

TOWN OF HAMBURG

PLANNING BOARD MINUTES

2-10-88

The Town of Hamburg Planning Board met in regular session on Wednesday, February 10th 1988 at the Hamburg Town Hall at 7:00 p.m.

Members attending included: Chairman Richard Crandall, G. Gerald Valgora, Elgin Cary, Steve Strnad, Gerard Koenig, Sandy Carnevale. Others attending were: Dan Gorman, Attorney, George McKnight, & Terry Dubey, Stenographer.

EXCUSED: Dennis Gaughan

Minutes of the meeting of 1-27-88 were approved as amended by Mr. Koenig seconded by Mr. Valgora. Carried.

GASTLE REZONING PETITION - SOUTH CREEK ROAD FROM R-A TO R-1

Applicants had asked to be heard at the next Planning Board meeting on a rezoning petition from R-A to R-1 on South Creek Road. Planning Board members reviewed the reasons why the rezoning recommendation was negative. Reasons are:

1. This would be considered a spot zoning.
2. There are no sewers in the area.
3. With R-1 zoning, it would be difficult to build single family units as set forth in the conditions of an R-1 district. Applicants were advised to follow the variance procedure and ask for an area variance.

PUBLIC HEARING - Deefield Heights Subdivision (across from Torry, Sherburn and Mark Avenue

Secretary Elgin Cary read the following Legal Notice on Deerfield Heights Subdivision:

**LEGAL NOTICE
TOWN OF HAMBURG
PLANNING BOARD**

Notice is hereby given that the Planning Board for the Town of Hamburg will hold a Public Hearing at Town Hall, S-6100 South Park Avenue on the 10th day of February at 8:00 p.m. for the purpose of approving a residential subdivision known as DEERFIELD HEIGHTS SUBDIVISION.

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Hamburg, County of Erie and State of New York being part of Lot 43, Township 9, and Range 7 of the Holland Land Company's Survey, being more particularly described as follows:

Beginning at a point in the west line of Lot 43, being the centerline of McKinley Parkway, 225.00 feet southerly of the north line of Lot 43 as measured along said west line; thence easterly, parallel with the north line of Lot 43, 200.00 feet to a point; thence northerly parallel to the west line of Lot 43 and the centerline of McKinley Parkway, 225.00 feet to the north line

of Lot 43; thence easterly along the north line of Lot 43, 1805.6 feet to a point; thence southerly, at an interior angle of 89° - 32' - 44", 1583.7 feet to a point; thence westerly at an interior angle of 90° - 15' - 49", 873.55 feet to a point; thence northerly at right angles to the last described line 205.65 feet to a point; thence westerly at an exterior angle of 89° - 48' - 13", 1124.75 feet to the centerline of McKinley Parkway, being the west line of Lot 43; thence northerly along the centerline of McKinley Parkway and the west line of Lot 43, 1150.2 feet to the point of beginning, containing 66.3 acres of land more or less.

DATED: January 20, 1988

**RICHARD CRANDALL,
CHAIRMAN**

1-28

PLANNING BOARD

DEERFIELD HEIGHTS SUBDIVISION HEARING (CONTINUED)

Chairman Richard Crandall opened the hearing.

Messrs. Trippi and Bielmeier appeared before the Planning Board with a preliminary subdivision drawing for approximately 100 homes to be located off McKinley Parkway. It is the developer's intent to dedicate approximately 8.2 acres of land for passive recreation or a total of 12% of acreage for open space.

A cultural resource survey has been completed by Ecology and Environment on the 60 acre parcel and no pre-historic or historic evidence was noted on the site. Deerfield Heights Subdivision will not impact any culturally important resources. On vegetation and wildlife habitat, the site does not provide any unique habitat value or support any threatened or endangered species. A berm along McKinley Parkway will be included in a landscaping plan along with additional flora added to the subdivision. A full report is being prepared and will be completed within the next week.

Mr. Norman Kranz, adjacent neighbor on Lewis Drive spoke of drainage problems in the area. He stated concerns of ponding and heavy run-off from winter melt thru spring. Mr. Trippi responded that they will drain away from his property and piping could be a means of diverting drainage to the creek.

Mrs. Ruth Miller of Prospect Avenue spoke about ponding in the area and felt that too much of the woods was being taken for development. She noted that the Town should try to preserve as much woodland as possible and felt 12% was not enough dedicated for conservation purposes.

