

Approved
12-16-98
by Phys. Bd.

Town of Hamburg Planning Board
Meeting 10-21-98
Actions Taken

Priess Subdivision Boston St. Rd. & Carpenter Rd. 2 lot subdivision	Approved preliminary		
Bilodeau 3 lot Subdivision Big Tree & South Park	Approved preliminary		
Kingsbury Subdivision Old Lakeview Rd.	Approved preliminary	TOWN CLERK	DEC 11 12 06 PM '98
Tim Horton's & Road House Grill - at Woodlawn Credit location Milestrip & McKinley	Referred to ZBA		TOWN OFFICE
Kwik Fill Station & Convenience Store 4909 South Park Ave.	Approved contingent on Engineering & landscaping		
Hampton Inn Commerce Place Commerce Park	Referred to ZBA on height of building & granted contingent approval by Engineering		
South Park Rezoning Sheila Ryan from C-3 office to N-C, Neighborhood Commercial	Favorable recommendation forwarded to Town Board		
Brierwood legal issue	Planning Board to review and re-examine material for determination.		

Town of Hamburg
Planning Board Meeting
October 21, 1998

The Town of Hamburg Planning Board met in a regular session on Wednesday, October 21, 1998 at 7:30 p.m. in Room 7 of Hamburg Town Hall. Those attending included: Chairman Richard Crandall, Vice-Chairman David Phillips, Paul Eustace, Don Fitzpatrick, Sue Ganey, Dick Pohlman. Others attending included: Drew Reilly, Wendy Salvati, Don McKenna, Attorney, and Terry Dubey, Stenographer. Excused: G. Koenig

Public Hearing - Priess Subdivision - Boston State Rd. & Carpenter Rd.

In the absence of the Secretary, G. Koenig, Paul Eustace read the following legal notice of Public Hearing:

LEGAL NOTICE

**TOWN OF HAMBURG
PRIESS 2 LOT SUBDIVISION
BOSTON STATE RD. & CARPENTER RD.**

Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a 2 lot subdivision known as Priess Subdivision located on F State Rd. & Carpenter Rd. for J. s Priess.

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 42, Township 9 and Range 7 of the Holland Land Company's Survey, being more particularly bounded and described as follows: BEGINNING at a point where the east line of the Hamburg-Springville Road

intersects with the south line of lands conveyed to James Mansell by Deed recorded in the Erie County Clerk's Office in Liber 9180 of Deeds at Page 326 on November 29, 1982; running thence easterly along the south line of Mansell and parallel to the southerly line of Lot 42 one hundred sixty-six and forty-one hundredths (166.41) feet to a point; running thence northerly along a line drawn at right angles to the last described line ten (10) feet; thence easterly at right angles to the last described line and parallel to the southerly line of Lot 42, a distance of two hundred sixty-two and sixty hundredths (262.60) feet to the southeast corner of said lands; conveyed to James Mansell by aforementioned Deed, said point also being on the westerly line of lands conveyed to Irving W. Zittel and

Mary L. Zittel, his wife, by Deed recorded in the Erie County Clerk's Office in Liber 4051 of Deeds at Page 544 on January 14, 1947; running thence southerly along the westerly line of said lands conveyed to Irving W. Zittel and Mary L. Zittel, his wife, one hundred eighty-five (185) feet to the south line of Lot 42; running thence westerly along the southerly line of Lot 42 one hundred eighty-seven and seventy hundredths (187.70) feet to the southeast corner of lands conveyed to Dean E. Becker by Deed recorded in the Erie County Clerk's Office in Liber 9349 of Deeds at Page 167 on January 19, 1984; running thence northerly at an interior angle of 92° 33' 40", one hundred thirty and twenty-one hundredths (130.21) feet to a point; run-

ning thence westerly at an interior angle of 267° 26' 20", thirty-eight (38) feet to point; running thence northerly at an interior angle of 90° 40' 09", twenty-nine and ninety hundredths (29.90) feet to point; running thence westerly at an interior angle of 269° 19' 51" and parallel to the southerly line of Lot 42, one hundred eighty-seven and fifteen hundredths (187.15) feet to the east line of the Hamburg-Springville Road; running thence northwesterly along the east line of the Hamburg-Springville Road nine feet and thirty-one hundredths (9.31) feet, more or less, to the point or place of the beginning.

