

Town of Hamburg
Planning Board Meeting
July 19, 2023 Minutes

The Town of Hamburg Planning Board met for a Work Session at 6:30 PM, followed by a Regular Meeting at 7:00 PM on Wednesday, July 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 Kaitlin Chmura.

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

Excused: Daniel Szewc

Ms. McCormick joined the meeting at 7:45 PM.

WORK SESSION

LocalStorage – Requesting a Site Plan waiver for a fence extension at 5255 Southwestern Boulevard

A representative of LocalStorage stated that the plan is to install a chain link fence where a split rail fence currently exists and add a gate.

Chairman Clark stated that there should be some landscaping in front of the chain link fence along Southwestern Boulevard and Amsdell Road so that the fence is not as visible from those roadways.

The representative stated that currently there is a rail fence in front of the existing fence and it will remain. He noted that the chain link fence would be approximately 25 feet towards the building from that rail fence. He further stated that the existing chain link fence on the property would be extended.

Board members agreed that a Site Plan Waiver is appropriate in this instance.

Chairman Clark made a motion, seconded by Ms. Gronachan, to authorize a Site Plan Waiver for LocalStorage. Carried.

Nickolas Hoffman – Requesting a Special Use Permit to operate an AirBNB at 3400 Lakeview Road

Chairman Clark stated that the Town Code requires that the living quarters shall not constitute a separate dwelling and shall not be leased as such. He stated that this request seems to conform with the basic tenants of the Town Code requiring AirBNBs and noted that a public hearing must be scheduled to receive any neighbors' comments.

Mr. Chapman made a motion, seconded by Ms. Gronachan, to schedule a public hearing to be held on August 2, 2023. Carried.

Feedmore WNY – Requesting Sketch Plan Direction on a proposal to construct a 197,7000 sq. ft. facility at 4832 Camp Road

Ms. Tara Ellis from Feedmore WNY stated that Feedmore is the merged organization of the Food Bank of WNY and Meals on Wheels of WNY. She stated that it serves four (4) counties and last year it fed more than 200,000 people, 80% of whom were from western NY. She explained the different ways in which Feedmore helps people with food, job training, housing, etc.

Ms. Ellis stated that Feedmore is currently operating out of multiple locations and the proposed facility will allow it to consolidate under one roof, increase its efficiency and expand the opportunity to serve a larger number of community members.

Mr. Mike Daloia, project manger for the proposed project, stated that the proposed building would have three (3) components - a warehouse for dry and refrigerated goods, a commissary and Feedmore's office.

Mr. Daloia stated that there would be four (4) outbuildings throughout the campus. He noted that the main building would be 1,000 feet from Camp Road and would be a pre-engineering metal building.

It was determined that there would be a new curb cut for the driveway.

In response to a question from Mr. Chapman, Mr. Daloia stated that the initial traffic study did not show any additional traffic that would be on Camp Road.

Mr. Chapman asked the representatives to consider a right-turn only at the exit of the new curb cut.

It was determined that an easement to a cell tower along the north property line exists and would remain.

It was determined that no variances would be required for this project.

Ms. Ellis stated that there are five (5) acres of federal wetlands on the site divided into two (2) pockets and they would be avoided entirely.

Chairman Clark made a motion, seconded by to schedule a public hearing to be held on September 6, 2023 and authorize the Planning Department to initiate the SEQR Coordinated Review. Carried.

Hamburg Brewing Company – Requesting Site Plan Direction and potential Special Use Permit revision at 6553 Boston State Road

Mr. John Russo, applicant, stated that the brewery would like to construct a hallway to connect two (2) sections of the building and change the use to assembly.

Mr. Reilly stated that the craft brewery law does not allow for full food service.

Mr. Russo confirmed that the assembly space would be used for food service and private events space.

Mr. Russo stated that at this time he is simply requesting approval of the hallway to connect the two (2) spaces.

Chairman Clark stated that whether the applicant should be allowed to use the space for food service and whether that use complies with the Town Code is not the Planning Board's decision.

Chairman Clark made a motion to table this project to the Board's August 2, 2023 meeting to discuss a Site Plan Waiver.

Mr. Russo stated that he also plans to add a few additional parking spaces for staff.

Mr. John Russo Sr. stated that this is a simple request to be able to utilize the space that used to house the train layout to seat more guests. He noted that they have planted at least 500 trees on the site over the years and take pride in its appearance. He stated that the brewery has more and more competition and they want to protect what they have invested in the business. He stated that he does not know why they need approval to make the place look better.

In response to a comment from Mr. Chapman, Mr. Russo Sr. stated that two (2) trees would be removed to add parking spaces but he has hundreds of trees around the buildings.

