

Town of Hamburg Planning Board  
Meeting - February 18, 1998  
Actions Taken

Scoping Session for  
Brierwood Sr. Ctr.  
E. Burke

Tabled for determination of legal  
standpoint and formal procedure  
standpoint. No scoping completed.

Sprint Spectrum  
Tree Farm Site  
Harris Beach & Wilcox

Tabled to March 18, 1998

3 lot subdivision  
Cary Subdivision  
Near 5006 Bayview Road

Preliminary approved.

Richwood Acres  
Donato Bldrs.  
McKinley & Fairgrounds

Concept approval granted.

Don Howe  
Learn & Play Day Care Ctr.  
4001 Legion Drive

Special Use Permit to be held  
March 4, 1998

Swiss Chalet Restaurant  
McKinley & S. Western

Drawing on retention basin approved  
dated 2-16-98

**Town of Hamburg Planning Board  
Meeting - February 18, 1998**

The Town of Hamburg Planning Board met in regular session at 7:00 p.m. in the Public Meeting Room of Hamburg Town Hall. Those attending included: Chairman Richard Crandall, Vice-Chairman David Phillips, Secretary Gerard Koenig, Paul Eustace, Don Fitzpatrick, Dick Pohlman. Others attending included: Councilman Mark Cavalcoli, Rick Lardo, Don McKenna, Attorney, Drew Reilly, Rich Whipple, & Terry Dubey, Stenographer. Excused: S. Ganey

**Scoping Session for Brierwood Sr. Ctr. - E. Burke Developer**

Chairman Crandall informed the group that it is time to begin the Scoping Session for the Brierwood Sr. Ctr. The public will have an opportunity for input, which will be at the tail end of the session. This is an opportunity for the Planning Board and the agencies involved to compile a scoping list of potential problem areas and items that should be addressed in the Impact Statement. Mr. Reilly from Wendel will be handling the session. I would like this to go as smoothly as possible. It should be informal but orderly in order to provide a thorough document.

Mr. Robert Walsh, Attorney for Mr. Ed Burke noted that this development is in progress and I was reviewing the board's decision to request a SEIS and I submit that there is no legal basis for the board to proceed. There is a misconception as to the standard. If you look at the requirements for an SEIS of 617.9, it requires that the lead agency may require a supplemental EIS limited to several significant, adverse conditions that were not addressed in the EIS. To give the board some framework, the project that is being considered now is just a change in use from commercial to a residential 3 use. We are still talking development, traffic and the change when the board approved the commercial portion. Most of the overall PUD when it was first approved under the EIS, consisted of 390 acres. Since that time 20 acres have been added, and the whole PUD is 410 acres. The acreage for this project is 10 acres, which is 2.5% of the overall project. If you look at the magnitude upon its face, it is insignificant. The fact that we are in a PUD which has set up variable uses and an R-3 being brought to the board, there is a situation when the PUD was put in place by the legislative body of the Town Board, it appears that the proper blend was R-3. The other relevant information that the board should consider is the fact that the school issue was not addressed. That is not true. This was addressed from 10 years ago; & it was determined that the absorption would have no impact on the school systems whatsoever. We are talking about senior housing, which by definition should not impact the school system. The green space was considered and there were pockets of green space provided. There will be more green space on this project as opposed to the other project. The drainage was adequately addressed by us. All drainage was looked at in the original EIS.

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On the character of the community, I submit that when the Town Board created the PUD, we looked at what would be involved with this PUD and did consider R-3 housing. We have everything from single family homes, up to apartments, with a healthy lifestyle of the golf course and different amenities over there. We now have a situation with a healthy life style to transition from a single family home, to a Townhome, to a condominium, or other single family housing. This is a transitional lifestyle. The other thing that you have to consider is that the board approved the initial EIS and took a hard look at the factors for the overall concept plan. At that point in time the board approved the concept with 944 living units, which is roughly a density of 2.5 per acre. The full build out would create 340 units. This is a reduction in density from the original EIS of 100 units, bringing the density down to 2.0 per acre. What was initially contemplated, did not take place. The intial documentation and the EAF that was submitted, the developer considered 7.5 acres within the whole complex. We have added a piece of property known as Old Tyme Village. In 1992, the question was raised about a Supplemental EIS & the board approved supplemental reports which was satisfactory for that type of change. That was more of a significant change. This is just a change of use. Rather than do the SEQOR process, which isn't necessary, we should follow the procedure that was followed in 1992 for a change of use. The Commercial property is still the same size, but there is a different concept. The developer has adjusted to different things for the circumstances. Representations to the board and the community and the homeowners has not changed. The problem that we are seeing now is that commercial properties are soft so it may not come in now. There is a need for senior housing. Before we go down the SEQOR path, I would ask the board for a legal determination as to the requisite basis at this time and to reconsider your decision. In my opinion, I don't feel that the board has identified specific environmental impact on this type of project.

