

FILED IN THE
TOWN CLERK'S OFFICE
HAMBURG, N.Y.

SEP 13 10 03 AM '90

Town of Hamburg
Planning Board Minutes
September 5th, 1990
Actions Taken

Durham Road Subdivision - Mr. & Mrs. Hogan Developers -
Tabled until October 10th - 8:00 p.m.

Emerald Green Townhouse Units - E. Burke
Tabled until October 10th - Request made for further drainage study
and supplemental E.I.S.

Woodledge Development - Town House Units - Preliminary subdivision
approval given with conditions.

~~Minutes of August 22nd not approved.~~

Next meeting: September 12, 1990 7:30 p.m.

**Town of Hamburg
Planning Board Minutes
September 5, 1990**

The Town of Hamburg Planning Board met in Special Session on Wednesday, September 5th in the Recreation Room of Hamburg Town Hall, at 7:30 p.m. Those attending included: Chairman Richard Crandall, Vice-Chairman Elgin Cary, Secretary Gerard Koenig, Sandy Carnevale, Steve Strnad, Dennis Gaughan. Others attending included: G. McKnight, S. Bower, Duke Spittler, P. Steele, L. Rockwood, R. Vaughan, R. Lardo, B. Pietrocarlo and Terry Dubey, Stenographer.

Excused: D. Phillips, Dan Gorman

Chairman Richard Crandall stated that it was his decision to hold the Special meeting which was discussed with several members of the Planning Board and if there is criticism it is the Chairman's responsibility and his alone. The meeting was set up to discuss controversial items in an attempt to allot more time for ~~issues that needed discussion & secure input from the public.~~ The Planning Bd. has listened to both sides; taxpayer groups as well as developers in order to decide on matters in an unbiased but objective manner.

Secretary Koenig read the following communication from A. Giacalone, the Attorney who has been hired by the Locksley Park Taxpayers Assoc. in its entirety: The letter was received by the Planning Dept. on September 5th at 10:24 a.m. It is as follows:

ARTHUR J. GIACALONE
ATTORNEY AT LAW
800 Chemical Bank Building
69 Delaware Avenue
Buffalo, New York 14202

Telephone: (716) 856-1010

RICHARD G. COLLIN
OF COUNSEL

September 4, 1990

Planning Board
Town of Hamburg
S-6100 South Park Avenue
Hamburg, New York 14075

Re: Durham Road Subdivision
September 5, 1990 Special Meeting

Dear Planning Board Members:

I am writing to you on behalf of my clients, the seventy-eight (78) members of the Locksley Park Taxpayers Association, Inc. ("LPTAI"), to express my clients' objections to the Durham Road Cluster Development proposed by Barry and Elizabeth Hogan.

Because the Planning Board abruptly scheduled a Special Meeting for September 5, 1990 to address the subdivision proposal, rather than allowing the matter to be considered at the September 12, 1990 regular meeting as announced on August 22, 1990, I have not had the opportunity to thoroughly examine all the potential issues raised by the subject cluster development. Nonetheless, it is clear that numerous legal and policy issues militate against approval of the Durham Road proposal.

The following is a summary of the major reasons why the members of LPTAI object to approval of the subdivision.

1. Planning Board is without authority to treat this subdivision proposal as a "Cluster" development. The statutory authority which empowers a Town to grant its Planning Board the ability to treat a subdivision proposal as "cluster housing" is found at Section 281 of the Town Law of the State of New York. That statutory provision mandates that the Town Board "specify" the lands to which cluster zoning procedures may be applicable. The Town of Hamburg, at Section 29-165 of the Zoning Ordinance, has complied with this mandate by legislating that cluster housing is only permitted (1) if the parcel is located within either an R-1 through R-5 or PUD District (Section 29-165(a)), and (2) if the parcel constitutes a major subdivision of not less than five (5)

FROM CLERK'S OFFICE
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acres in area (Section 26-165 (b)). Unless a parcel complies with both prongs of the requirements, the Planning Board is without authority to utilize the "cluster housing" provisions. It is without question that the proposed land, made up of two parcels, totals only 4.9 acres. The Planning Board has no power, as suggested by the Town Attorney, to "round off" the acreage in order to meet the 5-acre requirements. Only the Town Board, by amending Section 29-165 of the Zoning Ordinance, has the authority to change the minimum requirements.