It was determined that the grass that would be removed for the additional parking spaces currently is parked on often.

Ms. Chmura stated that it seems that the applicant is proposing to use the areas of grass that are already being trampled in a more efficient way.

Mr. Russo Sr. stated that either way the two (2) trees slated to be removed for the additional parking will be taken down because they are riddled with disease.

In response to a question from Ms. Chmura, Mr. Russo stated that there would be no change in the type of food that would be served in the new space for guests.

Mr. Reilly stated that the Planning Board should review the original Special Use Permit granted for the brewery.

Mr. Russo asked what that original Special Use Permit has to do with a Site Plan Waiver.

Mr. Chapman seconded Chairman Clark's motion to table to August 2, 2023. Carried.

K9 Barks and Brews - Requesting Site Plan Direction on a proposal for a boarding kennel expansion at 2866 Pleasant Ave

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

Perennial Properties, LLC – Requesting Sketch Plan Direction on a proposal to construct a two-story, 110 seat restaurant at 6666 Gowanda State Road

Attorney Sean Hopkins, representing the applicant, stated that the applicant is proposing to renovate this former nursery/greenhouse as a high end restaurant. He stated that the applicant proposes to utilize the existing greenhouse to grow vegetables and herbs to be used by the restaurant.

Attorney Hopkins stated that the site is .71 acres in size and an addition is proposed to the existing building. He noted that new parking spaces would be installed as part of the project.

Attorney Hopkins stated that two (2) variances would be required for this project as follows:

- Per the Town Code, no restaurant serving alcohol is permitted within 500 feet of a residential district or use.
- An area variance is required for a pavement setback from the right-of-way (the site is already non-conforming in that regard)

Attorney Hopkins stated that he has been advised that the Building Department's new policy is that a referral is required from the Planning Board in order to apply for variances.

Attorney Hopkins stated that because this is a redevelopment project and the addition to the building is relatively minor, this is a Type II Action under SEQR and therefore SEQR does not apply.

Attorney Hopkins stated that Ross Warhol, applicant, would be living in the building and noted that this building has been used for residential use in the past.

In response to a question from Mr. Chapman, Mr. Warhol stated that this would be a restaurant first and foremost with a small bar and lounge area. He stated that the lounge area could hold approximately 20 guests and would be intended as an area where guests can have a cocktail before sitting down to dinner.

Mr. Warhol stated that there would be seating for approximately 75 guests in the dining room and there would be a tasting counter.

In response to a question from Chairman Clark, Attorney Hopkins stated that the required setback is 35 feet from the right of way for pavement. He stated that if the applicant was forced to comply with that setback requirement, there would not be a feasible number of parking spaces.

In response to a question from Ms. Valenti, Attorney Hopkins stated that the applicant is very comfortable that the proposed number of parking spaces (40) will be adequate.

In response to a question from Ms. Valenti, Mr. Warhol stated that he is friends with most of the surrounding neighbors and he has invited them to the site to discuss the project.

Chairman Clark made a motion, seconded by Mr. Chapman, to refer this project to the Zoning Board of Appeals for variances. Carried.

Royal Wash Development LLC – Requesting Sketch Plan Direction on a proposal to construct a standalone car wash at 3233 Lake Shore Road

Attorney Sean Hopkins, representing the applicant, stated that the applicant proposes to redevelop two (2) contiguous parcels including the parcel located at 3233 Lake Shore Road. He stated that 3233 Lake Shore Road was formerly an auto repair shop and the adjacent subject parcel contains a vacant bottle redemption center. He noted that the applicant has entered into a contract to purchase these parcels, which are currently zoned M-3, and rezone them to C-2 in order to accommodate a proposed single tunnel stand along car wash facility.

Attorney Hopkins stated that one (1) curb cut is proposed on Lakeshore Road and noted that currently there are several undefined curb cuts there. He stated currently the pavement is falling apart, there is no landscaping and there may be some contamination from the former gas station, so this would be a complete redevelopment of these parcels.

Attorney Hopkins stated that this proposal was presented to the Code Review Committee on July 19, 2023 and the Supervisor had some comments the applicant will consider regarding sidewalks and landscaping.

Attorney Hopkins stated that the parcels are probably zoned M-3 because the Bethlehem Steel property is located directly behind them. He stated that if one looks at the size of these parcels and their location, one would conclude that there is no chance they will ever be redeveloped pursuant to the M-3 zoning classification.

Mr. Chapman stated that the Royal Car Wash that was constructed on Southwestern Boulevard was supposed to have all dark sky compliant lighting and instead it had purple, pink and orange lighting. He stated that he does not want to see that again at this location if it is approved.