Mr. Scheelar of Lewis Drive spoke of drainage problems in the area.

Mr. Randy Scheuler of Lewis Drive also spoke of drainage problems and would like to see the woods preserved as much as possible.

Mr. McKnight noted that the only way for the woods to be preserved is to have the Town purchase it. However, there are not enough funds available for that type of conservation and the issue has been discussed with the Town Board but no resolutions were drawn as to how to preserve open space in the Town.

Mrs. Ruth Miller stated that the density of the homes in that area is too much.

Mr. Michael Sendor, of Nussbaumer and Clarke responded that the developer has dedicated land to preserve the woodlands, has placed a deed restriction in the development to preserve as many trees as possible and is trying to accommodate the town as much as is practical.

Chairman Crandall called the hearing to a close. No determination was made on the matter. Discussion to be taken up at the next Planning Board meeting on 2-24-88

2-10-88

BROMPTON HEIGHTS ESTATES - SUBDIVISION HEARING

Secretary Cary read the following Legal Notice on Brompton Heights:

<p style="text-align: center;">LEGAL NOTICE TOWN OF HAMBURG PLANNING BOARD</p> <p>Notice is hereby given that the Planning Board for the Town of Hamburg will hold a Public Hearing at Town Hall, S-6100 South Park Avenue on the 10th day of February 1988 at 8:15 p.m. for the purpose of approving a subdivision known as BROMPTON HEIGHTS, PHASE I.</p> <p>All that tract or parcel of land situate in the Town of Hamburg, County of Erie and State of New York, being part of Lot 48, Township 9, Range 7 of the Holland Land Company's Survey and being part of a certain subdivision filed under Cover Map 925 in the Erie County Clerk's Office bounded and described as follows:</p> <p>Beginning on the east line of Brompton Parkway (or Highland Parkway) at the south line of Skrip subdivision as filed under Cover Map 2303, said south line of Cover Map 2303 also being the north line of Sub Lot 165 as filed under Cover Map 925.</p> <p>Thence east on the south line of Cover Map 2303 a distance of 400.0' to a point.</p> <p>Thence southeast at an interior angle of 117°-05'-36" a distance of 443.81' to a point.</p> <p>Thence south at an interior angle of 152°-45'-27" a distance of 170.0' to a point.</p> <p>Thence west at a right angle a distance of 160.0' to the east line of Brompton Parkway.</p> <p>Thence curving to the northwest on the east line of Brompton Parkway (having a radius of 1,482.68') a distance of 724.08' to the place of beginning containing 3.5420 acres of land.</p> <p>Also that tract or parcel of land bounded and described as follows:</p> <p>Beginning on the east line of Brompton Parkway (or Highland Parkway) a distance of 75.90' southerly as measured on the east line of Brompton Parkway from the southwest corner of the above described parcel.</p> <p>Thence east parallel to the south line of the above described parcel a distance of 230.15' to a point.</p> <p>Thence south at an interior angle of 90°-30'-41" a distance of 200.0' to the south line of Sub Lot 168 as filed under Cover Map 925.</p> <p>Thence west at an interior angle of 89°-29'-19" and on the south line of Sub Lot 168 a distance of 170.0' to the east line of Brompton Parkway.</p> <p>Thence curving to the northwest on the east line of Brompton Parkway</p>	<p>(having a radius of 1,482.68') a distance of 209.54' to the place of beginning containing 0.9067 acres of land.</p> <p>FEB. 1, 1988</p> <p style="text-align: right;">RICHARD CRANDALL, CHAIRMAN PLANNING BOARD</p> <p>2-4</p>
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BROMPTON HEIGHTS SUBDIVISION:

Chairman Crandall declared the hearing open.

Mr. Terry Leavitt appeared with the preliminary for the 9 sublots to be developed on Brompton Parkway. They will be building the same type of home that presently exists on the parkway. The homes will be set back by about 100'.

Mr. Mark Mitskovske of 4732 East Highland parkway noted that there are water problems in the area and the properties do not drain off well. He also stated that the proposed subdivision would be an invasion of their property which has already been infringed upon because of the building of the mall. It was noted that Mr. Mitskovske's property is in the peripheral area and not directly adjacent to the sub-lot in question for hearing.