2. "Cluster Housing" may only be used when the land contains "Unusual Features" requiring modification of zoning requirements, not for the mere convenience of the owner. The only ostensible reason for approving the proposed subdivision as a cluster development ~~is for the convenience and economic benefit~~ of the owner. This motivation is legally inadequate. The State's highest court has stated that cluster zoning is permitted "to allow more efficient use of land containing unusual features, the development of which might otherwise be inhibited by the literal application of the area and yard requirements of existing zoning laws." Kahmi v. Planning Bd. of Town of Yorktown, 59 NY2d 385, 465 NYS2d 865 (1983). The parcel(s) encompassing the proposed Durham Subdivision contain no "unusual features" justifying use of the cluster regulations.

The owners of the subject parcels clearly recognize the absence of any "unusual features". In their May 10, 1990 Full Environmental Assessment Form (FEAF), the Hogans answer "no" to the question, "Are there any unique or unusual land forms on the project site?" They also indicate that there are no streams, lakes, ponds or wetlands within the parcel, and that the entire land has a slope of 0-10%. Given these facts, the cluster housing provisions are only being utilized for the owner's economic benefit or convenience. No demonstration has been made to show that development of the land would be inhibited because of the parcel's unusual features. Therefore, no legal basis exists for applying the "cluster housing" provisions to this subdivision.

3. Treatment of proposal as a "Cluster Development" is irrational and arbitrary since no unified parcel is involved, and houses will not be clustered. The purpose of cluster developments is to enable landowners to build a number of residences close together on that portion of land that is suited for construction, and thus avoid the prohibitive costs or environmental impacts of developing that portion of the land unsuitable for construction. It is envisioned that "the houses will be clustered on the parcel", and that the remainder of the parcel will be utilized as open space

or recreation. See Rathkopf's The Law of Zoning and Planning, Vol. 5, 4th Edition, Section 65.04(b). The proposal before the Planning Board contradicts the concepts of cluster development. The homes are not "clustered" or built together at all. To the contrary, they are scattered from each other, with three (3) separate groupings of dwellings. Moreover, the appending of the 1/2 acre parcel south of Durham Road to the proposal, for the sole purpose of arriving at a total close to the requisite five acres, makes a mockery of the clustering process. This is not "cluster housing", but an improper attempt by the owners to increase the number of units to be constructed in this R-1 zone.

4. The proposal may not be approved if the number of units exceeds the number which could be permitted if the land were subdivided into lots conforming to R-1's minimum lot size and density requirements and conforming to all other applicable requirements. The Hogans propose to build fourteen (14) units within the proposed subdivision. It would only be proper to construct 14 units of "cluster housing" if they can demonstrate that they could legally build 14 single-family dwellings on the proposed site in total conformity with the minimum lot size and density requirements of an R-1 zoning district, as well as with all other applicable requirements. Town Law, Section 281(b). It does not appear that 14 units could be built on this R-1 parcel given the following requirements: (1) Minimum lot area - 11,250 square feet (Section 29-32(A)); (2) Lot width at building line - 90 feet (Section 29-32(B)); (3) No dwelling be erected on any lot within does not have immediate frontage on a street.

My clients urge the Planning Board to require the owners to prepare a conventional subdivision plat which meets all standards of the zoning ordinance and subdivision requirements so that the mandate of Town Board, Section 281 can be complied with. Only by doing so can the Planning Board and the public be certain that the proposed cluster development does not deviate from the R-1 density requirements.

5. Planning Board may not approve the subdivision until the requirements of SEQR, including preparation of an EIS, are strictly complied with. The subdivision proposal before the Planning Board may not be approved until the requirements of the State Environmental Quality Review (SEQR) law are complied with. It appears that at least three (3) aspects of the environment, i.e., drainage, traffic, and the character of the existing neighborhood, may, be significantly impacted by the proposed subdivision. The potential severity of drainage impacts is recognized by the Code Enforcement Officer, Mr. Lauchert, in his August 8, 1990 memorandum to the Planning Board. Furthermore, the owners admit in the FEAF

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that 100% of the site is "poorly drained". Serious questions also exist regarding traffic safety given the proximity of the proposed development to the playground on Durham Road, and the sharp curves in Durham Road at points where additional driveways would be accessing the public thoroughfare. Additionally, while a portion of the housing to the west of the subject parcel may be on small lots, the estates to the north and the properties to the east clearly surpass the lot size requirements of R-1 districts. Therefore, SEQR will not be complied with until an Environmental Impact Statement (EIS) is prepared by the developer, and the procedures mandated by SEQR are fully met.

