial zoning district.

Mr. Chapman responded that just because a lot is zoned correctly does not mean that a square peg should be allowed in a round hole.

Attorney Pavia stated that he feels that the applicant has done an incredible job taking into consideration the input received from the Planning Board and the public. He stated that the landscaping plan is very high quality and provides good buffering for a car wash.

Ms. McCormick stated that, although the ZBA did grant area variances for this project related to the site plan requirements, the Planning Board has Special Use Permit requirements. She asked Attorney Puglisi to research how the ZBA's granted area variances relate to the required Special Use Permit the project is also requesting.

Attorney Puglisi agreed to research Ms. McCormick's question, noting that usually variances granted by the ZBA are separate from a Special Use Permit required for a project.

Mr. Reilly noted that the setback requirements that were the subject of the variance requests were related to the Special Use Permit requirements and not the site plan requirements.

Ms. Gronachan stated that she can appreciate the additional screening proposed by the applicant, but in light of what the nearby neighbors expressed at the public hearing and in light of what the Planning Board has learned about what is out there for car washes, there is reference to decibels and the sound of the dryers. She noted that she has learned that there are dryers that actually make very little noise.

In response to a question from Ms. Gronachan, Mr. Atkas stated that the dryers provided in the parking area are as far away from the residential properties as possible. He further stated that the car wash would be open between 8:00 AM and 8:00 PM and would only produce 65 decibels at the property line.

Ms. Gronachan rephrased her question, to which Attorney Pavia responded that a sound study was submitted to the Planning Board that showed that the decibel levels produced by this car wash would be relatively low. He stated that he does not know if there is something on the market that would produce less noise for the nearby residents, but he will research that question.

Attorney Pavia stated that the sound study submitted for the equipment to be used by the car wash is from the manufacturer of that equipment and showed that the anticipated decibel level would be not excessive and would be fairly consistent with normal activity on a commercial street such as Southwestern Boulevard.

Ms. Valenti noted that the Town Code regarding noise is a nuisance standard and not a requirement for a certain decibel level, so it is really about how the neighbors are going to be impacted.

In response to a question from Ms. Valenti, Mr. Atkas stated that the existing trees on the site on its southern and western sides would be removed and the proposed trees to be planted would be between five (5) and six (6) feet tall at the time of planting.

Mr. Reilly stated that the applicant did a sound level reading and not a sound study and noted that they are two (2) different things. He further stated that the sound level readings were relative to the vacuums and it appears that the Planning Board is concerned about how much noise the dryers will create.

Ms. McCormick stated that one cannot say that everything will be inside the car wash building and at the same time say that it will be open on both ends.

Chairman Clark noted that the dryers would be on the other side of the building.

Ms. McCormick stated that even though all of the other equipment that would be closer to the adjacent residential properties would be inside, because the building would be open on both ends the nearby residents feel that the sound produced would be a nuisance. She stated that not only should additional information be submitted regarding the dryers, additional information regarding the noise levels that would be occurring from the equipment that is being operated in a structure that is open on both ends should also be submitted.

Mr. Atkas stated that the generic study that was provided shows the noise contours from both the vacuums and the building.

Ms. McCormick stated that the Planning Board needs the full write up of the noise information provided and how the calculations were arrived at.

Attorney Pavia stated that he had an opportunity to read Attorney Pohlman's letter during the meeting and it contains many inaccurate statements and misstatements. He stated that he would like the opportunity to respond. He further stated that the requested additional information regarding noise will be submitted.

In response to a request from Ms. Valenti for clarification, Mr. Atkas explained that there would be overhead vacuums for customer use and when he earlier referred to "parking lot dryers" he was referring to the vacuums. He further stated that the actual dryers for the vehicles would be inside the building with the doors open.

Attorney Pavia noted that the dryers would be at the farthest point away from the residents.

Ms. Valenti asked Mr. Atkas to provide the average wind direction and speed for this area.

Mr. Szewc stated that he is concerned that the adjacent properties would be at the top of the new trees since they are higher than the car wash site.

Mr. Atkas responded that the new trees along the western property line would be planted at the same grade as the adjacent property. He noted that the same would be true for the new trees planted along the southern property line, although the grade difference is a bit less.

In response to a question from Ms. McCormick, Mr. Atkas stated that there would be no lighting on the building itself but there would be LED lights on each vacuum assembly at an elevation of ten (10) feet and the other lights would be at an elevation of 27 feet.

Attorney Pavia noted that the lights mentioned above would only be on during operation hours.

Attorney Pavia agreed to submit information regarding what the mature height of the new trees would be and how long it would take to reach that mature height if planted at five (5) to six (6) feet initially.