Letter was also received from Mrs. Karen Stampfer of 4980 Thurston Rd. who stated concerns about drainage.

Chairman Crandall again asked 3 times if anyone wished to speak for or against the subdivision. Hearing no more comments, the hearing was declared closed.

Motion was made by Mr. Valgora, seconded by Mr. Strnad to accept the preliminary as presented with engineering modifications and to proceed to final for filing.

REZONING PETITION OF CARDINAL INDUSTRIES - FAIRFAX PARK APARTMENTS TO REZONE ADJACENT PROPERTY FROM C-2 TO R-3 FOR MULTI-FAMILY HOUSING. (SOUTHWESTERN BLVD.)

Mr. Bill Driggs of Cardinal Industries appeared before the Planning Board on a rezoning petition for 68 additional units of Fairfax Park Apartments which are to be located on an adjacent parcel of property for expansion from C-2 to R-3 zoning. The complex has proved to be quite successful and they are at 100% capacity.

Motion was made by Mr. Koenig, seconded by Mr. Carnevale to forward a favorable recommendation to the Town Board for the rezoning of land from C-2 to R-3 for the following reasons:

1. It is a natural extension with present existing R-3 development.
2. It is in conformance with the Master plan.
3. The property will be used for extension of a successful development. Carried.

WEST-HERR FORD USED CAR CENTER ON CAMP ROAD. (FORMER TOWN & COUNTRY)

Mr. John Wabich of West-Herr Ford appeared before the Planning Board for their proposed used car center which is located in the former Town & Country facility. They would like to park within the first 35' for a display area and will require a variance of 25'.

Motion was made by Mr. Valgora, seconded by Mr. Cary to reject the site plan as presented with a favorable recommendation to the Zoning Board of Appeals. Carried.

Motion was made by Mr. Carnevale, seconded by Mr. Strnad to give conditional approval on the site plan pending approval by the Zoning Board. Carried.

ORCHARD PARK INDUSTRIES (H&H WOOD PRODUCTS) 5600 CAMP ROAD - USE VARIANCE

Mr. Heisler appeared before the Planning Board for site plan review of a wood manufacture of pallets to be located on Camp Road in the former Telephone Company building. A use variance was granted at the Zoning Board of Appeals on 2-3-88.

Motion was made by Mr. Cary, to approve the site plan for the use variance seconded by Mr. Koenig. Carried.

HIGHLAND ACRES - JOHN BOSSE PROPERTY ON BIG TREE ROAD.

Mr. John Bosse appeared before the Planning Board on a proposal for a mobile home park on property which he owns on Big Tree Road. At the present time there are no sewers and no priority has ever been set for sewers in the area. No action can be taken until the sewer issue has been resolved. Applicant was advised to contact Fran Pordum on the issue of sewers. Item to be placed on agenda for work session.

HANK BOISMENU - PHYSICAL FITNESS CENTER - CAMP & NASH ROADS.

The variance for the physical fitness center (on side yard and parking) was approved at the Zoning Board meeting held on 2-3-88. Applicant to be advised that a seal is required for the site plan.

STREET LIGHTING RESOLUTION

In 1978, the Town Board passed a resolution on street lighting. However, it was never put in the subdivision regulations booklet. Engineering to decide what specifications are required. Once language is determined, item should be printed into books.

OTHER MATTERS -

New York State Planning Federation. - New list to be forwarded to Association for newsletter. Dick Crandall to talk with Mike Alspaugh for Western New York group membership.

Motion to adjourn was made by Mr. Strnad, seconded by Mr. Koenig. Carried. Meeting adjourned at 11:00 p.m.

RESPECTFULLY SUBMITTED,


Elgin Cary, Secretary
Planning Board

NEXT MEETING 2-24-88
7:30 p.m.

TOWN OF HAMBURG

S-6100 SOUTH PARK AVENUE • HAMBURG, NEW YORK 14075 • (716) 649-6111



Supervisor
JACK QUINN, JR.