Mr. Kevin Danielle from Royal Wash apologized for the lighting at the Southwestern Boulevard location, noting that the lights Mr. Chapman referred to came in multi-colored and very different than what was supposed to be installed. He noted that that has been rectified and it will not happen at this new location.

In response to a question from Mr. Chapman, Mr. Danielle stated that he is with Royal Wash Development, which built and operated the Royal Car Washes and is now partnered with Go Car Wash. He stated that Go Car Wash now handles the operation of the facilities, although Royal Car Wash Development is still involved.

Bell Atlantic Mobile Systems LLC – Requesting Sketch Plan Direction on a proposal to install and operate a wireless telecommunications facility on a replacement utility pole near 5600 McKinley Parkway

Attorney Jeff Woodie from Nixon Peabody, representing the applicant, stated that the applicant is proposing a replacement utility pole on top of which a small wireless telecommunication cell would be attached. He stated that the total height of the project, once installed, would be approximately 43 feet and it would help with capacity issues Verizon Wireless is facing within this part of the Town.

Mr. Woodie stated that Verizon needs this telecommunications cell because of problems it experiences during the Erie County Fair and the proposed cell would replace a remote wireless telecommunications facility that has to be brought in on a truck to help fill the coverage gaps.

Mr. Woodie stated that the applicant is requesting that a Site Plan Waiver be recommended.

Chairman Clark made a motion to schedule a public hearing to be held on August 16, 2023.

It was determined that Site Plan Approval and a Special Use Permit are required.

Chairman Clark's motion was seconded by Ms. Gronachan. Carried.

Carl Nezza – Requesting Preliminary Plat Approval on a proposal to construct a two-lot subdivision at 58 North Shore Drive

Mr. Carl Nezza, applicant, stated that he would like to subdivide his property so that his daughter can build a home next door to him. He further stated that he would be willing to

demolish the existing small garage on the property and the existing shed would be moved closer to his home.

Chairman Clark stated that the applicant's property is small and to subdivide would require a lot of variances.

Mr. Chapman stated that if the property is that small, he does not know if the applicant's plan would be feasible.

Mr. Nezza stated that the utilities are already in the ground and there is nothing next door to the property where his daughter would build. He further noted that his property is located on a corner.

Chairman Clark stated that it will not be easy to achieve what Mr. Nezza is proposing.

Mr. Nezza stated that he will proceed with requesting variances.

REGULAR MEETING

Public Hearing – 7:00 P.M., Pat DiChristopher – Requesting Preliminary Plat Approval of a two-lot subdivision to be located at 1814 North Creek Road

Ms. Grohachan 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 Pat DiChristopher to subdivide 1.01 acres off an 8.0-acre parcel at 1814 North Creek Road. The Public Hearing will be held on July 19, 2023 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Chairman Clark declared the public hearing open. No one spoke.

Chairman Clark declared the public hearing closed.

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

“In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the two-lot subdivision proposed by Pat DiChristopher to be located at 1814 North Creek Road. Based on the Preliminary Plat, review of the submitted materials and input from other departments, the Planning Board has determined that the proposed subdivision is not anticipated to result in any significant adverse environmental impact and that a Negative Declaration is hereby issued, and 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:

“The Hamburg Planning Board hereby grants Preliminary Plat Approval for the Pat DiChristopher Two-Lot Subdivision with the following condition and waivers:

1. The installation of sidewalks is waived.
2. The completion of a Final Plat is waived and the Hamburg Planning Board Chairman is authorized to sign the Preliminary Plat once the Town Engineer signs off on the Plat.”

Carried.

Public Hearing – 7:00 P.M., Revive Wesleyan Church – Requesting Preliminary Plat Approval of a two-lot subdivision to be located at 5133 Bayview Road

In response to a question from Mr. Chapman, a representative stated that there is an existing home on the property that would constitute the newly created lot. He confirmed that that parcel would be sold and go back on the tax rolls.

Board members discussed whether sidewalks should be required along Bayview Road along the frontage of both lots.

The representative stated that there are other parcels that separate the new lot from the church's property, so there would be sidewalks along some frontage and no sidewalks along the parcels not part of the larger church parcel.

It was determined that the Town of Hamburg does not currently have a sidewalk plan in place.

Ms. Gronachan 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 Revive Wesleyan Church to subdivide approximately 1 acre off of 74 acres at 5133 Bayview Road. The Public Hearing will be held on July 19, 2023, at 7:00 p.m. in Room 7B of Hamburg Town Hall."

Chairman Clark declared the public hearing open. No one spoke.

Chairman Clark declared the public hearing closed.

Board members continued to discuss whether sidewalks should be required.

Ms. Chmura stated that she does not see Bayview Road becoming a pedestrian area.