For all the above reasons, my clients urge the Planning Board ~~to deny the Durham Road subdivision proposal. We believe that it~~ would be a perversion of the letter and spirit of the zoning laws to treat the proposed subdivision as a cluster development. While we would prefer not to view the Planning board as our adversary, we are prepared to challenge in court a decision that would allow the so-called cluster development to proceed.

We ask that this letter be read at the September 5, 1990 meeting of the Planning board, and be made a part of the record pertaining to the Durham Road Subdivision application.

Very truly yours,


ARTHUR J. GIACALONE

AJG:jls

cc: Richard T. Crandall, Chairman,
Planning Board
Stephen Strnad, Planning Board Member
Elgin Cary, Planning Board Member
Dennis Gaughan, Planning Board Member
Sandy Carnevale, Planning Board Member
Gerard Koenig, Planning Board Member
David Phillips, Planning Board Member
George Danyluk, Town Clerk

Durham Road Subdivision (Continued)

Mr. & Mrs. Barry Hogan, who are the developers, asked that no decision be made due to the fact that they are in receipt of the information this evening and would like to bring in their own Attorney as he feels this is a one-sided opinion.

Mr. George McKnight, noted that he can respond to each section in the letter. However, it will take some time to respond to all the points. He will respond to the Planning Board by September 14th.

Mr. Rugnetta, resident of Durham Road brought up the fact that there is a traffic problem on Durham Road and residents have a difficult time getting out on to traffic on Camp Road. This is also an item that should be considered.

Motion was made by Mr. Strnad, seconded by Mr. Koenig to **Table** this matter at the request of Mr. Hogan so that he could obtain Legal Counsel. Also a response will be prepared by Mr. McKnight to the Planning Board on Attorney Giacalone's letter. **Carried. Matter Tabled until October 10th. Carried.**

Emerald Green Townhouses - E. Burke

Secretary Koenig read the following communication from A. Giacalone, Attorney for the residents opposed to the Townhouses on Cloverbank Rd. It reads as follows:

ARTHUR J. GIACALONE
ATTORNEY AT LAW
800 Chemical Bank Building
69 Delaware Avenue
Buffalo, New York 14202

Telephone: (716) 836-1010

RICHARD G. COLLINS
OF COUNSEL

September 4, 1990

Planning Board
Town of Hamburg
S-6100 South Park Avenue
Hamburg, New York 14075

Re: Brierwood - Emerald Green Townhouse Development
Special Meeting - 9/5/90

Dear Planning Board Members:

This letter is written on behalf of my clients, a group of homeowners residing in the Upper Cloverbank Road area of the Town of Hamburg. My clients strongly oppose the efforts of Mr. Burke to obtain approval for the Emerald Green Townhouse Development within the Brierwood PUD, and urge the Planning Board to deny the application until all legal and environmental requirements are strictly complied with.

Before addressing the grounds for our opposition to Emerald Green, we would like to first protest the rescheduling of the Planning Board's consideration of the subject development from October 10, 1990 to September 5, 1990. It was evident from the lengthy discussions during the August 22, 1990 meeting, that the Planning Board, the public and the developer have many unresolved questions and issues that need serious deliberation before an intelligent and proper determination can be reached regarding Emerald Green. Since only the developer stands to gain by the rendering of a prompt decision by the Board, the Planning Board's scheduling of a "special meeting", a mere nine working days after the August 22, 1990 meeting, can easily be interpreted by the public as the Board rushing to do the developer's bidding. My clients and the residents of the Town of Hamburg deserve, are owed, and demand better than that from their public officials. The Planning Board should make no determinations regarding either Brierwood generally, or Emerald Green specifically, until a thorough and reasoned review is made of each of the outstanding legal and environmental issues that has been raised.

The inappropriateness of conducting the September 5, 1990 special meeting is underscored by the fact of the Acting Chairman's request on August 22, 1990 that the residents opposing the Emerald Green project assist the Planning Board in its decisionmaking process by submitting written documentation of their objections. The October 10, 1990 timeframe provided the public with an adequate period to

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respond to that request. The abrupt shortening of the period between meetings makes it extremely difficult, if not impossible, to provide a complete written record of my client's objections. However, while reserving our right to submit additional information and/or raise additional issues, the following is an outline of the areas of major concern to my clients:

1. The Need for Additional Environmental Impact Statement. As the Planning Board members know, the Town's Conservation Advisory Board has requested that a Supplemental Environmental Impact Statement (SEIS) be prepared for all phases of the Brierwood project. We heartily concur with this request, and with the reasons given for the request contained in Ms. Rockwood's August 18, 1990 letter to the Planning Board. We believe that the changes in the development plans and circumstances surrounding Brierwood trigger the need for an SEIS under the standards listed at Section 617.8(g) of the SEQR regulations. To fail to require an SEIS at this point would constitute an abuse of discretion challengeable in a court of law.