Chairman Crandall responded that the need for senior citizen living is not the issue. As far as the rest of it, this board, together with legal advice and professional advice, not to underestimate the lawyers involved, have more credibility with our professional consultant. We have been advised to follow the SEQOR process. Based on the advice of our consultant and the information that this board has gone thru, we found this is the proper way to proceed. As far as I am concerned, & as far as the specifics, some of the figures you cited are questionable based on our review. I don't feel it is appropriate to start getting into an argument over figures. Some of our research shows that some figures are different. I feel that we are helping you by going thru this by addressing the questions here tonight and sometime in the future rather than someone challenging us, and we plan to do this thoroughly. Back during the course of the development, the question was raised a couple of times. There were some mistakes made.

We have been advised by our consultant that we should do this thoroughly. That is what our intention is.

Mr. Reilly noted that an SEIS is perfectly set up and the reason why we should do one. The idea of approveable use has nothing to do with it. A PUD is not a open check book for all allowable uses. That is a misunderstanding. If the Town had done this, you would be be in front of the Town Board as the concept plan is the only thing allowed. This project was done at the Planning Board level. They came with a proposed concept and an EIS. We agree that the impacts may be abused. Downstate, almost every project that came before us, they positive neg'd everything because they abused the word "may." In this case, the board listened for 3 months to the issues that were brought up by the public. We thought there were limited issues and we outlined the issues. In fact, 2 of the issues, through scoping, could be eliminated. The other 3 issues we stand behind and need clarification thru an SEIS. The nice part of an SEIS, that without doing SEQR as a part 3, you take the public out of the process. Since this is a process that involves input, we put the public back in. It's not a reason for stretching this out. The whole process can be done in a precise manner. This document could be 30 pages in length. I spoke with the DEC and the DOT and they could not be here tonight but gave me their input. Mr. Doleski agrees that this is a perfect way to do this. We will keep our comments to those issues that are caused by this change of use. That could be one issue relating to drainage. Back in 1990, the original EIS did not fall under the State SPEDES law. Since this project falls under that, it needs to be addressed in an SEIS. The DOT gave me input that they stand behind their request for a TIS and it could be incorporated into the EIS. The DOT helped define what is being looked for.

Attorney Walsh noted that he does not feel there is a basis to do an SEIS and would like some legal research done on this matter.

Mr. Crandall noted that a public hearing has been set up for a scoping session. I take offense that the decision was made by Mr. Reilly. Mr. Reilly has a good interpretation of this process based upon the fact that he did not understand our history as it relates to Brierwood was put into place years ago and somewhat questionably. There is no Town Board member that remembers what was done. I have confidence in what we have done. If we are wrong, so be it. Right now tonight, unless someone tells me to back off, we will proceed.

Mr. Reilly noted that we are trying to move this project along and have set up the scoping. Apparently, we are in error as the applicant never submitted a draft scope and therefore we cannot

have this meeting until one is submitted. The document can be used for public input from a scoping standpoint. We need this for review. We were trying to expedite this matter and didn't realize that you were taking the tract like this. I spoke to Mr. Burke a couple of weeks ago and he was going to challenge the idea of the impact statement. I guess we are going to proceed. Otherwise, we will hold the project up another month in research of whether you wish to do a SEIS or not. It is up to this board. I have an agenda to update the project. I thought the information I sent would be helpful in setting up his scoping document. We listed 5 reasons for the positive dec. In 1992, the board decided not to do an SEIS but additional studies. There was also a challenge with the Walmart project. Anything we do is subject to challenge. We have to make decisions for the best and go forward. It will now be up to the board tonight and we can move on, but since this is a legal issue, it will be up to Mr. McKenna.