Ms. McCormick stated that if there were to be sidewalks along McKinley Parkway in the area of the church, it would have to be part of a larger initiative because the Town might not want to encourage pedestrian access there.

it was determined that Board members do not feel sidewalks should be required in this instance.

Chairman Clark made the following motion regarding SEQR, seconded by Ms. McCormick:

"In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the two-lot subdivision proposed by Revive Wesleyan Church to be located at 5133 Bayview Road. Based on the Preliminary Plat, review of the submitted materials and input from other departments, the Planning Board has determined that the proposed subdivision is not anticipated to result in any significant adverse environmental impact and that a Negative Declaration is hereby issued, and 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:

"The Hamburg Planning Board hereby grants Preliminary Plat Approval for the Revive Wesleyan Church Two-Lot Subdivision with the following condition and waivers:

1. The installation of sidewalks is waived.

2. The completion of a Final Plat is waived and the Hamburg Planning Board Chairman is authorized to sign the Preliminary Plat once the Town Engineer signs off on the Plat.”

Carried.

Public Hearing – 7:00 P.M., Liberatore Management – Requesting Site Plan Approval on a warehouse development project to be located at Burke Parkway

Ms. Gronachan 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 Liberatore Management Inc. to construct a warehouse development project to be located at Burke Parkway. The Public Hearing will be held on July 19, 2023, at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Chairman Clark declared the public hearing open. No one spoke.

Chairman Clark declared the public hearing closed.

It was determined that the Planning Board wanted input from the Highway Superintendent and Mr. Reilly stated that he would get that for the Board.

In response to a question from Ms. Valenti, a project representative stated that Burke Parkway is a public road that ends at the applicant’s property, at which point it is a private road in front of the applicant’s property and then it becomes a paper street. He noted that the easement would extend into an existing green space area so the snow plows can push the snow off the road and exit.

In response to a question from Ms. Valenti, the representative stated that the applicant has proposed an easement at the end of the public section of Burke Parkway for snow plows, etc. and for a turn around. He further stated that there is an emergency turn around proposed on the applicant’s property for fire trucks and emergency vehicles.

Chairman Clark made a motion, seconded by Mr. Chapman, to table this project to the Board’s August 16, 2023 meeting and authorize the Planning Department to prepare draft resolutions. Carried.

Engineering Department comments have been filed with the Planning Department.

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

Attorney Frank Pavia from Harris Beach, representing the applicant, stated that the last time this project was before the Board, he was not able to show them the renderings of the rear of the site with respect to the proposed plantings and six-foot high wooden fence and the elevations of the site showing the difference in height between the applicant’s site and the adjacent residential properties.

Jason Atlas from Stoenfield Engineering showed Board members renderings they saw at their April 2023 meeting, which consisted of the view from the existing driveway of the proposed car wash facility, the view from Southwestern Boulevard showing the proposed street trees, the proposed evergreens along the west property line and the existing home west of the project site.

Mr. Atkas also showed Board members the adjacent residential property and pool, along with the proposed fence and evergreen buffering along that shared property line.

In response to a question from Ms. Gronachan, Attorney Pavia stated that the proposed fence and evergreen buffering would be on the applicant's property on the top of the proposed berm.

Board members were shown two (2) alternate proposals for the fence and evergreen buffering as follows:

- The fence would be on the applicant's property with the evergreen trees in front of the fence.
- The evergreens and the fence would be intermingled with the fence in the middle of the rows of evergreens.

Attorney Pavia confirmed that the six-foot high wooden fence would be on the applicant's property at the peak of the berm and maintained by the applicant.

Ms. Gronachan stated that she would prefer the fence closer to the neighbor's property instead of the evergreens being closer.

Attorney Pavia stated that if the Board prefers a vinyl fence, the applicant is willing to go that route.

Ms. McCormick stated that it appears from the renderings that the neighbors would still be able to see the car wash through the evergreens even at full growth.

Mr. Atkas responded that the only thing the neighbors would see is one portion of the wing wall that is only the parapet. He stated that the actual roof line height of the building is 16 feet. He further stated that the car wash would be approximately ten (10) feet lower than the neighbors' homes. He stated that with the proposed landscaping at between 12 and 15 feet in height at maturity, as well as the existing grade elevation difference, the car wash facility operations would be buffered from the neighbors.

In response to a question from Ms. Valenti, Mr. Atkas stated that the evergreens, when planted, would be between six (6) and eight (8) feet high and after approximately ten (10) years they would reach full maturity of between 12 and 15 feet in height.

Attorney Pavia reminded Board members that the applicant, at the last meeting when this project was discussed, committed to using the Predator equipment, which has a lower edible level.

Attorney Pavia stated that the applicant feels that with the modifications made to the Site Plan, the proposed plantings and fence, the commitment to the Predator equipment and the dark sky compliant lighting, all practicable measures to avoid adverse noise, light and visual impacts resulting from the site have been taken.