Dated: 10-8-98

Richard Crandall, Chairman
Gerard Koenig, Secretary
Planning Board

Mr. James Preiss appeared on behalf of his subdivision. He stated that he received the variance on his property at the last meeting of the Zoning Board of Appeals on 10-6-98. The variances granted were 1.61 acres on the size of the lot; 7' on the lot width at the street line; 107' on the width of the lot at the setback line. On side yard, a variance was granted of 10' on each side yard. This is a property that was granted a variance 8 years ago. Mr. Preiss was not able to follow thru on the subdivision of the property because of unique circumstances. Therefore, the variances were reaffirmed.

Chairman Crandall noted that the larger lot to the rear should be noted as Lot 2; the strip along the north end is to be marked as the exception, and Lot 1 is to be next to the exception. Five copies will be required for signing and they should all be sealed.

Chairman Crandall asked 3 times if anyone wished to be heard

for or against the subdivision. Hearing no comments, the hearing was declared closed.

Motion was made by Ms. Ganey, seconded by D. Fitzpatrick to approve the preliminary for the 2 lot subdivision; issue a Negative Declaration as there will be no major impact on the neighborhood; waive the filing of the map cover; that the sidewalk requirement can be waived as there are no sidewalks presently in that area; and that the applicant is to submit 5 sealed copies and have the lots numbered as required. Carried.

Comments from Engineering are as follows: 1. The proposed sublots should be numbered. Carpenter Rd. is an accepted Town highway. 3. Public sewer and water are available to the site. 4. We have no objection to waiving the map cover requirements.

Bilodeau 3 lot subdivision - South Park Ave. & Big Tree

Mr. Eustace read the following Legal Notice of Public Hearing:

**TOWN OF HAMBURG
PLANNING BOARD
LEGAL NOTICE
3 LOT SUBDIVISION**

**FOR ROBERT BILODEAU -
SOUTH PARK AVE. & BIG TREE**
Notice is hereby given that the Planning Board of the Town of Hamburg will hold a Public Hearing at 7:35 p.m. on Wednesday, October 21st, 1998 in Room 7 of Town Hall for the 3 lot Subdivision known as Bilodeau Subdivision located at South Park & Big Tree.

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 No. fifty-six (56), Township nine (9), Range seven (7) of the Holland Land Company's Survey, described as follows:

BEGINNING at a point on the east line of South Park Avenue one hundred ninety-two and three hundredths (192.03) feet north of its intersection with the north line of Big Tree Road, said point of beginning being also the northwest corner of lands conveyed to Pattie Ellis and Gwendolyn Morgan by deed recorded in Erie County Clerk's Office in liber 4121 of Deeds page 219; thence northerly along the east line of South Park Avenue nine hundred eight

(908) feet to the point of intersection of said east line of South Park Avenue with the center line of Rush Creek; thence easterly and southeasterly along the center line of Rush Creek about one thousand fifty (1050) feet to the northeast corner of lands so conveyed to Ellis and Morgan by aforesaid deed; thence southwesterly along the northerly line of lands so conveyed to Ellis and Morgan by aforesaid deed two hundred forty-one (241) feet to a point; thence westerly continuing along the north line of lands so conveyed to Ellis and Morgan by aforesaid deed one hundred seventy-eight and eleven hundredths (178.11) feet to the east line of South Park Avenue at the point of beginning.

The above premises are accepted subject to a certain Lease which was assigned by the Hanover Gas Corporation to the Iroquois Gas Corporation, recorded in Liber 4500 of Deeds at Page 444 April 12, 1949, in the Erie County Clerk's Office.

Dated: 10-9-98

Richard Crandall, Chairman
Gerard Koenig, Secretary
Planning Board

10-15

Chairman Crandall declared the hearing open:

Bilodeau Subdivision

Mr. Robert Bileodeau appeared on behalf of his subdivision. Mrs. Salvati noted that there is not enough land on one of the lots as it is located in the flood plain. There will be difficulty in getting a dwelling unit and a septic system on the one parcel with the dimension of 251.64. It was suggested that the line be moved over at a minimum of 40' to the south of its present location in order to give additional space to Lot #1. Also, driveway turn-arounds will be required.

Comments from **Engineering** are as follows:

FROM: Engineering Dept.

DATE: 10/20/98

SUBJ: 10/21/98 PLANNING BOARD MEETING AGENDA
Bilodeau Minor Subdivision (3 lots) - South Park Avenue

The following are review comments on a survey dated 9/17/98 and last revised on 10/16/98:

- (1) Sublot No. 1 is located in a flood plain. A Flood Plain Development Permit from the Building Inspector will be required for filling or construction within this subplot. The volume of fill required for construction is to be excavated from within other portions of the site to compensate for the flood storage reduction. Show this area on the plan.
- (2) Public sewer service is not available to the site.
- (3) Public water service is available.
- (4) We have no objection to waiving the map cover requirement.

