

TOWN BOARD MEMBERS PRESENT:

Steven J. Walters	Supervisor
Michael Quinn	Councilman
Cheryl Potter-Juda	Councilwoman

ALSO PRESENT: Catherine A. Rybczynski, Town Clerk
Walter Rooth III, Town Attorney; Drew Reilly, Planning Consultant; Tom Best Sr., Highway Superintendent; Milt Bradshaw, Town Assessor; Mike Reilly, Human Resources Consultant

Supervisor Walters calls the meeting to order at 6:00 pm

The Town Board reviews the 1st quarter schedule.

Supervisor Walters comments that he has a late resolution naming three new members for the Scranton Volunteer Fire Department.

Drew Reilly comments that the project at McKinley and Route 391 has been ongoing since April 2014 when the application came in. He then details all the steps taken to get to this point as per attached.

ARCHITECTURE ENGINEERING PLANNING ENERGY SERVICES CONSTRUCTION MANAGEMENT

**MEMO**

To: Hamburg Town Board
From: Town Planning Department, Drew Reilly
Date: December 14, 2015
RE: Wetzl Rezoning

The following memo provides the history of the Wetzl rezoning and some of the major issues that have occurred to date:

1. The Town of Hamburg received a rezoning request for 29+- acres of land on April 22, 2014.
2. The rezoning request was referred to the Planning Board by the Town Board on June 23, 2014.
3. The Planning Board reviewed this request from July 16, 2014 to October 7, 2015 (with numerous requests by the applicant for tabling).
4. On April 27, 2015, the Hamburg Town Board requested Lead Agency Designation.
5. During the Planning Board review process, the applicant offered numerous design changes and other mitigations to help reduce impacts to surrounding properties.
6. One of the changes offered by the applicant was to include a buffer of lands that would not be rezoned along the road frontages. This proposed amendment appears on all concept plans submitted by the applicant since December 2014.
7. The Planning Board sent a negative recommendation on the rezoning to the Town Board (4 to 3 vote) on the last plan submitted by the applicant (which included the reduced zoning area) on October 7, 2015.
8. The Town Board called for (October 15, 2015) and held a Public Hearing (November 9, 2015) on the rezoning application (entire acreage). During the public hearing the applicant presented the reduced rezoning area plan.
9. The Town has received petitions opposing this project. These petitions were received from July of 2014 through 2015. The rezoning file also included petitions from 2012, which were from a previous rezoning request.
10. Based on input received from the Town Board at their work session on 11/23/15, the Planning Department prepared resolutions for a SEQR decision (Negative Declaration) and approval of the rezoning request (to bring about a vote on the rezoning; no decisions were made that night). The Planning Department was also asked to look into the rezoning petition issue.

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11. In reviewing the petitions, there was some confusion in calculating whether the petitions meet the requirements of New York State Town Law 265. There are three (3) criteria for forcing a super-majority vote under NYS Town Law 265 (one has to be met). Some of the confusion related to the third criteria which requires calculating land areas of parcels that are across the street from a rezoning (within 100 feet of the road ROW). The validity of these petitions is also affected by whether the Town accepts the reduced rezoning area presented by the applicant.
12. In reviewing the petition issue and preparing the rezoning resolutions there were several iterations of the documents due to the issue of the reduced area of land to be rezoned. The final version filed included a resolution to approve the reduced area rezoning request and therefore not requiring a super-majority vote.
13. The following is the Planning Department's opinion:
 - a. The application was for 29.29 acres of land to be rezoned. The applicant has offered a reduced rezoning of 24± acres of land.
 - b. If the Town Board accepts the amended rezoning (reduced area), then the petitions submitted do not meet the requirements to force a super-majority vote.
 - c. If the Town Board does not accept the amended rezoning (reduced area), then the petitions meet the criteria and the Town Board would need a super-majority vote.
 - d. The only other option is to table the request.

He then reviews his Memo of December 11, 2015 as per attached.