In addition to the need for an SEIS for the entire Brierwood project, it is my clients' position that SEQR requires a separate EIS for each phase of Brierwood. A review of the EIS prepared at the time of rezoning of the Brierwood site to a PUD district reveals that the environmental study was conceptual in nature, and was not meant to, and in fact did not, address in sufficient detail the individual phases of Brierwood. The Appellate Division, Fourth Department has recognized the fact that, while an EIS is required at the rezoning stage of a development plan, SEQR regulations call for further environmental review at the site plan or subdivision review stage of specific projects within the rezoned area. See Kirk-Astor Drive Neighborhood Association v. Town Board of the Town of Pittsford, 106 AD2d 868, 483 NYS2d 526 (AD4 1984); 6 NYCRR 617.2(b). Consistent with the Kirk-Astor decision is the ruling in Rye Town/King Civic Association v. Town of Rye, 82 AD2d 474, 442 NYS2d 67 (AD2 1981), that the environmental impact of a specific project within a PUD "cannot reasonably be evaluated until the final form of the action has been determined". As will be discussed below, it is clear that the form of Emerald Green (or Phase IIa of Brierwood) now being proposed is significantly different from the townhouse development proposed at the time of the PUD rezoning.

For all the above reasons, it is my clients' position that the Planning Board will be in violation of the requirements of SEQR if it does not require the preparation of both an SEIS for the entire Brierwood development, and a separate EIS for the Emerald Green townhouses.

2. Uncertainties and Irregularities regarding Emerald Green Proposal. As was stated at the August 22, 1990 meeting, it is an

insult to the intelligence of both the Planning Board and the public for the developer to request approval of the Emerald Green townhouses with the scant amount of information he has provided. There are many, many questions left unanswered regarding the project, including what stage in the review process we are now at. Although the developer appeared to suggest at the August 22 meeting that the Planning Board has already given conceptual approval to the Emerald Green, such approval is not reflected in any of the Board's minutes. The following is a non-exhaustive list of questions or issues raised by review of the "Preliminary Layout" we believe still need to be addressed prior to any decision relating to Emerald Green:

-Do the quadrangles depicted on the drawing represent footprints of the buildings or lot lines? This question is significant since it will determine whether the buildings or the rear lot lines are the specified distances from the adjoining R-1 properties. During an August 20 meeting with Mr. McKnight, he expressed his understanding that the quadrangles represented lot lines, not buildings. That is not the impression I got from Mr. Burke on August 22.

-Why would the Planning Board consider approving building lengths of 168.67 feet when Section 29-166(A) of the Town ordinance limits townhouse buildings to a maximum length of 160 feet? Such a deviation is unjustified, especially when the townhouses will be located adjacent to existing single-family detached homes in an R-1 district. Such a deviation is even more unwarranted since it appears that the developer wants to cram smaller units into larger buildings. The Town ordinance requires minimum areas for each unit of 2,000 sq. ft., with an average area for the entire townhouse development of 2,200 sq. ft. (Section 29-166(E)). It appears from the preliminary layout that a full one-half of the units will only have 1,493 sq. ft., that is, will be less than 75% of the required minimum. Furthermore, the average for the entire 32 units, 1,987 sq. ft., is only 90% of the mandated average, and is less than the minimum required for any one unit.

-What are the proposed sizes for the front, side and rear yards? Will the requirements of Sections 29-166(E) and 29-34 be met?

-What is the proposed height of each of the 8 buildings? Will Section 166(C) be complied with?

-How much parking is proposed for the development? Considering the proximity to the adjacent R-1 district, where will the parking spaces be located?

-What specific types of buffering does the developer propose

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to shield the adjacent R-1 district from the townhouse development?
(Section 29-166(K))

-Will each unit have the required minimum patio area of 250 sq. ft.? (Section 29-166(L))

-Will Emerald Green have the mandated 500 sq. ft. of recreation space per unit required by Section 29-166(M)? Does the developer intend to develop the recreation space for passive and active recreation purposes and provide the facilities normally attendant thereto?

-In light of the proximity to an R-1 district, where will the service areas for garbage and waste collection be located?