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

Motion was made by Mr. Phillips, seconded by Mr. Pohlman to approve the preliminary for the 3 lot subdivision subject to the Eng. memo of 10-20-98; to move the south lot line on S.L. #1 a minimum of 40' south to make room because of the flood plain; issue a Negative Declaration; that driveway turn arounds will be required; waive the sidewalk requirement, and that there be no further subdivision of land. Carried.

Kingsbury Subdivision

Mr. Jay Pohlman appeared on behalf of the Kingsbury Subdivision. This issue of the proposed trail was discussed at the Work Session. The public hearing was held. The required 30 day review period for the Type I action has now expired as this property is in the Critical Environmental area. On the issue of the trail, an agreement has been worked out with Councilman Cavalcoli and Mr. Tripp of Recreation. There is to be an easement at the top of the bank, details of which are to be worked out with the Town. Mr. Cavalcoli also noted that the Town Board is agreeable to reducing the recreation fee from \$600 to \$400. Mr. Tripp noted that he does not want the trail to be in the creek bed area. The trail may or may not happen, but if there is an easement, it can be developed some day.

Mr. Pohlman asked about the distance from the creek. If there is a question of the title, the survey shows the property going all the way to the creek. The measured distance in the search doesn't quite go that far. I don't know what the width of the easement is to be. Mr. Crandall responded that this is usually a footpath approximately 20-30' in width. Mr. Pohlman asked if he could use the dimension of the last 30' from the north bank of the creek? Mr. Crandall responded that this should accommodate the safety issue as we do not want the trail to come too close to the edge. Thirty feet should give enough room and still keep as close to the creek as practical. This requirement is to be worked out with Mr. McKenna. Turn around driveways will also be included as well as the note of no further subdivision of land. The Planning Board will recommend to the Town Board that the recreation fee be \$400.

Motion was made by Ms. Ganey, seconded by Mr. Eustace to approve the preliminary for the Kingsbury Subdivision; issue a Negative Declaration; waive the filing of the map cover; and suggest to the Town Board that in exchange for the trail, the recreation fee of \$400 be charged per lot and subject to deed restrictions on the turn around driveways; that a portion of the land remain forever wild; and that there be no further subdivision of land, plus the sidewalk requirement is waived. Carried. Abstained: D. Pohlman.

It was also noted that this is a Type I action under SEQOR with the following supporting reasons: A coordinated review has been made. The comments of the Dept. of Env. Consv. have been so noted with respect to the critical environmental area. We are protecting the creek by (a) requiring the non-disturbance area; (b) we will get a trail back there. Some of the other issues are that a portion of the property will remain forever wild; that the condition of no further subdivision of land is in place; and for safety reasons, turn arounds in the driveways will be required; that the septic systems will be located a minimum of 4-500' according to Erie County Health Dept. regulations. Carried.

**Tim Horton's and Road House Grille - Woodlawn Credit Union Site -
McKinley and Milestrip**

Messrs. Dean Collins, Wayne Kwiatkowski, Paul Gregory, and Joe Palladino appeared before the Planning Board on a proposed Tim Horton's and Road House Grille to be located on McKinley and Milestrip.

Mr. Palladino explained that they have appeared before the Planning Board for the last 3 months on this proposal. The two tenants, Road House Grille is to occupy 7300 s.f. and Tim Horton's 800 s.f. Both tenants wish to move ahead with this development. We are prepared to sign leases with both parties. We are ready to proceed with negotiations pending Planning Board approval. The last time that we were here we raised concerns about variances. We don't feel the variances are necessary, especially on the one requiring prohibition of the sale of alcohol within 500' of a residential development. This does not abut a residential neighborhood. The next one is the 35' setback from the property line. However, the way we interpret it, this should be the street line. All but one area addresses that 35' requirement.

Mr. Phillips noted that you cannot take property that you do not own. That right of way belongs to the State and County. They may widen that property some day. You cannot count that as part of your setback.

Mr. Palladino responded that this is from the street line. Mr. Phillips responded that the last time we met we told you that you were wrong. The street line is defined in the code --is a line separating a lot from the street.

Mr. Gregory noted that the confusion comes in after the last sentence which is a 10' setback from the property line. It references the property line whereas if the property line is the same as the street line, there will be no need for the follow-up sentence. It seems to say 35' from the pavement and then 10' from the property line which results in confusion for us.