ARCHITECTURE ENGINEERING PLANNING ENERGY SERVICES CONSTRUCTION MANAGEMENT



MEMO

To: Hamburg Town Board
CC: Hamburg Legal Department
From: Drew Reilly - Wendel Town Planning
Date: December 11, 2015
RE: Protest Petition Against the Wetzl Rezoning

The Hamburg Planning Department has been asked to review the petitions received opposing the rezoning at McKinley and Boston State Roads.

We have reviewed New York State Town Law Section 265 dealing with zoning amendments. Paragraph 1 of that section includes three (3) criteria (the petitions only have to meet one) by which the Town Board must have at least three-fourths of the members approve the rezoning (a super majority vote).

The first criteria deals with the owners of the land that is being rezoned; this is not applicable to this rezoning (owner asking for rezoning).

The second criteria deals with those parcels that are immediately adjacent to the site (does not include lands across a street). Since this site has roads on three (3) sides the only parcels that are applicable to this criteria are the lands to the east of the site and a few properties on the north side of Boston State Road. We have included a map and calculations illustrating the results of this analysis. The criteria is not met (owners of 20% of the area of land within 100 feet) primarily due to the fact that the majority of the land is owned by the subject property owner.

The third criteria deals with any parcels directly across the street from the rezoned area of the site (within 100 feet of the road ROW). In this case, three (3) sides of the overall site are abutted by roads. The applicant has offered an amendment to their rezoning application to include a 65 foot to 75 foot open space buffer space area that would remain zoned RA along the road frontages. Therefore this criteria is not applicable, since the rezoned lands do not abut the adjoining roads. If the Town Board does not accept this revision, we have prepared an analysis and map that illustrates that the criteria is met. This is based on the Town Attorney's Office and the New York State Department of State having researched court cases that address the unique situation of this site and TL 265. This research confirmed that in calculating the lot areas only 100 feet of the lots are counted. Therefore, if the rezoning request is not amended, it shows that the petitions include more than 20% of the land area of these properties across the street from the parcel and a super majority vote is needed.

From a strict interpretation of the law, none of the criteria are met for the amended rezoning request and the Town Board does not need a super-majority vote to approve this rezoning.

groundbreaking

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Walt Rooth comments that in comparison to the rezoning that happened at the last meeting the circumstances are different in that there were no protest petitions received on that project. In this case, the changes offered by the developer, does not satisfy the residents that filed the protest petitions. In his Memo to the Town Board he states that it would be more prudent to have the applicant restart the application process. This way the application would show the smaller portion of the parcel.

Councilman Quinn questions why this was not presented from the beginning. It is not fair to the residents when they thought they could do something about their surrounding area. But now after a year has gone by, all of a sudden they cannot do anything about it. If they stayed with the original application would the Planning Board and Conservation Board have approved the rezoning?

Mr. Reilly responds that they did not approve of the rezoning for different reasons and would not have approved either application.

Councilman Quinn states that if the Planning Board and Conservation Board are against this project they should allow them to do their job. He states that they should table it or keep the super majority vote.

Mr. Reilly responds that the Town Board has to approve the SEQRA determination as well. Because the Planning Board voted against it they did not make a recommendation on SEQRA. The drainage is a huge issue in this area. Someone called and said that the Engineer said that this would not work. He spoke with Rick Lardo and the interim Town Engineer and they have taken no stance on this. Rick Lardo stated that if they designed a plan, as they put on the drawing, it could help the situation but it will not solve the situation. There is an issue of flooding on Newton Road. When Wetzl built the other project just north of this project the Town knew there was going to be a problem and they petitioned the County to fix that problem but the County has never fixed that problem. If they go forward with this project they would also need the County to fix the existing problem. There is flooding at the bottom of the hill that cannot be completely solved. The County knows it is going to continue to be a problem and is planning to build a berm around their pump station.