3. Drainage Issues. The environmental issue of greatest concern to my clients is the question of storm water drainage. The significance of the drainage issue was expressly recognized by the Town in the summary section of its Final EIS for the Brierwood PUD rezoning:

This is the environmental issue that could have the greatest impact on adjacent areas. The developer did not provide any computations or methodology for determining the amount of additional runoff that will be caused by this development.

Despite the potential for significant adverse impact from storm water runoff onto the properties of the existing homes adjacent to the proposed site, the developer has yet to provide the Town with computations or methodology for determining the size of the problem. The conclusory statements found in the August 22, 1990 Nussbaumer & Clarke, Inc. letter to Mr. Burke are totally inadequate for the purposes of SEQR and as a basis for this Board to make an informed decision. This is particularly true since, as of the August 22 meeting, the developer had not obtained an agreement with WNED that would permit drainage onto that owner's property. Even if a drainage easement was obtained by the developer, SEQR mandates that no decision pertaining to approval of the proposed development be made until the potential impact of the project is studied in detail and appropriate mitigation measures are incorporated into the plan.

The importance of systematically addressing the drainage issues is highlighted by the substantial changes that have been made in the Emerald Green proposal since the PUD rezoning. While both proposals call for 32 townhouse units, the original plan showed 4 buildings all located to the south of the proposed private road. The current proposal calls for 8 buildings, 3 of which are located

north of the proposed private road. The drainage plan contained in the PUD EIS showed the drainage pattern flowing from east to west in the area north of the proposed private road and south of the property lines of the existing single-family homes, precisely where the developer now wants to build 3 168+ foot buildings. The PUD DEIS, at page 29, had the following to say regarding drainage for Phase IIa: "The existing pattern is to a ditch system on the south side of Cloverbank Road that flows westerly to the railroad. It is the intention of the developer to continue this existing pattern and avoiding additional flows by the use of a detention area with a controlled outlet." Despite this representation, the developer no longer makes any references or proposals relating to a detention area for handling the runoff that would be created by the townhouse development.

4. Traffic Issues. There must be a comprehensive review, by way of an EIS, of traffic-related issues before a decision can be made regarding the Emerald Green project. The EIS must take a detailed look at the street layout and design now being proposed, as well as the existing traffic conditions throughout the Cloverbank Road area, to determine the impact of Emerald Green, Sawgrass Court, the proposed Pinegrove Park townhouse development, and all other contemplated phases of Brierwood on traffic patterns, levels and safety. The PUD EIS did not contain such detailed review.

The following is a non-exhaustive list of concerns and questions my clients have relating to traffic:

-The proposed junction of the Emerald Green private road with Cloverbank Road will create a safety hazard due to the volume of existing traffic and the sharp curve in the road.

-It is not clear whether the proposed private road meets the Town's width requirements.

-The proposed cul-de-sac for Sawgrass Court violates the Town ordinance in the following ways:

-It is grossly in excess of the 500 foot maximum for culs-de-sac found at Section 31-18(I) of the subdivision regulations.

-It is not "permanently terminated" at the turnaround as anticipated by Section 31-12. To the contrary, the developer has proposed an illegal and unsafe intersection of the turnaround with a private road leading to the proposed 30-unit Pinegrove Park Townhouse Development.

-It would be unsafe and in contradiction of the Town ordinance

to allow Emerald Green's private road to intersect Sawgrass Court at a point in such close proximity to the cul-de-sac.

-As Mr. McKnight stated to me on August 20, the private road leading to Pinegrove Park is too long and illegal since it does not intersect a public street.

Until each of the above concerns is studied and addressed, it will not be possible to evaluate the impact that the proposed Emerald Green development will have on existing traffic patterns, levels and safety.

5. Private Wells. Several of the adjoining homeowners have legitimate fears that the proposed development may sulfurize the existing private wells. At the ~~11/16/88~~ meeting of the Planning Board, the issue of the wells was discussed. As the Board's minutes reflect, Mr. Burke stated that he would be responsible for any impairment to the wells. Wisely, Mr. Gaughan suggested that a written agreement be drawn up stating Mr. Burke's responsibility. As the minutes reflect, "Mr. Burke agreed that something in writing from him will be forthcoming." Despite the passage of nearly 2 years, the residents have not received a written assurance from the developer. Furthermore, Mr. Burke has failed to provide any of the residents with the results of the first tests of the wells taken in conjunction with the PUD EIS.