Attorney Pavia stated that all of the criteria of the Special Use Permit and Site Plan Approval have now been met and asked the Planning Board to approve the project.

Mr. Chapman stated that if this project is approved, the fence must be vinyl.

A member of the public stated that there was no public input on the revised plans.

In response to a question from Chairman Clark, the member of the public stated that the revised plans do not change his client's position on the project and in fact make it worse.

Attorney Pavia stated that he received a copy of Attorney Pohlman's latest correspondence and his feeling is that the concerns have already been addressed in his May 30, 2023 correspondence to the Planning Board. He stated that those are the opinions of Attorney Pohlman and there was no technical information provided to support his opinions and claims.

Chairman Clark asked for roll call vote on the following motion regarding SEQR, which was seconded by Ms. Gronachan:

“Whereas, the Town of Hamburg received a special use permit and site plan application from Hutton ST 21, LLC to construct a car wash at 5363 Southwestern Blvd; 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 self-storage facility with outdoor storage 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.”

The results of the roll call vote were as follows:

- Ms. Valenti voted nay.
- Mr. Chapman voted nay.
- Ms. McCormick voted nay.
- Ms. Chmura voted nay.
- Ms. Gronachan voted aye.
- Chairman Clark voted aye.

Based on the above, the motion to issue a Negative Declaration failed.

Ms. McCormick stated that the potentially significant environmental issues are noise, community character and pollution.

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

“Whereas, the Town of Hamburg received a special use permit and site plan application from Hutton ST 21, LLC to construct a car wash at 5363 Southwestern Blvd; 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 im-

pacts, 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 may potentially adversely affect the natural resources of the State and/or the health, safety and welfare of the public based on potential impacts relating to pollution, noise, community character and visual impacts.

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 may result in a significant adverse environmental impact and that a Positive Declaration is hereby issued and that the Planning Board Chairman is authorized to sign Parts 1, 2 and 3 of the EAF.”

As the vote on the motion was four (4) ayes and two (2) nays (Chairman Clark and Ms. Gronachan), the motion carried.

Mr. Chapman clarified that by “pollution”, he was referred to the chemicals from the car wash blowing into the neighbors’ properties and trees.

Engineering Department comments have been filed with the Planning Department.

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 an updated plan was presented to the Planning Board at its May 17, 2023 meeting. He noted that the original plan consisted of 96 town homes for sale but based on input received and a more detailed permanent open space analysis for the overall quarry project, the applicant has proposed a revised plan consisting of 57 units.

Attorney Hopkins stated that one of the access roads to Briercliff Drive was eliminated and replaced with a two-family home, additional green space was added and the setbacks and buffers have been dramatically increased between the rear property lines of the existing homes on Briercliff Drive and the rear of the proposed town homes.

Attorney Hopkins stated that the proposed layout complies with the emergency access requirements of Appendix of the New York State Fire Code.

Attorney Hopkins stated that the following had been submitted since the Planning Board’s May 17, 2023 meeting:

- A very detailed storm water summary letter prepared by Carmina Wood Design confirming that the applicant is well aware of will comply with both the quality and quantity standards of the New York State Department of Environmental Conservation (DEC)
- A copy of a letter with a Phase I environmental assessment report dated May 14, 2001 confirming that there are no recognized environmental conditions on the property
- A letter from John Schenne dated July 3, 2023 that was based on geotechnical analysis that confirms that there be no need for any blasting activities in connection with the proposed project
- A letter from David Cruse, traffic engineer from Passero Associates, who looked at the traffic impacts in light of the reduction in the number of proposed units from 96 to 57 and

found a substantial reduction in the number of projected vehicular trips during the AM and PM weekday peak hours

Attorney Hopkins stated that the original full detailed Traffic Impact Study (TIS) was reviewed by the County. He noted that that TIS, which was based on the originally proposed 96 units, demonstrated that there would be no potentially significant traffic impacts on the intersections within the study area.

Attorney Hopkins stated that the Planning Board has been supplied with copies of the parcel reports from Erie County GIS that demonstrate that, in light of the modifications made to the project, this project is in compliance with the overall permanent open space requirements for the quarry area of the development. He noted that the requirement is 25% (27.08 acres) and as a result of the substantial changes made to the project there would be more than that amount of permanent open space provided.

Attorney Hopkins stated that the project not only complies with the permanent open space requirement for the overall quarry development, but it also complies with the recreation space requirement for the 9.37-acre project site (10%) by providing more than two (2) acres of open space, including the extension of the Heart Trail and a tot lot playground, walking trails, gazebos and a community garden.