Councilmen
D. MARK CAVALCOLI
JAMES F. CONNOLLY
DANIEL J. HENRY
PATRICK H. HOAK

Town Attorney
VINCENT J. SORRENTINO

Town Clerk
GEORGE DANYLUK

Supt. of Highways
RICHARD A. SMITH

Receiver of Taxes
ROBERT A. MARS

February 12, 1988

TO: Jack Gilbert, Town Engineer

SUBJECT: Street Lighting Resolution

The Street lighting resolution was discussed at the Planning Board meeting of 2-11-88. The board feels that if this is an item that should be in the subdivision regulations, than perhaps Engineering could submit the proper language and requirements for street lighting.

Sincerely,

Richard Crandall

Richard Crandall, Chairman
Town of Hamburg Planning Board

RC:tad

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2-8-88

TO: THE PLANNING BOARD MEMBERS

Attached are two resolutions that were passed on the Town Board level regarding street lighting in subdivisions. Unfortunately, neither of them were ever printed in the Subdivision Regulations booklet. The Engineering Dept. has requested that the Planning Board take a look at this problem again.

ITEM 12 With regard to the proposal from Councilman Edwards pertaining to street lighting in new subdivisions, it was moved by Councilman Edwards, seconded by Councilman Metz:

RESOLVED that, effective immediately, in all new subdivisions where electrical utilities are underground by New York State Public Service Commission mandate, the subdivider shall cause to be installed all street lighting facilities except the luminaire, and all such street lighting facilities shall be included in the public improvement required for final acceptance of the subdivision by the Town Board.

ROLL CALL:	Councilman Metz	voting Aye
	Councilman Schlehr	voting Aye
	Councilman Wicks	voting Aye
	Councilman Edwards	voting Aye
	Supervisor Fallon	voting Aye

Motion carried and the resolution duly adopted.

RESOLVED that, effective immediately, in all new subdivisions where electrical utilities are underground by New York State Public Service Commission mandate, the subdivider shall cause to be installed all street lighting facilities except the lamp, luminaire and cable, and all such street lighting facilities shall be included in the public improvement required for final acceptance of the subdivision by the Town Board.

The effect of this resolution is the developer has the responsibility for furnishing and installing the pole foundation and pole using our Public Improvement Permit process.

*put in
sub. reg. 12
new part in hand
1978
1979*

TOWN OF HAMBURG

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February 11, 1988

New York Planning Federation
301 So. Allen St.
Albany, N. Y. 12208

Gentlemen:

Would you please see to it that the following Planning Board members receive the newsletter.

Mr. Santino Carnevale
4972 Oregon Avenue
Hamburg, New York 14075

Mr. Dennis Gaughan
4942 Springway Lane
Hamburg, New York 14075

Mr. Gerard Koenig
4602 Mile Strip Rd.
Blasdell, New York 14219

Mr. Steve Strnad
5489 Scranton Road
Hamburg, New York 14075

These are new members to the Town of Hamburg Planning Board.

Sincerely,

TOWN OF HAMBURG PLANNING BOARD

Richard Crandall
Richard Crandall, Chairman

TOWN OF HAMBURG

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February 10, 1988

MEMO TO: Planning Board

FROM: Planning Department

SUBJECT: Proposed Fence Company

Mr. Peter Travis called me to say he wants to rent the property located at 3600 Sowles Road at Southwestern for fence sales. He was too late to be put on the agenda. I told him we would be concerned with his display area and customer parking. How much detail do you want him to provide to put him on the 2-24-88 agenda?

Property location map is attached.

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February 8, 1988

MEMO TO: Mr. Steve Doleski

FROM: George McKnight

SUBJECT: Environmental Assessment/Mining
Permit - Tri-Delta Aggregates

Based on our telephone conversation this morning, I have attached for your informal review, a copy of the environmental assessment, the mining plan, and the mine permit application that was sent to Mike Meyers in your Olean office. Tri-Delta is proposing to surface mine approximately 450,000 cubic yards of shale for use in road construction. The application refers to a 60 acre parcel which is the total parcel of which approximately 30 acres will be mined.

In my discussions with the firm I discussed the possibility of re-use of the property after the requested amount of shale is mined. They will rehabilitate the property and continue to develop it as an industrial park. The permit application proposes operating hours until 11 p.m. which I feel is one-two hours later than it should be. Also discussed was having all truck traffic use Route 179 rather than Bayview/Big Tree roads.

My prime objective in the phone call and this memo is to ensure coordination in review of the environmental assessment with the mining permit application. This is the first permit for mining that I have had to deal with since I have been with the Town of Hamburg. I would especially appreciate your guidance regarding the depth of environmental review your office generally requires with this type of project.