Mr. McKenna noted that this appears to be a procedural point with Mr. Walsh and his opinion. I don't have the right to decide the legal question tonight. All we can do is make note of Mr. Walsh's objection and go on.

Mr. Reilly noted that he would like to use a part of this meeting to help scope out the document and our interpretation on those issues which have been presented. We have to wait formally for the applicant to submit and we may have to schedule another session.

Chairman Crandall responded that he does not want to go thru this again. There are people who have come expecting a scoping session and that is what the board came expecting. Unless someone says that we cannot proceed or in violation, I want to go forward. I have reviewed the matter with Mr. Reilly and Mr. Werthman, who is present this evening.

Mr. Paul Werthman, board member of the Brierwood Homeowners Assoc. noted that he disagrees with Mr. Walsh. I am taken aback that the Planning Board issued a letter to the developer. It appears that some decisions have already been made with regard to the scope. The scoping session is supposed to be an open forum led by the developer to establish the scope of the SEIS and what it is supposed to be. I am concerned about the procedural issues and that there has been correspondence with the Town suggesting what should or should not be in the scoping document. I thought we were supposed to be here to decide. An SEIS is not required if there is a replacement of facilities in kind. This is not an in-kind replacement. It does affect the drainage, traffic and we feel the board is taking the correct path in requiring an SEIS. Mr. Werthman then asked about the letter that was sent to Mr. Burke.

Drew Reilly responded that at the end of the last meeting, I was asked to list the reasons for the Positive Dec. Five reasons

were listed. Mr. Burke asked for a letter to explain what we were doing and why and the explanation of my interpretation of the SEQR and then a follow-up of those reasons as a summary. This was done at the end of the meeting at the request of the applicant. That was the purpose of the letter and members of the Planning Board were copied as well as Councilman Cavalcoli & the Planning Board Attorney. The public can ask for an interested agency status that can be mailed out. As to proceeding tonight, Mr. Walsh is eluding to the fact that we have gone outside the SEQR law. Scoping is to generate information about the scope of an environmental case. I would like to proceed as there are people here tonight. Public scoping is not mandatory but we thought that since there were so many interested people, we would keep it out in the open. My suggestion is to go forward. Mr. Walsh has noted that we have made a minor procedural error. That's why he wants to keep it out of the SEQR process.

Mr. David Phillips noted that we as a Planning Board looked at the original concept and felt there were significant differences than what we approved. That is why as a board we need to do this. Mr. Walsh should understand why we are doing this. We as a board need further input.

Mr. Pohlman stated that if this is optional, how could we be in violation of doing something that is optional. If this is a mandatory item, how could we be in violation? If we stop right now, what would happen? Response: The project cannot proceed unless the applicant agrees to do an impact statement.

Mr. Walsh noted that the legal framework is not there. Therefore we do not need to go thru the SEQR process. We have no problem in anticipating what the public concerns are. It is the structure and framework of the SEQR process which will be difficult to follow. There was a development before and there is going to be one now, but it is 2% of the total acreage. All of these items were addressed in 1992.

Councilman Cavalcoli interjected that he is not a voting member of the board. As a representative of the Town Board we are directly involved with this PUD. I am hearing that there is a legal question and whether the SEIS should be done. I am hearing residents say that they didn't receive material to review before the scoping session. I have heard you say that you do not wish to do this 2 or 3 times with the same information. I am wondering if it might be best to postpone and review the legal stance so that the board has direction to move. At the same time, that allows Mr. Reilly and your staff to get the documents to the public to review them rather than having the scoping session.

Chairman Crandall responded that every time we hold one of these, it costs the taxpayers money. If we go out and start all over again, there will be additional expense. Who is responsible for that? If we are right and they are wrong, they have created an

undue expense. If we are wrong, we have to own up to it.

Councilman Cavalcoli stated that by delaying this, it would give Mr. McKenna a chance to submit his interpretation from a legal standpoint and does the SEQR allow for the applicant to bear those costs?