Attorney Hopkins stated that at its May 17, 2023 meeting the Planning Board reviewed a draft of Part II of the Environmental Assessment Form (EAF) and he listed the impacts discussed as follows:

- Impact on land - no additional information needed
- Impact on geological features - no additional information needed
- Impact on surface water - no additional information needed (letter from Carmina Wood Design submitted)
- Impact on ground water - no additional information needed
- Impact on flooding - no additional information needed (project's storm water management system will comply with the DEC's quantity standards)
- Impact on air - no additional information needed
- Impact on plants and animals - no additional information needed (there are no threatened or endangered species, flora or fauna on this site)
- Impact on agricultural resources - no additional information needed
- Impact on aesthetic resources - no additional information needed
- Impact on archeological resources - no additional information needed
- Impact on open space and recreation - the project is in compliance with the permanent open space requirement previously established for the quarry development areas
- Impact on Critical Environmental Areas - no additional information needed
- Impact on transportation - no additional information needed (an updated letter from Passero Associates was submitted)
- Impact on energy - no additional information needed
- Impact on human health - no additional information needed

- Consistency with community plans - no additional information needed
- Consistency with community character - A landscape plan was submitted on May 17, 2023 and it was indicated that input from the Conservation Advisory Board will be requested prior to subdivision approval

Attorney Hopkins stated that in light of the very lengthy history of this project and the substantial modifications that have been made in direct response to public input that resulted in a reduction of the magnitude of the identified environmental impacts and based on the draft Part II of the EAF that was prepared by the Planning Board and the extensive additional documentation provided by the applicant, he feels that the Planning Board is in the position to issue a SEQR determination.

Attorney Hopkins stated that the requested SEQR determination on behalf of the project sponsor is a Negative Declaration.

Attorney Hopkins stated that this site was always envisioned to be two (2) large rental apartment buildings based on the original planning documents. He reminded Board members that in 2010 a developer proposed an affordable housing project that was not well received by the neighborhood.

Attorney Hopkins stated that if the Planning Board does not issue a Negative Declaration relative to this current project as proposed, the likely decision will be to switch to a multi-family project. He noted that he recognizes the concerns raised by the neighbors and thinks that the substantial modifications provide the Planning Board with more than ample justification for an issuance of a Negative Declaration.

Chairman Clark stated that a public hearing should be held on the revised plan with the change in the number of proposed units.

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

Ms. McCormick asked if the public hearing could be focused on the change in the number of proposed units.

In response to a comment made by Mr. Reilly, Attorney Hopkins stated that there is a difference between permanent open space required and recreation space required.

Ms. Valenti asked what the Planning Board's responsibility is regarding the question of permanent open space. She referred to the neighbors' most recent submission referencing 1993 minutes and "recreational open space" and noted that the terms "permanent open space", "recreation" and "recreational open space" are all being used.

Mr. Reilly stated that the project meets the town house requirement for green space and the Heart Trail is a recreation feature. He noted that the Town of Hamburg has never taken dedication of recreation space or open space in the Brierwood PUD.

Mr. Reilly stated that after a SEQR decision is made, the applicant should go back to the Town Board on the issue of Brierwood and what has happened there regarding the waiving of the recreation fees.

Ms. Valenti stated that she feels that there is still an unanswered question that may be separate from SEQR but does require Town Board involvement.

Ms. McCormick asked Attorney Puglisi to research what the appropriate review and authority is for the Town. She stated that if there is a plan and an agreement it should probably be SEQR related under the public planning part of SEQR.

Attorney Hopkins stated that per the 1988 plan that was part of the PUD approval, the project sponsor is required in connection with the quarry development area to provide 25% open space. He noted that that has been satisfied. He further stated that in addition to that 25% open space, the town home regulations require that 10% of this particular site be set aside for recreational space.

In response to a question from Chairman Clark, Ms. Valenti stated that she does not think that the Planning Board has settled the question of whether this requirement of a separate agreement and not the PUD has been met. She stated that the Planning Board must be satisfied that the conditions have all been met and understand if those conditions are under the purview of the Town Board because the open space requirements are under a separate agreement outside the conditions of the PUD.

Chairman Clark stated that even if it is a separate agreement it has to do with community character, which is a SEQR question.

Ms. Gronachan stated that it was her understand that at the May 17, 2023 meeting the Planning Board asked someone to find out the difference in definition between "green space", "recreation space", etc. and to find the referenced 1993 minutes and clarify them.

Ms. McCormick stated that she feels that the storm water pond should count as open space because it was originally identified in the agreement as part of the overall site development as allowable open space.

Mr. Reilly stated that a PUD is supposed to set the requirements for open space, but in this case over the years the PUD requirements have been interpreted differently and agreements have been made with the Town Board. He stated that because of this, the town home regulations for recreation space have been applied to this development in section K of the quarry area (500 sq.ft. per unit).