Mr. Reilly explained that for 10 years the Town has interpreted the way the Planning Board is interpreting it. Every applicant that has come before us has said 35' from the right of way or property line. I realize that you may want to take a long time to interpret that. My advice is that if you go to the Zoning Board, you have every right to say we want your interpretation. The Zoning Board has that power. If they waive it and say you are right, you will not need a variance. I have a feeling though that 10 yrs. of history says it is and the definition is that the property line is the right of way line.

Mr. Gregory noted that if you look at the existing site, and

Tim Horton's and Road House Grille (Cont.)

the existing pavement, as you see it along Milestrip, we are actually putting green space back in. We are taking the existing pavement along McKinley and are maintaining the existing curb line at the pavement. We are not taking any green space out on McKinley or along Milestrip. The one area is in question that unless there is a different interpretation, we are working with the existing pavement.

Mr. Phillips noted that when the original credit union was built, there may have been different codes. Now that you plan to redevelop, you must follow present codes. Also, you are not picking up the extra property that is owned by the DOT.

Mr. Palladino noted that the purchase is not possible at this time. The buildings have been set back and we need the space for traffic circulation to have another row of parking.

Mr. Pohlman stated that the second plan is much better than the first and now you wish to go back to the original. Some effort should be made to acquire more land as the present project is too dense and not viable. You need a much larger lot for what you want to do. Also, no thought has been given to the traffic that is generated by the mall from November 1st thru Christmas. We have great concern about that area.

Chairman Crandall noted that he too is concerned about that intersection. If a person gets impatient, and darts out, there could be an accident. Also, 75% of the lot coverage is a concern especially with the traffic that will be generated within the site. The Planning Board feels that one use of the property is most practical. The original plan is just too much for the site. The Planning Board is charged with public health and safety.

Mr. Palladino noted that the two users are compatible with each other. Mr. Reilly responded that you are taking advantage of that site, however it is our concern on how to get people in and out safely. Mr. Palladino stated that they have done a lot of things to the site to make this an acceptable plan. We have tried to address the traffic concerns. We have revised the site plan and have tried to address the concerns.

Attorney McKenna noted that the street line in the statute deals mainly with use not right of way lines or title lines. This is a matter of use. You have 35' from where the use is. It seems to be a matter of interpretation.

Chairman Crandall responded that we are interchanging terms such as lot lines, street lines, right of way lines, etc. It is my interpretation that it should be 35' from the property line. A

setback is always from the property line. If the Zoning Board treats it differently, we will be bound by it.

Mr. Reilly noted that we need to sit down with our Traffic Safety Board 2 weeks from tonight, as well as representatives of the State. We do not have the expertise to comment on all the traffic items. The issue of the variances for the 75% lot coverage and setback is also a concern. This is a serious concern with traffic coming in and out of that site. The problem is, how do you mitigate it? There is a concern of traffic in the morning and additional traffic with Tim Horton's.

Chairman Crandall stated that Tim Horton does business 24 hrs. a day. The bulk of the traffic is in the morning. However, they also serve lunches. You will have noon-time traffic and later in the day, when the Road House Grille is at its peak, you will still have a reasonable amount of traffic. You are looking at traffic for both facilities. We should look at the relationship of the traffic on a 24 hr. basis, from 7:00 a.m. to midnight to see how that changes and what the impact will be throughout that period of time. If it is less than what I am thinking, that might change my opinion. We don't have enough information. I have a serious concern about two facilities on one site and I have not changed my mind. Our concern is traffic, access, and land coverage, as well as site plan layout. You have 82% coverage versus 75%. There is too much on the property. We are concerned about the appearance of the site.

Attorney Gregory stated that he does live in the Southtown's area and would like to see these businesses brought here.

Mr. Phillips stated that he has a lot of experience coming from the Woodlawn Credit Union site. Tim Horton's creates a great deal of traffic. It is a fast food facility that concerns us. We also need updated traffic information so that we can present this to the Traffic Safety Board. There is going to be a great deal of traffic generated during certain times of the day; especially during peak hours.

Mr. Palladino asked if they could have a recommendation so that they can proceed to go to the Zoning Board of Appeals. We also need to narrow the issues on the project. There are concerns as to the layout and setbacks; total coverage, setback.

Mr. Reilly noted that the Zoning Board looks for a recommendation from the Planning Board. They look to us as to what issues are of concern. We can send it with no recommendation. Our concern is that it is too much for the property.

Motion was made to look at all issues, the parking setback of 35' ask for an interpretation with reference to 280-135B(1) on the parking setback of 35' and lot coverage.

