

In response to a question from Mr. Quinn, Mr. Gow stated that the project involves the disturbance of less than one (1) acre.

It was determined that a Flood Plain Development Permit will be required from the Building Department.

It was determined that the parking area and driveway will be paved.

Chairman Clark made a motion, seconded by Mr. Mahoney, to schedule a public hearing to be held on April 3, 2019. Carried.

## **REGULAR MEETING**

### **James DeMarco – Requesting Preliminary Plat Approval of a two-lot subdivision to be located at 5054 Lakeshore Road**

James DeMarco, applicant, stated that he is going to attempt to get a letter from Erie County indicating that he does not have to physically separate the sewer and water lines on the property to be divided. He noted that both residences would be owned by members of his family, and he will ask the County to allow this situation to continue until such time as one (1) of the properties is sold to someone outside of his family.

Attorney Puglisi was asked how long Mr. DeMarco would have, after the public hearing is held, to obtain something from the County before another public hearing would be required. She responded that she will research that question.

Mr. Schawel read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a two-lot subdivision proposed by James DeMarco to be located at 5054 Lakeshore Road. The Public Hearing will be held on March 20, 2019 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.

Ms. McCormick made a motion, seconded by Mr. Chapman, to table this project until additional information is received. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Anthony Cutaia – Requesting Site Plan Approval of a proposed multi-family project to be located at 5138 South Park Avenue**

Attorney Sean Hopkins appeared on behalf of the applicant, Nick Cutaia, and stated that throughout the review process, when the applicant has been asked to make a change to the plan or address an issue he has done that.

Attorney Hopkins stated that based on the Planning Board's previous meeting, an updated Site Plan had been submitted that incorporates the following changes:

- The proposed recreational trail was extended to the existing bus stop on South Park Avenue.
- A sidewalk was added to the Site Plan from the driveway on South Park Avenue southerly to the existing bus stop. The sidewalk would be on the inside of the existing ditch that runs along South Park Avenue, which is on the applicant's property, and the applicant is willing to grant an easement for that sidewalk. This would alleviate the need to pipe the existing ditch along South Park Avenue.

Attorney Hopkins stated that as a result of the reduction of proposed units to 152 units, the project's density would be 5.62 units per acre.

Attorney Hopkins stated that the green space buffer area south of the Twilight Lane properties would not be touched, and the applicant would agree to have that land be subject to a conservation easement or a declaration of restrictions to ensure that this area will remain permanent open space. He further noted that all of the vegetation that exists in that area will be preserved, and a fence is proposed along the entire southern boundary of the Twilight Lane properties.

Attorney Hopkins stated that Bob Walter, Registered Landscape Architect, visited the site and identified an area of mature hardwood trees that should be preserved. He noted that based on Mr. Walter's input, one of the ball fields was moved further north and east to avoid that area of trees, and that area will remain untouched.

Attorney Hopkins stated that the required recreational space would consist of 20,000 sq.ft. of permanent open space accessible to future residents of the development in the immediate vicinity of the clubhouse, and the bike path equates to 56,000 sq.ft. If one adds in the Hilbert College ball fields' square footage, the total open space provided would be over 250% more than what is required.

Attorney Hopkins stated that numerous changes were made to the Site Plan regarding access to and from the site, and the acreage of wetlands to be impacted by this project has been reduced to .6 acres.

Attorney Hopkins stated that all of the buildings would be two-story.

Attorney Hopkins stated that because the project would generate more than 2,500 GPD of sanitary sewer flow, the project would be subject to the New York State Department of Environmental Conservation's Inflow and Infiltration policy. He noted that in terms of downstream sewer capacity during wet weather conditions, this development would result in an improvement in the existing conditions.

Attorney Hopkins stated that currently water generally flows in a northerly direction in this area and sometimes enters the back yards of the Twilight Lane properties, and as a result of the storm water system proposed for this development, that situation may no longer occur.

Attorney Hopkins stated that in terms of SEQR, he believes it is clear that the Planning Board has identified the relevant areas of environmental concern, taken a hard look at each of those impacts and is in a position to issue a Negative Declaration that would clearly be supported by a reasoned elaboration.

In response to question from Ms. McCormick, Attorney Hopkins stated that a small portion of the treed area to be preserved is located in the area where a ball field would be.

Attorney Hopkins stated that prior to any construction commencing, the areas to be preserved would be clearly demarcated with construction fencing or some type of physical barrier to ensure that contractors stay away from those areas.