It is my clients' position that no approval of the Emerald Green project may be granted until Mr. Burke provides a written assurance, in terms acceptable to the affected homeowners, regarding his responsibility if the wells are impaired, and until the results of both the original and recent well tests are shared with both the Board and the residents.

6. Concerns regarding the Character of the Existing Community and the requisite Buffering. SEQOR requires that the impact of a proposed development on the character of the existing community or neighborhood must be considered, and, where the potential for adverse effects exist, mitigated. The summary section of the PUD Final EIS recognized the need for buffering to lessen the impact on the existing development: "For purposes of aesthetics, noise and air pollution control, buffering with berms and vegetative plantings will be required by the Planning Board wherever necessary and feasible to enhance the proposed development [and] protect existing development..." In addition to the mitigation measures found in the EIS, the Town's townhouse regulations require appropriate walls, fences and buffering (Section 29-166(K)), as well as minimum yards (Section 29-166(F)). Furthermore, the Town's PUD regulations mandate that any "required yards" be "consistent

with any adjoining R" district.

It is my clients' position that the adequacy of the developer's plans for lessening the adverse impact of the proposed townhouses on the adjoining single-family homes must be evaluated prior to any determination on the Emerald Green proposal. Therefore, the developer must provide specifics regarding proposed buffers, fences, yard dimensions, etc. so that the appropriate review can be had. Furthermore, yard dimensions consistent with an R-1 district (e.g., 30' rear yards) must be required wherever Emerald Green adjoins R-1 property.

7. Concerns regarding Open Space and Recreation. It is clear that the ~~PUD EIS did not adequately address open space and recreation issues.~~ That fact was expressly recognized in the Town's summary section of the Final EIS: "The one subject that was not brought up in the scoping session that needs to be addressed is the provision of active and passive recreation land...The Planning Board will have to give careful attention to the provision of adequate open space for each phase of the development." Recent discussions at Planning Board meetings appear to indicate the Board's acceptance of the fact that it is time to take a hard look at open space and recreation issues throughout Brierwood. We urge the Planning Board to halt any further approvals of Brierwood phases until this matter of such significance to the quality of life is evaluated and adequately addressed. We also remind the Board that a major reason for permitting flexible lot size requirements in PUD districts is for the protection and enhancement of open space and recreation areas. It would be a perversion of the philosophy behind the creation of PUD districts to disregard the need for recreation areas, or to pretend that the presence of the golf course is an adequate substitute for passive and active recreation areas for all residents.

One final word regarding open space and recreation areas. The Town's townhouse regulations mandate the provision "on the site of each townhouse development" of "an area or areas devoted to the joint or common recreational use by the residents thereof". They require the provision of at least 500 sq. ft. per unit of recreation space, both active and passive, and call for inclusion of "the facilities normally attendant thereto". (Section 29-166(M)) The developer's preliminary layout fails to show such recreation areas or facilities. We urge the Planning Board to require strict adherence to these requirements when reviewing the Emerald Green proposal.

In summary, my clients ask the Planning Board to closely examine the multitude of issues that exist pertaining to Brierwood and the

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9/4/90
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the Emerald Green project, and to deny approval of any additional phases until all the outstanding legal and environmental concerns are resolved. We hope that, if such an approach is taken, the time and expense of litigation will be avoided.

Very truly yours,


Arthur J. Giacalone

cc: Richard T. Crandall, Planning Board Chair
Stephen Strnad, Planning Board Member
Elgin Cary, " "
Dennis Gaughan, " "
Sandy Carnevale, " "
Gerard Koenig, " "
David Phillips, " "
D. Mark Cavalcoli, Town Board Member
George Danyluk, Town Clerk

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Secretary Koenig read the following letter from the developer:

SEP-04-1990 17:07 FROM E.F. BURKE CO.

TO

6494087 P.01

the  **Burke Co.**

Post-It™ brand fax transmittal memo 7671		* of pages *	1
To	George McKnight	From	Edmund F. Burke
Co.	Town of Hamburg	Co.	E.F. Burke
Dept.		Phone #	675-3000
Fax #	649-4087	Fax #	675-3000

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6455-Lake Avenue Orchard Park, NY 14127
Telephone (716) 675-3000

September 5, 1990.

Mr. George McKnight
Town Planner
6100 South Park Ave.
Hamburg Town Hall
Hamburg, N.Y. 14075

Re: Your notification
Special Meeting
September 5, 1990
Emerald Isle Development

Dear George:

This communication will serve as a memorandum of my advisement that I will be unable to attend the above meeting. I have an uncancellable previous business commitment.

