

Town of Hamburg  
Planning Board Meeting  
September 20, 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, September 20, 2023 in Room 7B of Hamburg Town Hall. Those attending included Chairman William Clark, Vice-Chairwoman Kaitlin McCormick, Dennis Chapman, Cindy Gronachan, Daniel Szewc and Kaitlin Chmura.

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

Excused: Margaux Valenti

**WORK SESSION**

**Royal Wash Development LLC – Requesting rezoning of a 0.75-acre lot at 3231 and 3233 Lake Shore Road from M-3 to C-2**

Chairman Clark stated that the applicant had asked that the project be tabled. He further stated that the project will be placed on the Planning Board’s October 4, 2023 Work Session agenda.

Chairman Clark stated that the Planning Board would be going into Executive Session to discuss issues relating to attorney-client privilege and potential litigation on item # 6 on the agenda, A L Asphalt.

The Planning Board resumed the meeting at 7:10 PM.

**REGULAR MEETING**

**Public Hearing – 7:00 P.M., Essex Homes – Requesting Approval of Revised Plat for Niles Avenue Subdivision to merge flag lots**

Chairman Clark noted that this subdivision was previously approved with 14 lots and the applicant was requesting to reduce the number of lots.

In response to a question from Ms. McCormick, Mr. Kevin Curry from Essex Homes stated that Board members are always welcome to visit sites where Essex Homes is actively constructing.

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 Essex Homes to amend the Preliminary Plat for a previously approved 14-lot subdivision into a 12-lot subdivision located at Niles Avenue. The public hearing will be held on September 20, 2023 at 7:00 PM in Room 7B of Hamburg Town Hall.”

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

Chairman Clark declared the public hearing closed.

Mr. Reilly advised Board members that they received a letter from Attorney Sean Hopkins, applicant's attorney, indicating that the original approval of this subdivision was accompanied by ten (10) conditions and the applicant has asked for an adjustment to some of those original conditions of approval because of the number of lots being reduced.

Mr. Reilly stated that the applicant's proposed revisions to the conditions were outlined by Attorney Hopkins at the Planning Board's September 6, 2023 meeting and the applicant has asked why the original conditions were not amended per that discussion. Mr. Reilly stated that the Planning Department did not amend those conditions in the draft resolution sent to Board members because they had not made a decision on those proposed amendments to the original conditions of approval.

Mr. Reilly discussed the requested amendments to the original conditions of approval that were discussed at the Board's September 6, 2023 meeting.

Chairman Clark stated that original condition of approval # 7 required the planting of a native mixture of 70 trees of a minimum 2" caliper. He confirmed with Mr. Curry that the applicant was asking that that number be reduced to 60 because the number of lots would be reduced to 12 lots (five (5) trees per lot).

Ms. Gronachan stated that she has no problem with reducing the number of 2" caliper trees to 60 because at the Board's September 6, 2023 meeting, Attorney Hopkins indicated that, because there would be fewer lots, there would be a lot more trees on the lots that would serve as a buffer along the property lines so less trees would be taken down.

Ms. McCormick stated that at the September 6, 2023 meeting the applicant was asked to give the Planning Board a rough estimate of the number of trees that would be saved with the reduction in lots. She stated that the Planning Board asked for additional information and without that information she would be reluctant to make a decision on the requested amendments to the original conditions of approval.

In response to a question from Chairman Clark regarding Ms. McCormick's concern, Mr. Curry stated that reducing the number of lots from 14 to 12 would obviously result in reduction in the loss of current vegetation. He stated that Essex Homes would be providing the same number of trees on a per lot basis that was required originally and the end result would be an additional saving of vegetation since there would be two (2) less homes constructed.

Mr. Curry noted that the Town Code requires two (2) street trees be planted per lot and the original approval of this subdivision included the requirement that six (6) trees be planted per lot, which is substantial in an area that is already wooded.

Mr. Curry stated that the prior design of this subdivision with 14 lots would have resulted in a substantial number of trees being lost due to clearing for the new homes compared to the current 12-lot proposal. He further noted that Essex Homes has also proposed to shorten the cul-de-sac to provide an additional buffer area to the properties on Linwood Avenue.

Mr. Curry stated that the applicant has provided all information requested and has answered everything that has been asked.

Chairman Clark asked Mr. Curry if he had an estimate of the number of additional trees that would be saved by reducing the number of lots to 12.

Mr. Curry stated that not being the developer of the previously approved plan, he would estimate that number to be in excess of two (2) trees per lot (more than 25 trees).

Ms. McCormick stated that she would like Mr. Curry to demonstrate how he arrived at that number.