In response to a question from Mr. Chapman, Attorney Hopkins stated that Kurt Allen, Supervising Code Enforcement Official, confirmed that the project is in conformance with the New York State Fire Code in terms of access, as well as the proximity of the buildings to the fire hydrants.

In response to a question from Mr. Mahoney, Attorney Hopkins stated that per Mr. Walter's suggestions, additional trees were proposed along South Park Avenue, along the site's northern property line and along the edge of the storm water pond. He further noted that the one of the ball fields was moved to the north to mostly avoid the area of mature hardwood trees, and the vegetation associated with the wetland area between the athletic fields would be preserved.

Attorney Hopkins stated that 566 new trees, 988 shrubs and 55 ornamental grass plantings are proposed. He noted that what the applicant is proposing is 250% more than what the Town's tree preservation law requires in terms of the number of trees.

In response to a question from Mr. Reilly, Attorney Hopkins stated that the storm water ponds will be deep enough to avoid stagnant water that would be attractive to mosquito breeding. He noted that the ponds would contain standing water that would circulate. He further stated that installing a fountain in the ponds would not be possible because there would be no electricity on the east side of the project.

In response to a question from Mr. Monaco, Attorney Hopkins stated that the ponds would be a maximum depth of approximately six (6) to eight (8) feet. He further stated that a physical barrier along Bayview Road is proposed consisting of a one (1) to two (2) foot berm with some extensive plantings.

Mr. Quinn stated for the record that the Inflow and Infiltration requirement is a County sewer program through the New York State Department of Environmental Conservation.

Ms. McCormick stated that SEQR is largely procedural, and whether or not the Planning Board says there is an impact does not mean that it stops the project, but rather it means that the applicant would have to go through the SEQR process.

Mr. Reilly stated that issuing a Positive Declaration means that the Planning Board needs additional information, and that information comes in the form of an Environmental Impact Statement.

Attorney Hopkins stated that he did not know what additional information the Planning Board would be required, considering the fact that the applicant has addressed every single topic that has come up during the review process. He further stated that what is at the heart of an Environmental Impact Statement is an evaluation of alternatives, and that is not as relevant in connection with this project because the property is properly zoned, and in each instance where an issue has come up, the project has been revised downward in terms of environmental impacts.

Mr. Geraci stated that approximately 99% of the residents of Twilight Lane are satisfied with the project and what the applicant has done. He noted that to worry about a few dead trees is a waste of time on a project that could be held up because of trees. He stated that if nothing happens on this property, the Town will continue to have a building that is being vandalized and whose security is costing the Franciscan Sisters to maintain.

Chairman Clark polled Board members regarding whether they favored issuing a Negative Declaration or Positive Declaration as follows:

- Mr. Monaco: Negative Declaration

- Mr. Schawel: Negative Declaration
- Mr. Geraci: Negative Declaration
- Mr. Chapman: Positive Declaration
- Ms. McCormick: Positive Declaration
- Mr. Mahoney: Positive Declaration

Chairman Clark stated that he does not feel that there are improvements that could be made to this project as a result of an Environmental Impact Statement, and he cannot see how this project could get better by going through the Positive Declaration process. He stated that the applicant has mitigated to the best the Planning Board can expect all of the impacts that have been addressed.

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

**“Whereas**, the Town of Hamburg Planning Department received a Site Plan Application from Anthony Cutaia for the construction of a multifamily project to be located at 5138 South Park Avenue; and

**Whereas**, the Town of Hamburg Planning Board initiated the SEQR Coordinated Review Process and received input from Town departments, County departments, State departments, and professional planning consultants; and

**Whereas**, the Town of Hamburg Planning Board held the required public hearing on January 16, 2019; and

**Whereas**, the Town of Hamburg Planning Board has reviewed the EAF submitted by the applicant, received input from the Planning Department, received written and verbal comments from the general public, and received project information submitted by the applicant; and

**Whereas**, the Town of Hamburg Planning Board has reviewed the Town of Hamburg’s adopted Comprehensive Plan and Code of Ordinances; and

**Whereas**, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law, the Town of Hamburg Planning Board has reviewed Part 1 of the FEAF and has completed Parts 2 and 3 of the FEAF and reviewed the criteria for determining significance in accordance with Section 617.7 of SEQR.

**Now, Therefore Be It Resolved**, the Town of Hamburg Planning Board has determined that the proposed project will not significantly 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 therefore issues a Negative Declaration in accordance with Section 617.7 of SEQR; and

**Be It Further Resolved That**, the Town of Hamburg Planning Board Chairperson is authorized to sign the Full Environmental Assessment Form (FEAF Parts 1, 2, and 3), which will act as the Negative Declaration.”