Response: Mr. Reilly stated that this would be the responsibility of the applicant.

Chairman Crandall stated that we issued a legal notice in several publications, we have mailed notices to agencies. It is not the Planning Board's fault that the developer has not submitted a draft scope. We could have postponed it earlier and not have the disadvantage to the public. It is an inconvenience to the public, to the Town, and the Planning Board. We proceeded in good faith. The only thing that we are guilty of is that we tried to make this an open session so that it was done above board so that everyone has their say. That is the only thing we have done wrong.

Mr. Burke noted that he was never asked to provide a scoping document.

Mr. Crandall responded that on several occasions the applicant was asked to provide a draft scoping list. Mr. Burke responded that he has copies of all the meeting minutes and it does not say that.

Mr. Reilly stated that if you recall the procedure on Tinseltown, we tried to keep things moving by scheduling the scoping session. We were in hopes based on my letter, that this would help in the preparation of the scoping document. I was hoping I was going to get something that I could present and hand out.

Mr. Pohlman noted that we acted in good faith and it is unfair to expect a legal opinion in 5 minutes. This has caught the Attorney off guard. He needs to look at the statute and research the matter. The question is which trail do we take. Some trail has to be taken.

Mr. Reilly again reiterated that there are 5 impacts that reflect significant change. I asked the board what issues were involved with environmental impact. The board did the best they could. I followed up with a letter to Mr. Burke. I took the meeting minutes and tried to condense what is required. The scope is here. Traffic and drainage concerns are very straight forward. The only thing that we received from the DEC was the requirement relating to the SPEDES law. The other issues were schools and green space. There is some argument as to what was included in the original EIS. We can't just say present a document. What options are to be considered? The applicant can still present his challenge. At this point we made the decision to proceed. It has been advertised. We missed one technical issue by not having a document.

Chairman Crandall noted that perhaps the item should be tabled. I feel we have acted in good faith. Mr. Phillips then read the minutes from January 21st, Page 16, which reads: Motion was made by Mr. Phillips, seconded by Mr. Eustace to require an SEIS on the apartment complex for the senior housing project. This will require a scoping session of which the DOT is to be included. Carried. Mr. Burke asked that the issues be identified. He is also to get a packet of information ready for Traffic Safety and Engineering. I think we are aware of what an EIS is and what scoping is. I don't understand how you didn't know we were having a scoping session.

Chairman Crandall noted that the question he is asking is whether he was to prepare a scoping document? It is a matter of misunderstanding. Therefore, we will ask Attorney McKenna to review this matter from a legal standpoint. Mr. Burke's argument will be that he submitted additional information so that the board can proceed with site plan review.

Mr. Walsh responded that this is a very small portion of the project. Drainage is site specific and the DOT noted that they will accept an updated traffic report. We feel this project doesn't need an SEIS.

Chairman Crandall noted that if this is tabled, do we have authority to engage the services of Attorney McKenna to review this from a legal standpoint. (This question was asked of Councilman Cavalcoli).

Councilman Cavalcoli responded that if this is the position the board takes, I would certainly see that those requirements are met. The bigger question is whether the public has received the proper information to proceed with the scoping session. The separate issue of whether it is legal or not, it wouldn't seem that this would be a costly process for McKenna. Is it fair to the public to proceed? I think that what the board has done is clear that it is the intent to follow the proper procedures to assist Mr. Burke and the development and I feel you may have erred on the side of assisting everyone. I don't think any harm has been done to the public but I question whether it is fair to the public.

Chairman Crandall noted that there is a procedural problem and a legal problem. If we find that by delaying it a month, that we have addressed the procedural question that doesn't preclude Mr. Walsh from coming in and saying the same thing. If we address one we should address both. If we are wrong, we will change our procedure. If we are right, we will proceed.

Mr. Cavalcoli noted that if it is found that it is not required there would be no need for a scoping session. Therefore, we should identify the legal issue first, and then the procedural.

Motion was made by Mr. Pohlman to **Table** this item for a determination of the legal standpoint and from the procedural standpoint, seconded by Mr. Phillips. Carried. The Planning Board will not set another session until the legal issue is clarified.