Thank you for your help.

Sincerely,

TOWN OF HAMBURG PLANNING DEPT.

George
George McKnight

GM:tad

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February 4, 1988

TO WHOM IT MAY CONCERN:

Please be advised that a Use Variance for Orchard Park Industries, (H&H Wood Products) located at 5600 Camp Road was granted on February 3, 1988 at the Town of Hamburg Zoning Board meeting.

Motion was made by Mr. Strnad, seconded by Mr. Boldt to grant permission for the wood pallet manufacturing business as it fell within the constraints of a use variance. Findings of fact are as follows:

1. The petitioner was able to prove that there is a true hardship which was not self-imposed and that the property is located too close to the road.
2. The property has been for sale for a number of years and has been difficult to market as a retail operation.
3. The type of business that is to be located is for the manufacture of pallets which is borderline to a wood craft or wood working operation.
4. This operation will not change the character of the community that surrounds the property.
5. This business will not be detrimental to the health, welfare and safety of the people in the area but will be an asset to the community.

Sincerely,

TOWN OF HAMBURG BOARD OF
ZONING APPEALS


Paul J. Schlehr, Secretary

PJS:tad



HAMBURG TOWN HIGHWAY DEPT.

● **Mr. Richard A. Smith, 97 Evans St., Hamburg, N.Y. 14075**
Telephone Days: (716) 649-7700 - Nights: 648-5111

Date: February 8, 1988

Subject: Drainage Policy

A telephone survey of other towns in the County of Erie has proved that the roadside, sideyard, and backyard drainage are a common problem to all. Most of the other urban towns follow the same basic procedures that our Highway Department is presently doing. The exceptions are who actually supplies the pipe- all residents pay but some towns deliver pipe and other have residents acquire it. Also some landscape and some do not. Amherst has 4 drainage districts within the town and major off-road drainage is charged to the district. The problem is that none of the districts have enough money to accomplish very much. Some other towns (including Hamburg) have a townwide drainage account that depending on Town Board action may or may not help. I have listed the opinions of our staff and have made an attempt to clarify the problem.

● **CURBED SUBDIVISIONS:**

Example: The curbed subdivisions have taken drainage into consideration and for the most part are trouble free except for extensive maintenance. We use our Vacall Catch-basin / Gutter Cleaning machine to sweep the curb line and vacuum the catch basins to prevent plugging. We can only do each subdivision once a year at the present service level.

PROBLEMS:

A. The residents from time to time fill in the rear yard and sideyard drainage swales (depressed area that directs water away to a catch basin) with topsoil causing backups and flooding. This is an ongoing problem and is very difficult to monitor or police until flooding occurs and the residents call on the town for help. Usually these sideyard and backyard problems are referred to the Town Engineers. In addition to the topsoil residents place sheds, pools, fences, woodpiles, and hedges and cause blockage of the storm system. The only solution as we see it is to force the local residents who eliminated the swales to be held responsible for correcting the situation and not hold the Town responsible.

175th ANNIVERSARY 1812 - 1987

Improved Streets Mean Safer Streets!



Curbed Subdivisions (cont)

B.Problem:A subdivider develops a large parcel of land that fronts on a state, county, or town road. The planning board requires the developer to enclose the drainage systems on the new streets but nothing is required on the older accepted streets. Therefore either the front yard or rear yard of the homes constructed on the perimeter always end up with an open ditch. The residents then call the Highway Department and want it piped in and argue that the other homes within their subdivision are filled and the Town should do it free of charge. We then explain if you buy the pipe the town will install it as our schedule permits. A possible solution to this problem would be to have the developer be responsible for enclosing all drainage at the time of construction, the same as the have to install sidewalks.

C.Problem: The small underdrains that constantly back up. This could be corrected by installing a 12 inch or larger perforated drain on each side of the street similar to what we are installing on the uncurbed subdivision streets. We are presently installing bubblers at the curb for the residents who have a problem. We install these (100 per year) rather than totally replace the underdrain system.

In the curbed subdivision the above problem could be addressed relatively easier at the time of construction. The destruction of the drainage systems by residents after final construction should be solved by making the residents correct it themselves through enforcement by engineering or building inspection.