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

Mr. Chapman made the following motion:

**“Whereas**, the Town of Hamburg Planning Department received a Site Plan Application from

Anthony Cutaia for the construction of a multifamily project to be located at 5138 South Park Avenue (Immaculata Campus Conversion); and

**Whereas**, the Town of Hamburg Planning Board initiated the SEQR Coordinated Review Process and received input from Town departments, County departments, State departments, and professional planning consultants; and

**Whereas**, the Town of Hamburg Planning Board held the required public hearing on January 16, 2019; and

**Whereas**, the Town of Hamburg Planning Board has reviewed the EAF submitted by the applicant, received input from the Planning Department, received written and verbal comments from the general public, and received project information submitted by the applicant; and

**Whereas**, the Town of Hamburg Planning Board has reviewed the Town of Hamburg's adopted Comprehensive Plan and Code of Ordinances; and

**Whereas**, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law, the Town of Hamburg Planning Board has reviewed Part 1 of the FEAF and has completed Parts 2 and 3 of the FEAF and reviewed the criteria for determining significance in accordance with Section 617.7 of SEQR and issued a Negative Declaration.

**Now, Therefore Be It Resolved**, the Town of Hamburg Planning Board approves the construction of the proposed multifamily project to be located at 5138 South Park Avenue (Immaculata Campus Conversion) with the following eight (8) conditions:

1. Approval is contingent upon the Engineering Department comment letter dated March 13, 2019.
2. The Town Engineer shall review the final design of the artificial turf (field turf) fields to make sure they meet, not only structural standards for player/user safety, but also all applicable environmental standards to ensure that no part of the field adversely impacts the downstream environment or the watershed as a whole;
3. The wooded or otherwise natural, areas demarcated on the site plan (approximately 5.4-acres) shall be clearly marked during all phases of construction to ensure no physical disturbance;
4. The permanent open space buffer area along the north boundary of the project site adjacent to homes on the south side of Twilight Lane, as well as the areas depicted on the site plan as "wooded area to remain", shall be clearly delineated on the final site plan and shall be subject to a conservation easement / deed restriction to be held and enforced by the Town of Hamburg (in accordance with Chapter 87 of the Town of Hamburg Code);
5. In approving the removal of approximately 6.9-acres of wooded or otherwise natural areas, the Planning Board requires that the replacement tree planting schedule utilize trees from the Town of Hamburg Approved Tree Species List. The replacement tree planting schedule shall adhere to the requirements speci-

fied in §§ 243-7 and 243-8 of the Town of Hamburg Code. The replacement trees shall be re-inspected after three (3) years of installation;

6. The final landscaping plan shall be approved by the Planning Department. The applicant shall adhere to §§ 280-307.1 and 280-307.2 of the Town of Hamburg Code; and
7. A cross access agreement with Hilbert College, to be reviewed by the Planning Board Attorney, shall be required for the access drive aisle that connects Hilbert College to the proposed project's southern lot line.
8. The requirement of the installation of sidewalks shall be waived along Bayview Road and also from the north side of the entrance on South Park Avenue north to the property line (sidewalks are required from the south side of the entrance on South Park Avenue to the NFTA bus stop)."

Carried.

The following amendment to the above motion was offered by Ms. McCormick:

Amend the last paragraph before the conditions to read as follows: "Now, Therefore, Be It Resolved that the Town of Hamburg Planning Board approves the Site Plan for the proposed multi-family project to be located at 5138 South Park Avenue (Immaculata Campus Conversion) with the following eight (8) conditions:"

The following amendment to the above motion was offered by Chairman Clark:

Amend Condition # 4 to read as follows: "The permanent open space buffer area along the north boundary of the project site adjacent to homes on the south side of Twilight Lane, as well as the areas depicted on the site plan as "wooded area to remain", shall be clearly delineated on the final site plan and shall be subject to a conservation easement / deed restriction to be held and enforced by the Town of Hamburg (in accordance with Chapter 87 of the Town of Hamburg Code) and shall be enforced by the Conservation Advisory Board;"

Mr. Geraci seconded Mr. Chapman's motion and the two (2) amendments.

Carried.

Engineering Department comments have been filed with the Planning Department.

## OTHER BUSINESS

Mr. Geraci made a motion, seconded by Mr. Chapman, to approve the minutes of March 6, 2019. Carried.

Mr. Schawel made a motion, seconded by Mr. Geraci, to adjourn the meeting. The meeting was adjourned at 7:50 P.M.

0 P.M.

Respectfully submitted,  
Doug Schawel, Secretary

March 27, 2019