Mr. Robert Vogel of 33 Pinegrove Park is to receive a copy of the letter that was sent to Mr. Burke.

Mr. Joseph DiCenzo of 133 Madison Ave. Lackawanna (14218) also would like to be notified of future correspondence.

**Sprint Spectrum Tree Farm Site -**

Ms. Maureen Elwell and Karin Stamy appeared before the Planning Board on a proposed sketch for the tree farm site to be located near the Nike base for a communications tower. Board members noted that there should be an 8' fence with no barbed wire.

Councilman Cavalcoli stated that on the alienation issue, they have received a document from Albany identifying the project with bill numbers. He plans on passing a resolution on Monday. Then on Tuesday all legal copies will be forwarded to the State Legislature for action as quickly as possible. Mr. Cavalcoli also asked Ms. Elwell about the FAA status? Response: She will check into it.

The issue as to who signs the Environmental Assessment Form was then raised. After considerable discussion, it was noted that the Planning Director should sign.

Motion was made by Mr. Phillips, seconded by Mr. Pohlman to direct the Planning Director to sign the Environmental Assessment Form. Carried. Site plan review is to continue on the sketch plan. There are no comments as yet on this matter.

Motion was made by Mr. Pohlman, seconded by Mr. Fitzpatrick to put Sprint on the March agenda. Carried.

**3 Lot Subdivision known as Cary Subdivision - near S5006 Bayview**

Secretary Koenig read the following Legal Notice of Public Hearing:

**TOWN OF HAMBURG  
PLANNING BOARD  
LEGAL NOTICE  
FEBRUARY 18, 1998**

Notice is hereby given that the Planning Board of the Town of Hamburg will conduct a Public Hearing for a 3 lot subdivision known as Cary Subdivision to be located near S5006 Bayview Road on February 18, 1998 at 8:30 p.m. for a single family dwelling.

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 Number Fifty-four (54), Township nine (9), Range seven (7) of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the point of intersection of the east line of the Erie Railroad Company's lands with the center line of the Bay View Road; thence southerly along the east line of Erie Railroad Company's lands to the center of Sowle Road; thence easterly along the center of Sowle Road to the center of the Bay View Road; thence northwesterly along the center of Bay View Road to the point of beginning.

SUBJECT to easements, restrictions and rights-of-way of record, if any.

THIS PROPERTY is not encumbered by a Credit Line Mortgage.

Feb. 5, 1998

Richard Crandall, Chairman  
Gerard Koenig, Secretary  
Planning Board

**Cary Subdivision (Continued)**

The contractor appeared with the applicant stating that his mother would like to build a home next to his on Bayview Road. There will be one single family unit on the parcel and the remaining parcel will be left undeveloped.

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

**Engineering:** 1. Sanitary sewer and water service are available for S.L. 2 and for the portion of S.L. 1 which fronts along Bayview Rd. adjacent to the railroad right-of-way. We recommend that the map cover be waived.

Motion was made by Mr. Pohlman, seconded by Mr. Eustace to approve the preliminary, issue a Negative Declaration, waive the filing of a map cover. Carried.

**Richwood Acres - Donato Builders**

Mr. Cliff Krumm of Pratt & Huth appeared on behalf of Donato Bldrs. on a sketch plan for Richwood Acres. A topo has been done on the site, to determine the land layout and adjustments were. At the last meeting two sketches were presented on this project.

Mr. Reilly explained that there was a previously approved concept plan for a layout of the subdivision. Subsequently, there is a new applicant on the project. Mr. Donato presented two sketches for this application. The Town Engineer's office prefers the option of not having a tie out to McKinley. The Planning Board at the work session went with Sketch 1 with the tie to McKinley. The Town Engineer likes the other plan. This plan is less dense and is designed better to conform with the existing terrain. There is a natural detention basin and you can see that we have preserved more trees than the previous plan. We did have a meeting with the Attorney, Jay Pohlman and the homeowners. We did agree to save certain trees in the back so that there would be more preservation. There is a note on the drawing to reflect the preservation areas. However, if we have to abide with the backyard drainage requirement, some trees may be affected. On S.L. 66-67-68, there will be a line of spruce trees. There is a small parcel on the back belonging to Mr. & Mrs. Gross. It is my understanding that we will swap a large parcel in back for a little parcel to meet the Town's radius.