UNCURBED SUBDIVISIONS

Example:A street has been accepted by the town and it has no drainage systems on either side except open ditches or ditches that have been filled in by the resident, or piped in by the town highway department. Now a person gets a permit to build a home on a vacant lot on that street and then realises that an open ditch runs across the entire frontage. They then call the Highway Dept. to place a driveway pipe so they can access the property and of course they want it as soon as possible. We write up a work order, the resident purchases the required pipe from a private vendor or the town and the Highway Dept. sets the pipe

according to elevations set by the Town engineering dept. If the existing ditchline is at the correct grade and the pipes on either side of the proposed lot are the correct size -NO PROBLEM. Usually the ditchline is not to grade and the adjacent driveway pipes are the wrong size and material causing the Highway Dept. to redo the entire street. As we start many residents may have to buy a new pipe or want to pipe in the entire frontage while we are there. This is where we run into a scheduling problem. A job that should take us about 1 hour then becomes a 3-6 week project and the people on our existing waiting list become very aggravated when we tell them they have to wait.

A typical job on a 100 foot lot: We will excavate, install, connect downspouts, do driveway, backfill, and landscape. Approximate Time 10 hours.

100 foot of pipe with connectors:	\$525.00	by owner
backfill, topsoil, seed:	\$100.00	by town
Connection of downspout drain:	\$ 25.00	by town
Blacktop approach :	\$150.00	by town
Engineering, labor, equipment :	\$500.00	by town
Share of catchbasin cost-----	\$135.00	by town
	\$1410.00	

Every 300 feet a catchbasin is built by town at a cost of \$400.00. Included in this figure is an additional \$1.73 per foot charged to the resident to offset some of the towns costs. Therefore about \$173.00 can be subtracted along with the labor changing the town's cost to \$237.00 and the residents cost at \$525.00.

Some towns landscape as we do and some do not. Some supply pipe and some do not. This is a service that will eventually catch up on the drainage problems in the uncurbed subdivisions. The front yard system usually collects the storm water from the downspouts, sump pumps, side and backyards. Presently the Town via local taxes, state, or federal grants, constructs the major drains through a subdivision and the residents connect to it with the assistance of the Town Highway Dept.

OPEN STREAMS AND FIELD DITCHES

Example: The roadside or backyard storm drains enter a stream or field ditch that is plugged and it is on private property. The Highway Departments - State, County, or Town are only responsible for the area within the accepted right of ways. The State Highway Law allows the Town Highway Dept. to enter these lands if it affects the highway and approval is given by the Town Board and funded with non-highway dollars. The problem is where do we get the money and to what extent do we want to get involved????

Additional drainage policy by Highway Supt.:

Where our department creates or has an existing roadside ditch that is over 3 feet deep and constitutes a safety hazard the town supplies the pipe and corrects the hazard if money is available in the Highway accounts or the A8540 townwide drainage accounts.

When a large stream or ditch is causing a problem for more than 4 residents we secure permission slips or an easement from the owners and clean the system depending again on funds available.

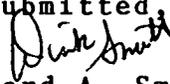
When a backyard system is blocked, collapsed, or filled in, and it affects more than 4 residents we will correct the problem providing that we have permission, an easement, and the available money.

When a resident has a large ditch along the side or rear of his property and the resident is willing to fund the pipe we will install it for them. (low priority)

The highway department presently installs about 16,000 feet of pipe per year and cleans about 10,000 feet of open ditches. These are funded through a variety of ways as previously mentioned and we have a backlog of about a years work on our waiting list.

DRAINAGE, IN MY OPINION, IS THE NUMBER 1 PROBLEM IN TOWN and WE CAN ONLY DO AS MUCH AS WE HAVE MANPOWER, EQUIPMENT, AND MONEY FOR ! ! !

Briefly submitted,


Supt. Richard A. Smith

Fair Payment on Land

LAND THAT CAN'T be used is property robbed of its value. When a government puts such severe restrictions on land that it is in effect made useless, the owner should get something in payment.

The U.S. Supreme Court has upheld this principle in its ruling in a California case. After buildings at a church-owned campground were destroyed by a fire and flood, the state imposed an ordinance saying there could be no new construction or reconstruction anywhere in the region. The church sued.