TOWN OF HAMBURG

S-6100 SOUTH PARK AVENUE • HAMBURG, NEW YORK 14075 • (716) 649-6111 • FAX (716) 649-4087



Supervisor
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Town Attorney
VINCENT J. SORRENTINO

Town Clerk
GEORGE DANYLUK

Supt. Of Highways
JAMES F. CONNOLLY

Receiver of Taxes
ROBERT A. MARS

Referral to the Town of Hamburg ZBA for Road House Grill/Tim Horton's Proposal

It is the understanding of the Planning Board that the above referenced application will require the issuance of two variances from the Zoning Board of Appeals. We respectfully request an interpretation of the language of the Town Zoning Ordinance, and submit recommendations to wit, as follows:

1. Section 280-135 B of the Zoning Code states that no open or enclosed off-street parking spaces shall be located within 35 feet of any street line. The Planning Board interprets this provision to mean within 35 feet of the "property line". This interpretation is based on our reading of the definitions for *Street* and *Street Line*, as specified in Section 280-222 of the Code. Street line is defined as a line separating a lot from a street. Does this mean the property line (or right-of-way line) or the curb line? If it is the finding of the Zoning Board of Appeals that street line is correctly defined as the property line, and based on the location of the project site, the Planning Board renders a negative recommendation for the issuance of a variance from the 35-foot setback requirement.
2. As provided in Section 280-68.1 of the Zoning Code, the maximum allowable lot coverage in a C-1 Local Retail Business District is 75 percent of the site. The applicant is proposing a total lot coverage of 82 percent. Based on the location of this site, and our opinion that a landscaping plan would not effectively mitigate the excess of paved area that will exist under this proposal, the Planning Board renders a negative recommendation for the issuance of a variance from the 75 percent lot coverage requirement.

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Receiver of Taxes
ROBERT A. MARS

TO : Planning Board

FROM: Engineering Dept.

DATE: 10/20/98

SUBJ: 10/21/98 PLANNING BOARD MEETING AGENDA
Road House Grill & Tim Horton's
McKinley Parkway at Milestrip Road

The following are review comments on a preliminary plan last revised on 8/3/98 and received in our office on 8/14/98:

- (1) The Planning Board should consider requiring public sidewalk access to the site.
- (2) We will review the site plan when it is prepared in accordance with the site plan review checklist.
- (3) The site plan should be revised to reflect the traffic impact mitigation measures recommended in the Traffic Impact Study, as well as those requested by the Planning Board.

All concerns must be satisfactorily addressed for approval.

Gerard M. Kapsiak, P.E.
Town Engineer

Richard J. Lardo
Principal Engineer

RJL/dhp

Mr. Reilly will need the updated traffic information as soon as possible.

Motion was made by Ms. Ganey for an interpretation of the lot line, where it starts with the 35' setback. Depending on their interpretation would be how we review--

Mr. Crandall wants this to be more specific. I want an interpretation on Section 280-135B(1) setback as it further relates to setback of parking on that specific C-1 site. I want the ZBA to look at that section. Also, I would like them to look at the definition 280-106, and 280-222 street and street line. With those two items, we want to go further and address the overall recommendation as it relates to what the setbacks are.

Ms. Ganey interjected that depending on the interpretation of the ZBA, would determine my recommendation on the setback. If it is from the property line, then we need to look at it completely different. If it is from the street line, then there may be enough there that we won't have to worry about any peak, depending on how the ZBA will interpret. That is why until you get an interpretation can you recommend one way or the other.

Mr. McKenna stated depending on how they decide, the longer distance, at the same time, they can get the variance. There are two choices. We can address the interpretation or add both. If there is a way to add both, I would prefer it so that we get both answers coming back. We have refused others that have applied. However, we have given 22' to the Seven Corner Development.

Ms. Ganey's motion was then read back: 1. Interpretation as to Section 280-135B as it relates to setback of parking at the specific site which is a C-1 district; Definitions 280-106 and 280-222 street and street line. Address the recommendation as to what the setbacks are depending on whether the ZBA would determine the requirement from the street. We also need to look at the 35' depending on the determination that I would look at reducing it to no less than 10'; if it is from the street line. This should include land coverage with exceptional landscaping to avoid the sea of asphalt.

Chairman Crandall responded that if the interpretation is the property line as we know it to be, I would have a problem in reducing the 35' to 10'.

Mr. Reilly interjected: You are asking for an interpretation of the code on parking setback. That the interpretation as we understand it, they need a variance. If they interpret our way, they need a variance and you would recommend to the ZBA for that variance as long as this did not make that variance more than 10' on the 35' requirement. The Zoning Board would like your input.