Mr. Curry responded that it is hard to answer Ms. McCormick's question when he does not know how many trees would have remained with the originally approved layout. He asked Ms. McCormick if she had that number.

Ms. McCormick stated that at the last meeting she was told that the buffer width at the back of the lots would be increased and that there would be some estimate of the additional depth of buffer. She stated that she thought someone would give the Planning Board an estimate of how many trees would be in the additional buffer area.

Mr. Curry responded that with the buffer being increased from 60 feet to 80 feet, his estimate of the number of additional trees that would be saved is 15. He noted that this number would be in addition to the areas that would not be cleared compared to the original layout because of the reduction in the number of lots.

Chairman Clark stated that the number of trees to be planted in condition # 8 would be reduced from 14 to 12 and the number of trees to be planted in condition # 7 would be reduced from 70 to 60, thereby resulting in a reduction of 12 trees to be planted. He further noted that by increasing the buffer areas, an additional 15 trees would be saved.

Ms. McCormick stated that she wanted someone to visit the site to confirm that the developer will not clear the lots and she wanted someone to count how many additional trees would be saved by increasing the buffer area. She stated that she did not feel that she received the information she asked for.

Chairman Clark stated that the original condition of approval # 8 required the planting of 14 trees of a minimum 4" caliper and it appears that 4" caliper trees are not feasible but 8' coniferous trees are feasible. He suggested changing the requirement in condition # 8 to 8' coniferous trees instead of the 4" caliper deciduous trees, noting that this would provide year-round screening.

Chairman Clark stated that originally 14 trees were required per condition # 8, which represented one (1) tree per lot. He noted that the number of lots has been reduced to 12.

Ms. Gronachan stated that she supports requiring that 60 trees instead of 70 be planted on the new lots and also supports Chairman Clark's suggestion that 12 8' evergreens be required instead of 14 4" deciduous trees.

Chairman Clark stated that the original condition of approval # 9 required a ten-foot vegetated buffer on the east ends of lots # 4, 6 and 7 and the applicant has proposed to double that number to 20'.

In response to a question from Ms. Gronachan, Mr. Curry stated that lot # 3 would have a buffer area of 85' instead of 75' and lots # 4 and 5 would have buffer areas that would be doubled to 20'.

In response to a question from Chairman Clark, Mr. Curry stated that the proposed buffer areas for lots # 1 and 2 would increase from 70' to 80'.

Chairman Clark polled Board members regarding how many trees should be required in condition # 7 as follows:

- Mr. Chapman stated that 60 trees is appropriate.

- Ms. McCormick stated that she prefers 70 because she did not get the information she requested.
- Mr. Szewc stated that 60 trees is appropriate.
- Ms. Gronachan stated that 60 trees is appropriate.
- Ms. Chmura stated 60 trees is appropriate because there would be additional trees saved by reducing the number of lots and the buffer areas for the lots would be increased.

Chairman Clark confirmed that those members who indicated that 60 is an appropriate number also feel that the number of 8' evergreen trees to be required should be reduced to 12.

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

“In accordance with NYS SEQR law, the Town of Hamburg Planning Board has reviewed the 12-lot subdivision proposed by Essex Homes to be located on Niles Avenue. This is a revised Preliminary Plat that has resulted in the reduction of proposed lots. The Planning Board has previously approved this subdivision and this reduction in lots reduces the environmental impacts. Based on the Preliminary Plat review of the submitted materials and input from other departments and a thorough environmental analysis utilizing Part II of the EAF and materials submitted by the applicant and analyzed in Part III of the EAF from the previously approved project, the Planning Board has determined that the proposed subdivision is not anticipated to result in any significant adverse environmental impacts 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 received a subdivision application from Essex Homes for the development of a 12-lot subdivision on Niles Avenue; and

Whereas, the Hamburg Planning Board reviewed the application and revisions to the application at meetings from October 2022 through September 2023; and

Whereas, the Hamburg Planning Board has reviewed the project and determined that the project 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 and a Negative Declaration was issued by the Planning Board; and

Whereas, the Hamburg Planning Board held the required public hearing on September 20, 2023 and received comments from the public; and

Whereas, the Hamburg Planning Board has reviewed the project against the requirements of the subdivision, zoning and wetlands protection laws and found the project to be in accordance with those laws noting that the non-jurisdictional wetlands on the site are not quality wetlands and that the uniqueness of the site does not allow for their avoidance.

Now, Therefore, Be It Resolved that the Hamburg Planning Board hereby issues Preliminary Plat Approval with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated September 15, 2023.