The Supreme Court has ruled rightly that the church is entitled to some payment. No matter how noble the purpose of the state's limitation on new development, the land had become worthless to the church.

The decision follows the constitutional principle that if a government takes a private owner's land, the landowner is entitled to "just compensation." Until now the provision has been applied mainly in cases where the public takes ownership, as when land is condemned for use as a highway or park.

The court's expansion of the principle makes sense. When the owner retains the land but is denied the right to use it, that is kind of "taking," as the court said, and the right to just compensation should be applied.

The decision will have wide implications in New York State. Landowners within the Adirondack Park indicated they may sue over restrictive zoning there, and challenges to the state's wetlands program may be based on the decision. The dissenting justices in the

6-3 ruling said they fear a litigation explosion and a future hesitancy of governments to regulate land use. But the court left room for a sensible interpretation. If the principle is applied with rationality, it will not do undue harm. And the guidelines for such an interpretation are in the decision.

The court said its ruling applies where "all" use of land is taken away by a state action. That indicates that if there is still some reasonable way to use the land (not necessarily the most profitable way), there need be no compensation. Ordinary zoning, which restricts development but does not render land useless, should not be subject to new costs under the decision.

Regulations on land use in the interest of health, safety and environmental protection are also vital, and creation of special districts is often desirable for some special public use. But where such actions leave a property owner with land that has no use, the owner is entitled to compensation.

A Rutgers University professor of urban planning, quoted by the New York Times, saw a healthy balance in the ruling. The professor, Jerome G. Rose, said the decision means "that if zoning starts to get so harsh, onerous and restrictive that it can be characterized as confiscatory, then compensation must be made."

The full effects of the ruling won't be felt until further court decisions come in specific cases. The courts must show common sense in these subsequent cases. But the property owner's basic rights have been properly upheld.



and landed just outside the Hotel Ambasciatori, from which apparently they were launched.

was hurled by two men who fled from the area, which is a half-mile from the U.S. Embassy.

ing making all air travel to and from countries that refuse to coop-

See Summit

Officers who entered a fifth-floor

One statement to be included in a

Page A-2, Column 4

BUFFALO NEWS FRONT PAGE 6-9-87

Supreme Court Extends Concept Of 'Just Compensation' for Land

Associated Press

WASHINGTON — The Supreme Court, in a case of importance to local zoning officials, ruled today that property owners must be compensated when new restrictions are placed, even temporarily, on the use of their land.

By a 6-3 vote, the court said the "just compensation" required by the Constitution's Fifth Amendment for any "taking" of private property for public use applies to zoning laws or other regulations that impose new limits on a property owner's use of land.

"Temporary takings which deny a landowner all use of his property are not different in kind

from permanent takings, for which the Constitution clearly requires compensation," Chief Justice William H. Rehnquist wrote for the majority.

Four other times since 1981 the high court has tried to resolve the property-rights issue.

Each time, the justices backed away from cases granted review after finding procedural problems.

The decision was sparked by a California dispute in which the First English Evangelical Lutheran Church is seeking compensation from Los Angeles County.

But the ruling did not resolve that particular dispute, sending it back to the California state courts.

The Glendale church used to operate a camp, called Lutherglenn, on 21 acres it owns in the mountains north of Los Angeles.

Forest fires in the summer of 1977 burned off much of the vegetation at the camp, and heavy rains the following year caused flooding that leveled the camp's buildings.

Los Angeles County subsequently enacted an ordinance that effectively prohibited reconstruction of the buildings destroyed.

State courts threw out the church's lawsuit against the county after seemingly assuming that the flood-plain regulation was a "taking" and ruling that California law denies any compensation.

Court Extends Compensation For Landowners

From News Wire Services

WASHINGTON — In a major property-rights decision, the Supreme Court ruled Tuesday that landowners must be compensated when government regulations bar them, even temporarily, from using their property.

The court, by a 6-3 vote, said regulations such as zoning ordinances that impose new limits on an owner's use of land may amount to a "taking" for which the Constitution requires "just compensation."

And the court said that compensation may be required even if the "taking" is not permanent.

The decision in a case from California represents a clear victory for landowners and the real estate and home building industries. It was a setback for state and local zoning.

One key question the decision left unanswered is whether a local government's decision to "downzone" property — from commercial to residential or to require larger lot sizes for homes, for example — ever can amount to a "taking" that requires compensation. Another unresolved question is whether compensation ever may be required for regulations imposed for public safety.