On the second issue, the variance of lot coverage (75% versus 82%) you are recommending that they grant the variance as long as they provide enough landscaping to meet our requirements.

Mr. Crandall noted that he would vote against it.

Motion died for lack of a second.

Motion was made by Mr. Phillips that we refer the matter to the Zoning Board of Appeals for interpretation of the different codes mentioned. That if it is determined they need a variance on the 35' setback from the property line, I make a negative recommendation on the variance; On Item 2 on the 75% allowable coverage, I make a negative recommendation as I don't believe any additional landscaping can be done because it would interfere with the line of sight. There is no other place. It is a sea of asphalt. We are asking the board to clarify the interpretation from the property line, and recommend that the applicant not receive the variance; seconded by Mr. Fitzpatrick. Carried. Opposed: Ms. Ganey.

Attorney Gregory stated that I would like the record to reflect if possible that we did point out where the existing pavement is; and that we are actually removing pavement on Milestrip, I would like the record to reflect that there will be 82% coverage versus 75% if you characterize it as a sea of asphalt. Also, I'd like the record to reflect that the adjacent property is all green, as well as the fact that there is some misunderstanding on our part as to the question of the code section and how the setback is to be measured. Finally, as to parking, different Towns and Villages have different concerns as to parking according to street. For example, are we talking about parking spaces or access roads. What has to be setback. You don't want cars fronting on the street near the property line or pavement.

Response: Mr. Crandall - that may be a part of the interpretation. What I read is off street parking space.

Attorney Gregory: If its not lined, where do we measure from? The parking space as opposed to pavement.

In closing, Attorney Gregory asked if they could have a copy of the minutes also.

Kwik - Fill 4909 South Park Avenue

Mr. Tom Lucci of Sear Brown appeared on behalf of the revised site plan for the proposed Kwik-Fill on 4909 South Park Avenue. The Planning Board has received verification that the property on Howard Rd. has been abandoned. This information was received from the Town Legal Dept. The revised site plan is quite acceptable to the board. We thank the applicant for responding to the board's concerns. They have added more landscaping along South Park Avenue with some flowering cherry trees. The elevations are acceptable.

Engineering Comments:

- (1) We could not locate a previously approved site plan for this parcel.
- (2) Note on the plan that a New York State Dept. of Transportation (NYSDOT) permit is required for work within the highway right-of-way. We will not approve these plans without NYSDOT review and approval of the proposed work on their right-of-way.
- (3) Provide a copy of the Erie County Health Department approval for the septic system.
- (4) The landscape plan is to be approved by the Planning Board.
- (5) Show the details for the RPZ backflow preventer, as required by the Erie County Water Authority as part of the water service.
- (6) Provide a detail drawing of the proposed storm water drywells. Include site drainage calculations and soil boring logs of the drywell locations for review by our department. Stormwater detention facilities may be required to be provided.
- (7) A minimum of ten (10) inches of subbase material is required for the pavement section.
- (8) We do not have any records in our files showing that the portion of the Howard Road paper street which crosses the property has previously been abandoned by the Town.

Motion was made by Mr. Pohlman, seconded by Ms. Ganey to approve the site plan for Kwik-Fill, issue a Negative Declaration, contingent on Engineering and final approval on landscaping. Carried.

Court Decision on the SDEIS for Brierwood Senior Center

Chairman Crandall noted that this is a reconvening of the original discussion on the Brierwood Senior Center.

Mr. Robert Walsh, Attorney for E. F. Burke, appeared before the Planning Board on the Court decision for the Brierwood Senior Center. He noted that he sent a letter to Mr. Donald McKenna with the transcript from the proceeding and the central issue. It is my position from day one has been that this isn't a beginning project. It's at a different juncture of the SEQOR process & has been completed. Getting into a supplemental requires a whole different level of findings. That there may be an environmental impact but it is a specific adverse environmental impact. The court in reviewing the matter that was submitted of what the board has done and reviewed the position that the project does not have adverse environmental impacts. We took the position that the findings could not be sustained because you couldn't take the hard look and come up with the findings. The court said that it didn't find the hard look and sent it back to the Planning Board. In good faith, the board has taken the position of the fact they did take a hard look. Mr. McKenna argued in good faith as an advocate that a hard look had been taken and we are back. In my view, there is nothing new in the record. It is what it is. I don't think you can take a harder look than you have already. I suggest that we go forward with the project.