Mr. Atkas stated that the Conservation Advisory Board's (CAB) arborists visited the site and had no comment regarding the plantings that are currently proposed and just suggested that more of the same plantings be provided.

Ms. Gronachan stated that one of the biggest concerns about the site is the drop from the back of it to the back of the adjacent properties. She noted that this is why the Planning Board is concerned about the proposed trees. She stated that she thinks that there are ways to allow the project to go there and make the residents somewhat happier than they are at this point. She noted that one of the most affected neighbors indicated that her pool is 75 feet from where the car wash would be and she is concerned about spray from the operation getting into her pool and the area where her grandchildren play.

Mr. Atkas stated that from a topographic standpoint, the water from the car wash would never make its way to the residences. He further noted that there would be a wall that would be installed to block any runoff from traveling to the adjacent properties.

Chairman Clark noted that when one drives along Southwestern Boulevard in this area, one can see the adjacent resident's pool.

Attorney Pavia responded that this is why two (2) rows of evergreen trees are proposed.

Ms. McCormick stated that two (2) rows of evergreen trees is not what she would say rises to the level of a buffer. She noted that this would be a little bit of screening and the concern still remains that as spraying occurs, there will be aerosolized moisture. She stated that people may still complain about that depending on the prevailing winds and because the building would be open on both ends.

Ms. Valenti stated that she would like to know what the depth to the water table is on this site and how the water collection and containment system works, as well as whether water would be reused. Mr. Atkas agreed to provide that information.

Mr. Atkas responded that a reclamation system would be used and approximately 2/3 to 3/4 of the water used would be reclaimed.

Ms. McCormick asked Mr. Atkas if the applicant has any County level approvals for the installation of the underground tanks associated with the reclamation system. Mr. Atkas stated that everything was approved under the application for water and sewer approval.

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

Engineering Department comments have been filed with the Planning Department.

DATO Development, LLC – Requesting Site Plan Direction on a mixed-use development to be located on Southwestern and Rogers Road

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

Engineering Department comments have been filed with the Planning Department.

Referral of Town of Hamburg Industrial Rezonings for Recommendation and Report to Town Board from Planning Board

Mr. Reilly stated that the Town is beginning the implementation of the Comprehensive Plan that was adopted earlier in 2023. He noted that the Town determined that there are some incorrectly zoned industrial properties. He discussed the following properties:

- Camp Road and Sowles Road, an old industrial area, (north of the South Shore Planned Unit Development) is to be rezoned to C-2. The R-A section of this property is actually a cemetery and not for residential use.
- The Operating Engineers site in Lakeview is zoned Industrial and there is no reason for it to be. It is used as a training facility and should be rezoned to R-A.
- Railroad Avenue and Lakeview Road was zoned Industrial years ago along the railroad when the Town thought there would be industrial growth there but there are no industrial uses and it should be rezoned to R-A.
- The Camp Road /Staley Road site where the asphalt plant is proposed is currently zoned Industrial and will be rezoned to MU1 (Mixed Use), which is a floating zone, but the Town Board can rezone a property to MU1 and then the property owner must show a plan to the Town Board before proceeding to Site Plan Approval.
- The area just outside the Village of Hamburg on Lakeview Road where it splits from Old Lakeview Road in the area of the NYSDOT highway garage should be rezoned to C-2.

Board members discussed the above suggested rezonings at length and the Planning Board will issue a report to the Town Board at its next meeting.

A.L. Asphalt - SEQR Status Update

Attorney Puglisi stated that a revised draft Environmental Impact Statement (DEIS) was submitted by the applicant and at its April 5, 2023 meeting the Planning Board acknowledged that fact, went into Executive Session and did not discuss it on the record. She asked Planning Board members for their thoughts on the submitted DEIS.

It was acknowledged that Planning Board members received a copy of the DEIS.

Ms. McCormick stated that there were extremely limited revisions to the document and the Planning Board previously provided a list of deficiencies and a slightly reduced list of deficiencies that were not addressed at all in the updates in the document.

In response to a question from Ms. McCormick, Attorney Puglisi stated that Ms. McCormick's comments are consistent with her opinion.

Attorney Kim Nason from Phillips Lytle stated that originally the Planning Board compiled a list of 19 deficiencies, which was reduced to seven (7) deficiencies with a reservation of rights on the remaining items. She stated that the submitted revised DEIS includes the applicant's efforts to address two (2) of the seven (7) items on the list.

Attorney Nason stated that the Planning Board's options are to move the DEIS forward to public review or to continue to reiterate the deficiencies that have been previously identified for the applicant.

It was determined that the Planning Board must vote on the above at its May 3, 2023 meeting.