2. Recreation fees in lieu of land will be required as there is no appropriate place to locate a new facility.
3. The construction of sidewalks shall not be waived and they will be constructed on the entirety of Niles Avenue as illustrated on the approved plans.
4. Deed restrictions shall be put in place on the rear of the deep lots to restrict development of those lots in accordance with the required vegetated buffer and Conservation Easements outlined in Condition # 9.
5. The storm water management area will be placed on its own lot owned by a Homeowners' Association and will be restricted as permanent open space and the appropriate drainage easements to the Town for emergency repairs will be provided.
6. The detention basin will be oversized as proposed by the applicant and approved by the Town Engineer in order to accommodate the removal of non-jurisdictional wetlands and to address existing wet conditions.
7. The planting of a native mixture of 60 trees with a minimum 2.5" caliper or equivalent coniferous trees with survivability in accordance with the Town law shall be required.
8. An additional planting of a native mixture of 12 coniferous trees at least eight (8) feet in height with survivability in accordance with the Town law shall be required.
9. Conservation Easements shall be placed on vegetated buffers on specific lots as follows: 80 feet on the west end of lots # 1 and 2, 85 feet on the east end of lot # 3, 20 feet on the east end of lots # 4 and 5.
10. The developer will submit a tree clearing plan per lot at the time of construction to the Town Engineering Department and the Town Conservation Advisory Board for approval."

Carried.

Mr. Curry commented that he believes that the number of trees that will be preserved will be well in excess of what would have been preserved as previously approved.

Engineering Department comments have been filed with the Planning Department.

**Bell Atlantic Mobile Systems LLC – Re-Issuing Site Plan Approval on a proposal to install and operate a wireless telecommunications facility on to a replacement utility pole near 5600 McKinley Parkway**

Mr. Reilly noted that the Planning Department was not aware that this project met the requirements for a 239-M referral to the County. He stated that the referral was made and the applicant's attorney has asked that the project be re-approved.

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

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

"Whereas, the Town of Hamburg received a Site Plan application from Bell Atlantic Mobile Systems LLC to install and operate a telecommunication facility near 5600 McKinley Parkway, Hamburg Fairgrounds; and

Whereas, the Hamburg Planning Board held the required public hearing and received no 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 completed Part II and III of the FEAF; and

Whereas, the Hamburg Planning Board, in accordance with SEQRA, has determined that the proposed Site Plan Approval and installation and operation of the telecommunications facility will not adversely affect the natural resources of the State and/or the health, safety and welfare of 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 Site Plan Approval and installation and operation of the telecommunications facility is not anticipated to result in any significant adverse environmental impact and that a Negative Declaration is hereby issued and that the Planning Board Chairperson is authorized to sign the EAF, which will act as the Negative Declaration.”

Carried.

Chairman Clark made the following motion regarding Site Plan Approval, seconded by Mr. Szewc:

“The Town of Hamburg Planning Board hereby grants Site Plan Approval for the Bell Atlantic Mobile Atlantic Mobile Systems LLC telecommunications project to be located near 5600 McKinley McKinley Parkway with the following conditions:

1. The owner will allow other users on the pole, if possible.
2. The Planning Board waives the installation of sidewalks because it is at the Fairgrounds and is all paved already.”

Carried.

### **Jeffery Zimmer – Requesting rezoning of property located on the southwest corner of Abbott Road and Milestrip Road from R-2 to C-1**

Attorney Jeff Palumbo, representing the applicant, stated that the applicant envisions the same type of thing on this site, if the rezoning is approved, as the applicant has on the east side of Abbott Road (Reeds Jens store).

Attorney Palumbo stated that after his last meeting with the Planning Board, he took a look at the NC zoning and determined that that zoning is not appropriate for this site because of the specifications for 2,000 sq.ft. and ten (10) parking spaces. He noted that the applicant’s concept plan shows a 5,700 sq.ft. building and 28 parking spaces for a mixed use development of possibly retail and a small restaurant.

Attorney Palumbo stated that the R-2 zoning is not appropriate for this site and he thinks the applicant’s plan might act as an incentive to continue commercial development along Abbott Road to match the existing commercial development on the east side of the road.

In response to a question from Mr. Szewc, Attorney Palumbo stated that the site will not support a large restaurant but the applicant envisions something like a small breakfast restaurant and not a restaurant/bar.

Ms. McCormick stated that the Planning Board should take a hard look at what the permitted uses are in the C-1 zone, noting the size of the property in question and the fact that there are residences nearby.

Board members considered reasonable conditions that could be placed on any approval of the rezoning request.