Chairman Crandall noted that a portion of this issue is not a planning issue but a legal issue. That is why we have Mr. McKenna here. I will then turn this over to Don to respond.

Attorney McKenna noted that this has been settled by the court and raised in a paragraph of the order as part of the record and the Colloquy it is remanded that the Town of Hamburg Planning Board for reconsideration of the determination, that they should take a hard look and make a reasonable elaboration of the determination. There is a decision that is part of the record. I don't see how it explains how the court was thinking, but it does reference the same thing. It's a matter of the Judge not looking at the record presented to the Court and he didn't find sufficient evidence that a hard look was taken. The Court is saying, do it again in effect. So we go back to January 20, 1998 and take another look. This would not include scoping, not include anything from the petitioner. It is a matter of reconsideration. Therefore, go back and look at your files. Nothing can be clearer than that.

Mr. Walsh noted that the Court said that the agency did not take a hard look. It gets to a point, where the Board went thru it carefully and diligently and the decision that was based upon what was before you. Now we come back and it is not sustained. I think we have exhausted the avenue. No new information can be brought in

on this environmental issue. At this point, we should take it forward. The Court order in a decision has to take it in context. The context was re-petition under the Article 78 that the SEIS finding is improper. It's improper because it wasn't a requisite hard look. The reason it wasn't a requisite hard look was because the determination coming out didn't make sense. When you boil it all down, the Judge agreed with us because I don't see it. How you could come to that conclusion when the Colloquy references how you address Mr. Walsh's point that many of these impacts are positive impacts. It's not on the basis of the motion we are making a decision but look at the record. My recommendation is to move forward.

Chairman Crandall reiterated the position of the board that this is a legal matter and as such, I feel we should follow the advice of our legal counsel. We will address that in a minute, but in the meantime, Drew is there any comment that you would like to address?

Mr. Reilly responded that this is a legal issue and we have been given direction. I have put all the files together for the Planning Board and will try to break it into files relating to the original EIS and actions taken in 1990-1991, & 1992. All the information that was presented by E.F. Burke up to the date of your determination. I have it all set up for the Planning Board to review the files. You have a lot of the information, but I put it together for your review for the hard look.

Chairman Crandall therefore noted that we will re-examine the material. I feel that is the appropriate position we should take and proceed on that basis. Therefore I would like to see a motion that this board re-examine our previous SEQOR determination taking it back to January 20, 1998.

Motion was made by Mr. Phillips that as a result of the Court Order of the Hon. Christopher Burns, we re-examine our SEQOR determination for this development as of January 20, 1998, seconded by Mr. Pohlman. Carried.

Mr. Reilly explained that what I am asking the board to do, is to review the file and the information that has been presented. There are notes and public meetings. I am asking that you keep this moving expeditiously so that in 2 weeks that you have a list of notes and can articulate one way or the other about the potential impacts. I will also do the same thing as consultant to the Town. This is for the hard look.

Attorney McKenna noted that there will be no scoping or public hearings. This is a re-consideration of the matter. Procedurally, everyone must review the material.

Mr. Reilly explained what is to happen next. Procedurally, if

the board comes back 2 weeks from tonight and has taken the hard look and in that hard look you believe we made an error in your decision and want to make a Negative Declaration, the applicant will proceed with site plan review. If the Planning Board determines that the same interpretation has been made, we are at the point of waiting for the applicant to submit a SDEIS. There will be no scoping. Then we can recommend a decision for the record, for the public, and later on.

Mr. Pohlman asked if Mr. Reilly could supply us with a definition of hard look. Response: There isn't any. Drew will try to locate something if one exists. Attorney McKenna stated that this is street language and very subjective. There was a decision in case law that might help. The hard look is that of a layman and what he feels.

Chairman Crandall noted that we thought we gave this a hard look before. Obviously the court does not agree. Therefore we will re-examine the issue.

Christine Roach, resident of Brierwood, stated that she was at the Court hearing. The Judge said he would never over-rule your decision. Your decision stands. The lawyers presented what the looks were. You have worked very hard in examining this from January. It was obvious to us that you have worked very hard in reaching a decision. You did the right thing. He didn't say you did the wrong thing. He said we stand on your decision.

Mr. Crandall responded that this is part of the dilemma, to try to figure out what the Judge wants us to look at and what we feel would support that decision.