Ms. McCormick stated that Ms. Puglisi should research whether it is the Planning Board's responsibility to approve the amount of permanent open space in the PUD and recreational space on the project site.

Attorney Hopkins stated that clearly it is up to the Planning Board to determine whether the project sponsor has met the permanent open space requirement for the quarry area, noting that the project is in front of the Planning Board, which is the SEQR Lead Agency.

Mr. Reilly stated that he will provide the Planning Board with something official from the Town Board regarding the overall Brierwood PUD and what has gone on in the past regarding the waiving of fees.

Ms. McCormick stated that the Planning Board needs some structure to understand what it is basing a SEQR decision on. She stated that the Planning Board should determine what the items are that it thinks are needing additional information and then discuss them in a structured way.

Mr. Reilly stated that there is no straight forward answer on the open space issue.

Attorney Hopkins stated that the answer on the permanent open space is straight forward.

Ms. Valenti stated that the neighbors submitted a letter on July 10, 2023 with 1993 minutes attached. She noted that the submission also references the 1992 Nussbaumer report.

Attorney Hopkins asked if this project will be placed on an agenda before the scheduled public hearing so that he can understand what Ms. Puglisi's research regarding the open space questions raised at this meeting shows.

Chairman Clark made a motion, seconded by Mr. Chapman, to schedule a public hearing to be held on September 6, 2023. Carried.

In response to a question from Attorney Hopkins, Board members indicated that he can respond to the neighbors' submittal received by the Planning Board and also respond to any issues that arose at this meeting regarding open space, etc.

Engineering Department comments have been filed with the Planning Department.

Hamburg Retail, LLC - Requesting Site Plan Approval on a proposal to construct a 9-unit multi-family project at 4100 St. Francis Drive

Attorney Sean Hopkins, representing the applicant, stated that the Planning Board last discussed this project at its meeting in May 2023. He stated that an updated plan had been prepared showing a proposed internal property line in order to divide the proposed town house project from the remainder of the site (former gas station). He noted that the remainder of the site will be developed as a separate project some time in the future.

Attorney Hopkins stated that this project will have to be reviewed again by the Waterfront Revitalization Committee (WRC), which hopefully will occur in July or August and he asked the Planning Board to table this project to its September 6, 2023 meeting.

In response to a question from Ms. McCormick, Attorney Hopkins stated that it is very possible that there would be cross-access between the town house project and whatever is developed on the former gas station portion of the site and that the gate could be removed.

In response to a question from Ms. McCormick, Attorney Hopkins stated that this project requires a use variance from the Board of Zoning Appeals (ZBA) and he is hoping that the Planning Board will issue a SEQR determination before the variance is requested. He noted that if the variance is granted, this project would return to the Planning Board for Site Plan and Subdivision review.

In response to a comment made by Ms. Gronachan, Attorney Hopkins stated that the applicant still needs a comment back from the New York State Department of Transportation (DOT) regarding the proposed curb cut onto Lakeshore Road. He noted that the DOT does have the most recent plan.

Ms. Gronachan noted that the DOT's comments on the proposed curb cut onto Lakeshore Road must be reviewed by the Planning Board before a SEQR determination can be made.

Attorney Hopkins stated that the gas station is being cleaned up, but he does not know if it is being cleaned pursuant to the Brownfield Cleanup Program. He noted that either way it will meet the DEC's standards.

It was determined that in order to issue a SEQR determination, the Planning Board requires the DOT comments, input from the SRC and input from the Conservation Advisory Board if it has any comments regarding this project.

Attorney Hopkins stated that a landscaping plan will be submitted.

Chairman Clark made a motion, seconded by Mr. Chapman, to table this project to the Planning Board's September 6, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

3800 Hoover Road, LLC - Requesting Site Plan Approval on a proposal to construct a 7-unit multi-family project at 3800 Hoover Road

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Board's September 6, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

AL Asphalt Discussion of DEIS Comments

Chairman Clark noted that the second and final public hearing was held and concluded the previous week. He added that this meeting would be an opportunity for Planning Board members to comment on the project.