Ms. McCormick stated that a Lead Agency's Final EIS is largely noting changes from the DEIS and if the Planning Board were to move the DEIS forward, there would be a substantial onus on the Planning Board to make sure that all 19 topics were adequately covered. She stated that in that case the FEIS would be a much larger and robust document than it would be if the 19 items were addressed.

Attorney Nasson stated that the SEQR Lead Agency (the Planning Board) has the ability to work with the project sponsor both on the DEIS and the FEIS, but in the end the adequacy and accuracy of the FEIS is the responsibility of the Lead Agency.

Attorney Nasson noted that the FEIS addresses changes from the DEIS but also responses to all substantive comments received on the DEIS.

Mr. Reilly stated that an FEIS is made available to the public and is sent to other agencies, but no public hearing is held on the document. He noted that the Planning Board will make Findings based on what is on the record.

Ms. Gronachan asked if the applicant gave a specific reason why all 19 deficiencies were not addressed.

Attorney Nasson responded that there has been a series of letters that have gone back and forth between the Lead Agency and the applicant since the original deficiencies list was provided in September 2022. She stated that the applicant's position has largely been that the deficiencies noted are not included in the final Scoping Document that was completed in March 2020. She stated that the Lead Agency has given its response that it disagrees and the SEQR regulations provide that there are other considerations in the regulations outside of just the Scoping Document in terms of information that needs to be provided in order for the public to assess impacts and provide comments.

Attorney Nasson stated that at this point it is essentially a disagreement between the Lead Agency and the applicant in terms of what is contemplated in the final Scoping Document and what is required to be in the document.

Attorney Nasson stated that per the SEQR guidelines, the Planning Board may continue to reject the DEIS back to the applicant for further revision if it feels that it is not sufficient for public review. She noted that there is guidance, however, that provides that if the Planning Board feels that the DEIS provides bare minimum information in terms of project details and discussion of impacts, it may move the document forward to public review while noting all of the disagreements or deficiencies and those should all be noted in the Notice of Completion, which is the document it must issue as Lead Agency in order to move the document to public review.

Attorney Nasson stated that if the Planning Board decides to move the document forward to public review, it will be asking the public to comment on the 19 items that it views as deficiencies from the DEIS, as well as on the DEIS itself.

Ms. McCormick asked Attorney Nasson if given the disagreement between the applicant and the Planning Board on what is required, it is her expectation that the applicant would be providing substantive information back to the Planning Board as it prepares the FEIS.

Attorney Nasson responded that she believes it would be absolutely reasonable for the Planning Board to ask the applicant that in advance of its determination on the DEIS.

Mr. Reilly stated that the Planning Board can hire an outside consultant to prepare sections that it does not think have been adequately addressed.

Board members discussed which entity would be responsible for the consultant's costs.

Ms. Gronachan stated that based on Attorney Nasson's comments that the Planning Board can move forward duly noting those deficiencies but allowing for public comment, she believes that is the process that the Planning Board could go forward with. She stated that the applicant has not provided the information in three (3) years.

Ms. McCormick stated that in that scenario the Planning Board would have to factor in the additional costs, as well as the timing constraints it has, if it is going to take on this level of additional effort.

Attorney Nasson stated that once the Notice of Completion is issued, a public hearing must be held within 60 days on the DEIS. She stated that within 45 days of the close of the public hearing, the Lead Agency is responsible for issuing the FEIS. She noted, however, that the SEQR regulations do clearly state that the Lead Agency can take more time if needed.

Ms. Gronahan stated that the applicant has been asked for this information and the Planning Board does not have it but yet is forced to take some sort of action. She stated that the public will know that the requested information was not submitted and she feels that the Planning Board will do a better job. She stated that it is unfortunate that the Planning Board cannot get that information.

Ms. McCormick stated that Ms. Gronachan's suggestion to move forward would be an additional cost to the Town.

Attorney Nasson stated it appears that further discussion and evaluation is needed. She stated that she can reach out to the applicant and let them know some of the Planning Board's concerns that have been noted with respect to timing, cost and burden of preparation if it decides to move forward.

Ms. Gronachan noted that if the applicant provided the requested information, it would probably speed up the process and cause less of a delay.

Attorney Nasson stated that there have been a number of requests that have come from the Lead Agency for that information.

OTHER BUSINESS

Chairman Clark made a motion, seconded by Ms. Gronachan, to approve the March 15, 2023 Planning Board minutes. As the vote on the motion was five (5) ayes and one (1) abstention (Mr. Chapman), the motion carried.

Chairman Clark made a motion, seconded by Ms. Gronachan, to approve the April 5, 2023 Planning Board meeting minutes. As the vote on the motion was five (5) ayes and one (1) abstention (Ms. McCormick), the motion carried.

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

The meeting was adjourned at 9:30 PM.

Respectfully submitted,

Jeb Bobseine, Secretary

Date: April 25, 2023