Chairman Crandall asked if we heard anything from Jay Pohlman? Mr. Reilly responded that Mrs. Schalmo attended the Work Session and that the applicant agreed to go back to the Tie thru.

from McKinley.

Mr. Krumm reiterated that the neighbor's are more agreeable to this sketch. It will take the pressure off of Quinby and Fairgrounds. Nothing has been done on the signal issue with Erie County as yet. We have not approached them as yet.

Motion was made by Mr. Phillips, seconded by Mr. Pohlman to grant conceptual approval on this sketch plan. Traffic Safety Board, Recreation, and Jay Pohlman are also to be contacted on this matter. Carried.

**Engineering Comments are as follows:**

The following are review comments on Sketch Plan No. 1 dated November 1997, which was determined to be favored by the Planning Board at the 2/4/98 Work Session:

1. The right-of-way width for the proposed road in the southeast area of the site should be shown on the plan.
2. The radius of road centerlines are to be dimensioned.
3. The radius of the proposed cul-de-sacs are to be shown on the plan.
4. Storm water detention facilities will be required for the site, as well as appropriate arrangements for maintenance of the facilities. The two lakes shown on the plan are not acceptable to this office.
5. Any proposed berms or landscape buffers are to be shown on the plan.
6. The previously submitted traffic study performed by EMS Consulting for this project was never accepted. Erie County-Highways has previously stated their opposition to any median opening on McKinley Parkway as shown in Sketch No. 1. It is also our understanding that the Town Traffic Safety Board is not in favor of any road connection into McKinley Pkwy. Based on this, it is suggested that the proposed road connection to McKinley Pkwy. be eliminated, in favor of the developer's alternative plans to end the road in a cul-de-sac. While this would necessitate the construction of a second Fairgrounds Road connection to the easterly portion of the subdivision for access purposes, it may also create additional building lots for the developer.
7. If the suggestion presented in Item (6) above is implemented, it would result in all subdivision access being by way of Fairgrounds Road. This would direct most of the subdivision traffic desiring to use McKinley Pkwy. to the intersection of

McKinley Pkwy. and Quinby Drive, which would provide additional justification for the installation of a traffic signal at this location. At the 1/21/98 Planning Board meeting, the developer was directed to contact Erie County/Highways in this regard. The developer should be required to contribute at least a portion of the cost of the signal installation, unless the County and/or the Erie County Agricultural Society agree to fund the entire amounts.

8. The existing right-of-way width of Quinby Drive is 49.5 feet (not 60 feet as shown).

**Don Howe - Learn' & Play Day Care Center - 4001 Legion Drive**

Mr. Donald Howe appeared before the Planning Board on a revised site plan for the Learn & Play Day Care Center which is to be located in the doctor's office at 4001 Legion Drive. It was noted that directional signage should be erected showing one way in and out. Engineering would also like to see parking bumpers along the fenced area. Also trees are to be preserved.

**Engineering:** No comments.

Motion was made by Mr. Koenig, seconded by Mr. Eustace to approve the project for a day care center, to add parking bumpers in the area that is fenced and treed, issue a Negative Declaration and schedule a Public hearing for March 4th on the Special Use Permit as this is a C-3 office district. Carried.

**Swiss Chalet Restaurant Revision**

Chairman Crandall informed the board that Mr. Bushart has changed the size and depth of the retention basin and has moved it further inland. There will be a depth of less than 3' and is 9' wide. Part of this will be piped. Mr. Crandall is to contact Mr. Bushart and notify him that the drawing is acceptable.

**Other Matters:**

Chamber Luncheon is scheduled for March 9, 1998. Dick Crandall, Dave Phillips, Gerard Koenig, and Don Fitzpatrick wish to attend.

Motion was made by Mr. Koenig, seconded by Mr. Pohlman to approve the minutes from the last meeting. Carried.

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Motion was made by Mr. Eustace, seconded by Mr. Pohlman to adjourn. Carried. Meeting adjourned at 10:00 p.m.

Respectfully submitted,

Gerard Koenig, Secretary  
Planning Board