Ms. Gronachan made the following motion, seconded by Ms. McCormick:

"Whereas, pursuant to the State Environmental Quality Review Act ("**SEQRA**") the Town of Hamburg Planning Board ("**Planning Board**") is the Lead Agency in a coordinated review of A.L. Asphalt Corporation's ("**Applicant**") proposed Hot Mix Asphalt Plant ("**Project**") and related accessory uses at 5690 Camp Road in the Town of Hamburg; and

Whereas, the Applicant submitted a nominally revised Draft Environmental Impact Statement dated April 5, 2023 (the "**DEIS**") in response to the Planning Board's requests for revisions and additions to the DEIS first made by resolution dated September 21, 2022, and as reiterated by correspondence to the Applicant dated November 10, 2022, January 5, 2023, and February 21, 2023 the ("**Deficiency Correspondence**"); and

Whereas, pursuant to the Notice of Completion of the DEIS as published on May 4, 2023 ("**Notice of Completion**") the Planning Board accepted the DEIS subject to the Listed Deficiencies described therein and thereby opened SEQRA's public comment period for the Project, which will close on July 28, 2023 ("**Public Comment Period**"); and

Whereas, pursuant to SEQRA the Lead Agency may comment on the DEIS during the Public Comment Period, and the Planning Board now desires to submit public comment on the DEIS to reiterate the deficiencies described in the Deficiency Correspondence and as set forth in the Listed Deficiencies in the Notice of Completion; and

Now, Therefore, Be It Resolved, that the Planning Board fully incorporates here by reference each of the Listed Deficiencies as defined in the Notice of Completion as comments from the Lead Agency during the Public Comment Period."

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

Chairman Clark stated that the public comment period will close on July 28, 2023 and noted that there are advisory boards that have not yet weighed in.

Ms. Gronachan thanked the residents who participated in the two (2) public hearings and thanked Hilbert College for making the facility available for the Planning Board. She stated that she supports the Planning Board doing whatever it can to have the least negative impact on the community. She stated that after reading the studies from the consultants and all of the deficiencies pending, as well as the studies that were submitted that were inaccurate, she feels that this is a pretty big project that could have a negative impact on the community.

Ms. Gronachan stated that she hopes that the residents stay informed and keep an eye on this project. She stated that she feels that some of the information provided by the applicant are misleading and by having the consultants look at the project and educate Board members more, she is more confident about voting how she is going to vote.

Chairman Clark stated that as Chairman of the Planning Board, he has a lot of influence on the process the Board takes and he understands that some people are frustrated that the Planning Board even decided to entertain the SEQR process. He stated that as long as he is the Chairman of the Planning Board, the Board will never arbitrarily say yes or no to any project and it will give applicants every opportunity to meet the requirements of the law. He stated that any member of the public who proposes a project will be given the same opportunity. He noted that he understands that it is frustrating when deficiencies are not addressed, but that does not mean the Board should not follow the process that is identified in State law.

Chairman Clark stated that he is very happy about the community engagement that has come as part of this project. He stated that six (6) years ago there were only a few people talking about the Comprehensive Plan and there did not seem to be an appetite for addressing land use and zoning issues, and since then the Town has done a lot of thinking about how it wants to look going forward and has implemented a lot of good changes. He stated that five (5) years ago no one attended Planning Board meetings and in some ways as a result of this project there has been a lot of community input on several issues. He stated that he hopes to keep that engagement with the community for as long as possible.

Chairman Clark stated that ever since this project was proposed, he has looked at Section 280-133 (C) (1) (b) of the Hamburg Town Code, which prohibits any dissemination of atmospheric pollutants, noise or odors into any R, C, M1 or M2 district. He noted that this applies to M-3 districts and to this project. He stated that he has yet to see any evidence suggesting that this project could comply with that provision of the Town Code. He noted that the Planning Board does not have all the information yet, but that is where he stands.

Board members discussed the next steps in the SEQR process and the fact that a Final EIS will be prepared and that Board members must agree with what is in it.

Chairman Clark stated that the applicant has asked for time to address the comments during the public comment period and the Planning Board will give her that time. He further stated that this will be discussed again at the Planning Board's August 2, 2023 meeting for updates to the final public comment period and to determine the next steps going forward.

Mr. Reilly stated that there will be a separate section in the FEIS addressing the deficiencies.

It was determined that at its August 2, 2023 meeting the Planning Board will go through the table of contents of the FEIS.

Ms. McCormick stated that she would like the Board to discuss how the document will be structured at the next meeting to ensure that it is understandable to Board members as well as the public.

Mr. Reilly stated that the DEC and Erie County have indicated that they will have comments to the Planning Board by July 28, 2023.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Planning Board's August 2, 2023 meeting. As the vote on the motion was five (5) ayes and one (1) abstention (Ms. Valenti), the motion carried.

OTHER BUSINESS

Ms. McCormick made a motion, seconded by Mr. Chapman, to approve the June 21, 2023 Planning Board minutes. Carried.

Chairman Clark made a motion, seconded by Ms. Valenti, to adjourn the meeting. Carried.

The meeting was adjourned at 9:30 PM.

Respectfully submitted,
Cindy Gronachan, Secretary

Date: July 25, 2023