The Constitution's Fifth Amendment says "private property (shall not) be taken for public use without just compensation."

A "taking" most often has meant condemnation — private land being bought by the government for public uses. But in recent years, courts have seemed more willing to recognize that some land-use regulations can have the same effect as public ownership.

"Temporary takings which ... deny a landowner all use of his property are not different in kind from permanent takings, for which the Constitution clearly requires compensation," Chief Justice William H. Rehnquist wrote for the majority.

"We merely hold that where the government's activities have already worked a taking of all use of property, no subsequent action can relieve it of the duty to provide compensation for the period during which the taking was effective."

Rehnquist was joined in his ruling by Justices William Brennan, Byron White, Thurgood Marshall, Lewis Powell and Antonin Scalia.

In dissent, Justice John Paul Stevens, joined by Justice Harry Blackmun and Sandra Day O'Connor, said the ruling will "generate a great deal of litigation."

"Cautious local officials and land-use planners may avoid taking any action that might later be challenged and thus give rise to a damage action," Stevens said. "Much important regulation will never be enacted, even perhaps in the health and safety areas."

The decision made clear that once some court has found that an owner's land was "taken" by a regulation, government officials may amend the regulation, withdraw it or buy the property. But whatever the government does, it will have to compensate the owner for the time between the regulation's effect and the finding that it was a taking.

The California dispute stems from an attempt by the First English Evangelical Lutheran Church of Glendale to collect compensation from Los Angeles County for a campground purchased in 1957 by the church.

Forest fires in 1977 burned off much of the vegetation, and in 1978 a flood destroyed buildings at the campground, prompting the county to adopt a temporary ordinance prohibiting construction or reconstruction of any building in the region.

The church filed suit alleging that the ordinance kept it from being able to use its property and seeking to recover damages.

Tuesday's decision said California law cannot deny compensation for such takings, but returned the case to state courts for study.

TOWN OF HAMBURG

S-6100 SOUTH PARK AVENUE • HAMBURG, NEW YORK 14075 • (716) 649-6111



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Town Attorney
VINCENT J. SORRENTINO

Town Clerk
GEORGE DANYLUK

Supt. of Highways
RICHARD A. SMITH

Receiver of Taxes
ROBERT A. MARS

February 9, 1988

To: Planning Board

Re: Concept Plan Proposed Multi Family Residence Dev. JV Land & Dev. Co.
Revised Parking 7 Dimensional Plan Dated 4/3/85.
Plan Job #810398-1A for S.3055 McKinley Pkwy.

These two buildings, a seven & a four unit apartment complex (townhouses) were finally approved by the Zoning Board of Appeals on March 1, 1983. The only variance that was required was five foot on the north side and the south side of the seven unit apartment building, plus a 96 square foot area per unit was required.

Extensions have been granted since that date. The building permit was finally issued on January 5, 1988.

I gave my comments to the Site Plan Review at that time, if for some reason they are missing I would still recommend that more elevations are placed on the plan for the elevations by the driveway and the areas where the drainage would run. We know that it runs from west to east to Smoke's Creek which is to the east of this property. I would also like to see where they are going to hook into the sanitary sewer, I have a good idea but I would like them to tell me.

On the existing Erie County Water main they should show the distance closest to the fire hydrant. Some type of curbing should be placed around the driveway to stop cars from running off of it. As you can see it does descend slowly to the rear.

I have another case in court concerning Mr. Bosse, violation on Rt.5 between Fairway & Shoreham Drive. I know that you mentioned before that you were not concerned with people filling in their land, but in many situations like this as in the past it results in drainage problems. Anything that you can do to expedite this solution would be appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Lauchert".

John J. Lauchert, C.P.C.A.

JJL/kmd

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January 28, 1988

TO: JOHN J. LAUCHERT
BUILDING INSPECTOR - TOWN OF HAMBURG

SUBJECT: Topsoil on property to the south of Wegman's

I have advised the Planning Board that it is not within the jurisdiction of the board to involve itself in the removal of topsoil in this case, or in similar cases. This is a matter solely for court action.

Sincerely,


DANIEL GORMAN, ESQ.
PLANNING BOARD ATTORNEY