Mr. Reilly now presents a memo updating the Town Board on Engineering Department projects and activities as follows:

ARCHITECTURE ENGINEERING PLANNING ENERGY SERVICES CONSTRUCTION MANAGEMENT

**MEMO**

To: Hamburg Town Board
From: Orest Ciolko, PE, Interim Town Engineer
Date: December 14, 2015
RE: Engineering Project Update

The following is an update to the Town Board on Engineering Department projects and activities:

- A. Mt Vernon Sewer District – CIPP Lining**
 - a. Provided United Survey Inc. with notice to proceed with CIPP lining work as noted in their report with the exception of (six) 6 sections of pipe requiring spot repairs. USI will place this work on their schedule for completion in 2016.
 - b. Spot repairs noted above will be completed as part of the Lakeshore Road/Mt Vernon Blvd sewer replacement project and lining work for these pipe segments will be completed in the future.

- B. Mt Vernon Sewer District - Lakeshore Road/Mt Vernon Blvd Sewer Replacement**
 - a. Received detailed information regarding Sanitary Manhole replacement from ECDEP which will allow NCI to complete the design report, design plans and specifications for submittal to ECDEP for design approval and bidding in early 2016.

- C. RR Quiet Zone – Phase 2 – Bayview, Pleasant and Lakeview**
 - a. The Design Report, estimates and Design Plans for the project are being finalized and will be submitted for Town review by the end of December prior to formal design submittal to NYSDOT
 - b. Per direction of the Town Board, Wendel investigated the potential closure of the Bayview Road grade crossing to eliminate the Quiet Zone in its entirety. Based on discussions with GBNRTC officials, they saw no apparent problems with the closure and abandonment of Bayview Road at this at grade crossing but this action will require Town Board, NYSDOT and FRA approval. Based on past experience, the elimination of an at grade crossing may take from 24 to 36 months due to DOT and FRA procedural guidelines and their current backlog.

If you have any questions, do not hesitate to contact me.

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Mr. Reilly then comments that the Town Board is entertaining a rezoning this evening on the agenda for a public mini storage. The applicant said that he has talked to all the neighbors and they are in support of the rezoning. It is an up zoning to industrial.

Supervisor Walters comments that he has a request from some of the businesses over on the industrial portion of Maelou Dr. They are asking that the Town construct a truck turn around at the end of the road. It is a dead end street. The businesses have stated that they are close to the road and there is not much room for the trucks to turn around when they come down the road for deliveries or pick-ups. He had Rick Lardo, Engineer, take a look at it. He responded that the Town does own the right-of-way through to the residential side and does maintain that. They would have to purchase some land from the vacant parcels on the residential portion to extend the road and make the turn around. There would be some expense to the Town and he asks the Town Board if it is something they want to entertain? Should he send this over to Highway to get a review/study started?

Councilman Quinn comments that if the businesses all want this could they maybe put their money together and buy the parcel and make it a private road? He doesn't see how they could entertain it now because of the budget issues.

Supervisor Walters comments that the Town has done improvement districts. This was before he became Supervisor and doesn't know how to start the process. The Legal Department would have to take a look at this. They could create a special district where only those businesses would be taxed to pay for the project. Can a private entity improve a Town road?

Highway Superintendent Best responds yes.

Supervisor Walters comments that is an option and he will take it back to the business owners for a response.

Supervisor Walters comments that a while back the Police Department asked about paving their back parking lot. At the time the Town Board said to hold off until the general bonding went through and then they would be able to pay for it. After the bonding went through Chief Wickett asked if they could release the money for it. However because of the time it takes to get the funding put into the Town account Chief Wickett said he couldn't wait, the weather could turn soon and he was just going to get it done. He is now submitting the bill. He talked to Mary Dosch and she said that there is funding available in the Police Operating Account. This is an \$18,000 expense.

Councilman Quinn comments that he thought they were going to pay for it through Drug Seizure money.

Supervisor Walters responds that Chief Wickett said that he didn't think they could use Drug Seizure money for paving. He is asking Legal to take a second look at that. In the meantime the Police Department does have money left in their operating account.

The Town Board agrees that they should look at using the drug seizure money first before using the money in the operating account.

1.

On a motion of Supervisor Walters, seconded by Councilwoman Potter-Juda, the following resolution was

ADOPTED	Ayes	3	Walters, Quinn, Potter-Juda
	Noes	0	

RESOLVED, that the Town Board move into Executive Session on two legal matters, one personnel matter and a legal matter concerning the Assessing Department.