Mr. Reilly stated that the Comprehensive Plan indicates that the Town should work with and investigate the Town of Orchard Park to come up with a plan in this area that works.

Ms. McCormick stated that this site is within 500 feet of a residential district and no sale of alcohol would be allowed on the premises.

Board members agreed that this site should not be zoned R-2.

Board members reviewed the permitted uses in the C-1 zone as follows and whether they would be acceptable at this site:

- Retail sales - acceptable
- Dry cleaners - NOT acceptable
- Eating and drinking establishments, provided that any entertainment shall be limited to television, radio or music and no alcohol sales for consumption on the premises is allowed where the principle building is less than 500 feet from the side lot that abuts any R District boundary - acceptable with no alcohol sales
- Garden center - Applicant states he will not put a garden center on this site
- Hotel and motels - Applicant states he will not put a hotel or motel on this site
- Banks and drive-thru banks - Bank would be acceptable, but no drive-thru bank
- Racketball clubs, squash courts, health spa and related fitness facility - acceptable
- Nursery school/day care center - acceptable with a Special Use Permit
- Garden center with outdoor display - NOT acceptable
- Uses permitted in the HC district - acceptable
- Uses permitted in the NC district - acceptable

Chairman Clark stated that the Planning Board will forward a report to the Town Board recommending approval of the requested rezoning from R-2 to C-1 with the following conditions:

- A fence should be installed between the C-1 district and the adjoining residential properties
- The following uses should not be permitted:

- Drive-thrus
- Alcohol sales
- Outdoor storage
- Dry cleaning facilities
- Hotels and motels

Chairman Clark made a motion, seconded by Mr. Szewc, to authorize a draft report to forward to the Town Board regarding the requested rezoning with the conditions discussed and recommending approval. Carried.

**West Herr Automotive – Requesting Site Plan Approval on a proposal to demolish an existing single-family home and to construct a vehicle towing lot on 0.5-acre lot at 3600 Sowles Road**

Mr. Rob Pidanick from Nussbaumer & Clarke, representing the applicant, stated that two (2) parking spaces have been removed from the Site Plan so that the distance from the parking area to the adjacent residential home would be 23.8 feet. He noted that landscaping and an eight-foot high stockade fence are proposed around the perimeter of the site.

Mr. Pidanick stated that Nussbaumer & Clarke has addressed all of the comments received from the New York State Department of Transportation (DOT). He noted that the DOT did ask the applicant to modify the plan to limit the water that would be taken into the DOT's basin and therefore the outlet will be restricted to a 6" outlet. He further stated that the modified plans have been resubmitted to the DOT and submitted to the Engineering Department.

Mr. Pidanick stated that a meeting was held with the nearby neighbors on August 24, 2023 and the concerns raised were primarily related to problems that have existed in the area for many years (traffic, drainage). He further stated that the DOT has indicated that it has improved the outfall structure to the ditch from which drainage from this site would travel and this has improved the drainage conditions in the area of the residential homes on Oregon Road.

In response to a question from Ms. McCormick, Mr. Pidanick read the letter he received from the DOT regarding the modifications DOT has done to its outfall structure in the area.

In response to a question from Ms. McCormick, Ms. Jarrell confirmed that the modifications made by the DOT in concert with the applicant reducing the outlet to 6" on its site should be an improvement to the drainage conditions in this area.

Mr. Jim Mulka, Director of Facility Operations for West Herr, stated that this site would be used if West Herr wants to get vehicles from one location to another and does not want to put miles on them or if a vehicle is a trade-in and is not drivable.

Mr. Reilly noted that this project is an Unlisted Action under SEQR because a Special Use Permit is required.

It was determined that no input had been received from the Traffic Safety Advisory Board.

In response to a question from Ms. McCormick, Mr. Mulka stated that there would be security lighting at night so that no one breaks in overnight. He noted that he can commit to the light poles not being higher than 15 feet.

Ms. McCormick asked for information regarding the height of the proposed light poles and how much above the fence they would be.

Board members discussed possible conditions of approval of the Special Use Permit.

Chairman Clark made a motion, seconded by Mr. Chapman, to authorize the Planning Department to prepare draft resolutions for SEQR, Special Use Permit and Site Plan Approval for the Planning Board's October 18, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

**Camp Road Interchange Recommendation and Report Discussion**



Mr. Reilly asked that Board members get their recommendations with reasoning to him in advance of the Board's next meeting. He noted that Board members need to look at all of the properties surrounding the former loop of the I-90/Camp Road exit and determine if this area should be zoned Camp Road Interchange or some other designation.