Unfortunately having received the surprise meeting notification on Friday 8/31/90 and with the Labor Day weekend the short notice left me unable to alter my schedule.

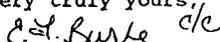
Kindly advise the board so as they won't be inconvenienced in their planning.

Also, with my inability to attend I would feel it inappropriate for any action or discussion without my ability to respond.

Realizing the Board has a busy Fall schedule kindly advise when a new mutually agreeable date can be scheduled.

Thanking you and the Planning Board for their understanding and cooperation I remain

Very truly yours,


Edmund F. Burke

CC: Richard Crandall Chairman
Hamburg Town Planning Board
James Walsh, Attorney

EFB/cc

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Planning Board Chairman Crandall responded that the Conservation Board has gone on record requesting that a supplemental Environmental Impact Statement be done, as well as Councilman Cavalcoli. He himself is of the same opinion. The Planning Board is also concerned about the same issues. Discussion again centered on drainage problems in the area and the wells.

In response to the Engineering concerns, there are ways of solving the problem, by bypassing the properties, piping out and around the WNEC property along Cloverbank and then back into the quarry where it drains now. This is one option to mitigate the present drainage situation.

Attorney Giacalone complained that there are no computations available on the drainage or what impact it will have on the area. They would like an extensive drainage study done to determine what measures can be taken to alleviate the standing water as it presently exists.

Lee Rockwood of the Conservation Board noted that according to the Mt. Vernon Sewer District that area has a lot of wet weather problems. Many of the homes experience sewer backup. That is why when there is a great deal of rain, the pumps can run day and night.

Mr. Ray Vaughan of the Conservation Board noted that a revised drainage plan is in order as the development has changed from the original.

Mr. Donald Wiess of Cloverbank Road stated that he has discussed the matter with W.N.E.D. as he worked with the Engineers and they will not allow any run off to come on to their property as it would affect the underground tracking that they have in place.

In summation, Mr. McKnight will also need time to respond to the Planning Board on the issues that have been raised by Mr. Giacalone. Attorney Giacalone asked if that memo could be submitted to him also.

It was again explained that Planning Board minutes can only become available to the citizenry after they have been approved by the Board. When they are approved, they are taken to the Town Clerk's office and kept in a separate location. All minutes are available in that office. Legal research is not provided by the Planning Department.

Also, the green space issue for Brierwood will be discussed by the Planning Board at the September 26th meeting.

Chairman Crandall also pointed out that there is another letter that should be in the record on this matter. It is as

Planning Board Minutes, Page 15, 9-5-90

Emerald Green (Continued)

follows:

8/30/90

Kathleen A. Kolczynski
2710 Ferndale Ave.
Hamburg, N.Y., 14075
627-9726

Subject: Emerald Green/ Brierwood

Dear Sir:

After attending the planning board meeting of August 22, 1990, I obtained the enclosed plot plan from the town Planning Dept. I felt as a close neighbor it was necessary to make my opinion known.

Although increasing the tax base is a positive result of new home construction, there are very serious considerations to be thoroughly investigated. I feel it is most important to look at the whole project rather than singling out one phase at a time for approval.

Point I - The storm runoff of the area is a major concern, not only for the residents in the Cloverbank area but also for those in the Nanakah/ Amsdell area where the drainage runs under the roads and railroad tracks through ditches and culverts in the vicinity of Roberts Rd., Southcrest Av., Ferndale Av., Glendale Av. and numerous others. Drainage has been a significant problem in these neighborhoods for years. The enormity of the proposed "Phase IV" development certainly deserves close scrutiny.

Point II - Concern for the environment is foremost on everybody's minds these days, and if it isn't it should be. The topic of greenspace raised at the August 22 meeting focused on its relationship to Emerald Green. The idea that the golf course could serve as sufficient greenspace is very short-sighted in view of the ambitious growth proposed by Mr. Burke. If everything on the enclosed map is approved and completed as shown, there will be virtually no public areas for recreation save for the golf course which is sharply limited to golf. "Phase IV", if completed as shown, will wipe out acres of hardwood forest and wetland habitats that harbor many types of wildlife; deer, Red fox, owls, herons and other waterfowl to name just a few. The close proximity of roads, single family homes and townhouses/condos to the lake sites will drive these creatures into yards and streets, then onto the golf course and finally out of the area entirely. The scenario painted in Amherst of animals foraging in backyards will undoubtedly be repeated here.