Mr. Reilly stated that the Benderson property is not included in the map of this area because a recommendation has not been made on its zoning, noting that Benderson has an active application before the Town. He stated that the Planning Board can recommend a zoning for this Benderson parcel if it so desires.

Board members discussed the different properties included in the Camp Road Interchange area.

Mr. Reilly stated that he spoke to the Liberatores, owners of three (3) properties in this area that are zoned Industrial and C-2, and they were not in favor of their properties being rezoned to Camp Road Interchange. He noted that he advised them that the Town plans to go ahead with the rezoning of their properties.

Ms. McCormick stated that she feels that the Benderson property should be rezoned to Camp Road Interchange. She further stated that she feels that the properties in this area that are split zoned, including the Commerce Place parcels, should be rezoned to the dominant zone on the parcels.

It was determined that the Planning Board feels that the Camp Road Interchange area should be larger rather than smaller.

Board members agreed that 5220 Camp Road and the property directly south of it should be zoned Camp Road Interchange.

Chairman Clark stated that the area west of the property line that runs along the residential properties all the way to the I-90 should be zoned R-A. He further stated that all Commerce Plan properties should be zoned Camp Road Interchange, as should the property across the I-90 from Commerce Place because this would be a gateway district and this property is adjacent to the Village of Hamburg. He stated that 5201 and 5203 Camp Road have existing uses on them that would be grandfathered, but they should also be zoned Camp Road Interchange.

Chairman Clark stated that the justification for such large changes would be that if this area is to be a gateway to the Town and Village, the space to do that will be needed. He noted that there would be multiple vacant properties and someone could come in with a fairly substantial and interesting project.

Ms. Chmura stated that rezoning the Benderson property would allow property that was going to be warehouses to be more accessible and used by the public.

Ms. McCormick stated that she would support rezoning the parcels in this area that are wetlands and rezoning them to the Camp Road Interchange or less intensive zone if someone wanted to put a park there.

It was determined that this discussion would be continued at the Planning Board's October 18, 2023 meeting.

## **AL Asphalt – SEQR Status Update**

Attorney Kim Nasson from Philips Lytle, stated that the applicant had not submitted any additional information in response to the letter sent requesting that the substantive comments be summarized, additional analysis be performed as necessary, responses to those substantive comments be prepared and proposed revisions to the sections of the DEIS as required be prepared.

Attorney Nasson stated that a letter was submitted by the applicant's counsel on September 15, 2023 referencing specifically the DEC's comment letter on the DEIS and asking the Planning Board to allow the DEC to move forward with interacting with the applicant outside of the SEQR process. She noted that this is not how the SEQR process works and the comment letter from the DEC is a comment letter on the DEIS. She stated that those comments need to be addressed in the SEQR process and the DEC cannot move forward with determinations until the Planning Board as Lead Agency has completed its own SEQR process.

Attorney Nasson stated that October 18, 2023 is still the target date to adopt the FEIS.

Attorney Nasson reviewed the FEIS and its sections.

Chairman Clark stated that if the Planning Board does not have enough information to answer a question raised by the public during the comment period, the FEIS will state that the applicant had the opportunity to provide that information and the Planning Board did not receive it, so it will be considered a deficiency.

It was determined that this discussion would be tabled to October 4, 2023.

## **OTHER BUSINESS**

Mr. Rodgers stated that he received a request from Benderson to extend for 90 days its Hamburg Crossing project.

Attorney Puglisi stated that it is her understanding that Benderson has met with the nearby property owners twice and plans to meet with them again soon.

Ms. McCormick stated that there have been no updates on changes to the plan.

It was determined that this is the first time Benderson has asked for an extension for this project.

Ms. McCormick stated that the Planning Board has already provided extensive comment to the applicant on the fact that there is a Gateway Area Plan that came out and that part of its SEQR analysis has to do with community character and consistency with plans. She noted that she told the Benderson representative at a Planning Board meeting that previously and the Planning Board has failed to see any information from the applicant about how the proposal they have, regardless of the zoning, is in alignment with the Comprehensive Plan and the Gateway Area Plan.

Chairman Clark polled Board members regarding whether they wished to approve the requested extension as follows:

- Mr. Chapman - no
- Ms. Chmura - no
- Ms. McCormick - no
- Ms. Gronachan - undecided

- Mr. Szewc - no

Mr. Reilly stated that the Planning Department will work with Attorney Puglisi on a response letter to the applicant's attorney.

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

The meeting was adjourned at 9:00 PM.

Respectfully submitted,  
Cindy Gronachan, Secretary

Date: September 23, 2023