Point III - Mr. Burke spoke of "the undeveloped quarry area" when referring to diverting Emerald Green runoff. Does he mean the quarry will forever remain undeveloped? If the answer is no, I believe the community as a whole would be better served by thoughtfully redesigning the "Phase IV" portion. This is a beautiful spot well-suited to footpaths and observation areas.

A. Townhouses have no place so near the water, an area even the developer denotes as "wildlife and nesting area". The flats are far better suited as a water retention basin. It's an ideal spot for a community picnic grove or park. In 1983 the town building inspector found the site "not suitable as a residential area".

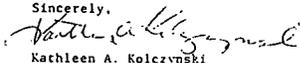
B. The number of lots is excessive, as is the lot size inadequate for the large homes that will occupy them. The overall number of units should be decreased and set farther back from the lakes. Public areas of heavy woods connected by trails should intersperse the homesites. In this way both man and beast stand a chance of co-existing.

page 1 of 2

Considering the way sales are going at the Brierwood Estates and elsewhere, I cannot imagine buyers lined up to purchase expensive homes on relatively small lots set so near four sets of railroad tracks. Careful planning could allow Hamburg to have a showcase for environmentally sensitive development, similar to the Reinstein preserve in Cheektowaga.

Finally, I hope our elected officials and town leaders as well as the developer give serious consideration to the contents of this letter as it is a viewpoint shared by many taxpayers.

Sincerely,


Kathleen A. Kolczynski

enclosure

cc:
E. F. Burke
Mark Cavalcoli
James Connolly
Dick Grandall
George Danyluk
Rosemary Donohue
Dan Henry
Pat Hoak
Rick Lardo
George McKnight
Jack Quinn Jr.
Donald Spittler

Motion was made by Mr. Gaughan, seconded by Mr. Koenig to Table this matter until October 10th, 1990. Carried.

Woodledge Development - Townhouse Units

Applicant Joe Cellura, Brian Ginter and Attorney Grasser appeared before the Planning Board on the revised plan for townhouse units to be located on North Creek and Southwestern Blvd. Comments are as follows:

Building Inspection--I received this well prepared set of drawings this morning. A great deal of time and effort went into this preparation. This is zoned a P.U.D. Unfortunately, I can't give you the required parking spaces for the proposed specialty shops, spa or restaurant. Restaurant parking is based on the seating; the other two buildings are based on square footage. I am pleased that the 60' setback has been honored as established by the code. I am also pleased that the 100' setback for the flood plain has been honored. It is very nice that you have used Hemlock Pond as part of the development and made allowances for future development adjacent to this property. ~~This appears to be a well laid out~~ division of property. As many trees as possible should be saved and the green space should not be altered.

Mr. Cellura explained that they now have 85 units on 34 acres and have reduced the density by 8 units. It was noted that Hemlock Creek should not be developed. Mr. Spittler noted concern that something should be designated on the plot plan that this will remain an open, undeveloped area. Attorney Grasser responded that this could be accomplished by having a recorded declaration. Mr. Vaughan cautioned that by giving preliminary approval for the residential units, this could be considered as segmentation. Mr. McKnight responded that the preliminary will be filed as a subdivision. The commercial areas will be treated as site plans.

Residents of the area stated concern of drainage and how it would affect the 3 homes on North Creek Rd. The response given was that the developer cannot block the drainage pattern. Residents also noted traffic concerns on North Creek Rd.

Mr. Strnad asked what assurances there were that the project will not be any closer than 60' from the top of the bank. Response to this question was that an Engineer's calculations should be accurate.

Motion was made by Mr. Koenig to approve the preliminary for the residential subdivision only. This does not include commercial structures. With respect to Hemlock Crk. there is to be a recorded declaration filed with the subdivision stating that this area is to remain undeveloped; that the drainage pattern for 3 properties on North Creek will not be blocked or disrupted by construction; that a breakaway gate on Nut Hatch be provided for emergency conditions & that a Negative Declaration be issued stating that environmental concerns have been addressed, seconded

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Woodledge Continued:

by Mr. Cary. Carried.

Minutes of the meeting of August 22nd were not approved. To be approved at the regular September 12th meeting.

Motion was made by Mr. Koenig, seconded by Mr. Cary to adjourn the meeting. Meeting adjourned at 10:30 p.m.

Respectfully submitted,


Gerard Koenig, Secretary
Planning Board

Next meeting: September 12, 1990 7:30 p.m.