Hampton Inn - Commerce Park Subdivision - Commerce Place

Mr. Mark Tiedeman of MTW Associates appeared on behalf of the 88,000 s.f. facility to be located on a 2 acre site in Commerce Park. The building will be 3 stories in height, 13,000 s.f. per floor, equating to 40,000 s.f. We have provided 78 parking stalls. The requirement is 73 and we have met that. We are aware of the Engineering letter. On the extension of the road, it has to be done by M.J. Peterson and dedicated to the Town. Nussbaumer and Clarke are working on that portion. The Engineering plans are underway for Commerce Place and they are working with M.J. Peterson in order to seek the agreement with the Erie County Water Authority for this work. That needs to be completed before we can get our approval. We would like to have a contingency approval as we will be ready to start in the spring. We have submitted plans to the Sewer authority. The building height is a bit over 35'. We could drop it down.

Chairman Crandall suggested that the applicant go to the Zoning Board for approval since construction is not going to start until next spring.

Hampton Inn - Commerce Place

Wendy Salvati pointed out that we are in receipt of a letter on the traffic. There will be 61 vehicles and responded to the engineering concerns that have been brought up. On signage, the Thruway will not allow any signage and the building will not be seen from the Thruway. They can't move the trees as they are 50' to 60' and the Town is willing to work out some type of sign location.

Mr. Tiedeman responded that he is aware of the situation.

Motion was made by Mr. Pohlman, seconded by Mr. Phillips to approve the Hampton Inn site plan subject to Zoning Board approval on the height of the building and contingent upon implementation of the Engineering requirements as described in the memo of 10-20-98. Carried.

SUBJ: 10/21/98 PLANNING BOARD MEETING AGENDA
Hampton Inn - Commerce Place

The following are review comments on plans dated 9/21/98, last revised 10/15/98, and received by our office on 10/16/98:

- (1) It will be necessary to design, construct, and dedicate to the Town an extension of Commerce Place for site access. This is to include a temporary paved cul-de-sac at the end of the extension. The existing paved turnaround at the end of Commerce Place is to be removed as part of the extension. It is our understanding that this road extension is currently being designed by Nussbaumer & Clarke.
- (2) A mainline water extension will be required to provide service to the site. The Erie County Water Authority (ECWA) should be contacted for pressure and flow information in the system. A water district extension or other appropriate agreement with ECWA will be required. It is our understanding that the waterline extension is currently being designed by Nussbaumer & Clarke, and that M.J. Peterson is working on obtaining an agreement with ECWA.
- (3) It is our understanding that the plans have been submitted to the Erie County Dept. of Environment and Planning (ECDEP) for review on behalf of the Erie County/Southtowns Sewage Treatment Agency. We will not approve the site plan prior to approval by the ECDEP.
- (4) Traffic information has been provided for the site, as required in the rezoning of the parcel. The Planning Dept. should determine if the information satisfactorily addresses this requirement.

South Park Rezoning from C-3, Office District, to N-C Neighborhood Commercial.

The attached memo was presented by Wendy Salvati on a study that was done on a portion of land near CID offices on South Park for the purpose of considering a change in zone from Office, C-3 to N-C Neighborhood Commercial.

The following recommendation was made by the Planning Board:

Motion was made by Mr. Phillips, seconded by Mr. Pohlman to forward a favorable recommendation to the Town Board on the rezoning of land on South Park from C-3 to Neighborhood Commercial, as it is an area that has been mis-zoned. We have reviewed the study of the existing conditions and in our opinion we feel the area should be changed to N-C. The classification would allow existing residential structures to continue and would permit the establishment of small business also. Carried.

Mr. Reilly noted that he will have to re-write the zoning code change for their adoption. Legal descriptions have to be drawn up and a public hearing must be held.

Minutes of the meeting of September were approved on motion by Ms. Ganey, seconded by Mr. Fitzpatrick.

Motion was made by Mr. Phillips, seconded by Mr. Fitzpatrick to adjourn the meeting. Carried. Meeting adjourned at 11:00 p.m.

Respectfully submitted,

Gerard Koenig
Gerard Koenig, Secretary
Planning Board Secretary

Next meeting: 11-4-98

The ENB SEQRA Notice Publication Form

Please check all that apply:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Negative Declaration - Type 1 | <input type="checkbox"/> Draft EIS |
| <input type="checkbox"/> Conditioned Negative Declaration | <input type="checkbox"/> with Public Hearing |
| <input type="checkbox"/> Draft Negative Declaration | <input type="checkbox"/> Generic |
| <input type="checkbox"/> Positive Declaration | <input type="checkbox"/> Supplemental |
| <input type="checkbox"/> with Public Scoping Session | <input type="checkbox"/> Final EIS |
| | <input type="checkbox"/> Generic |
| | <input type="checkbox"/> Supplemental |

DEC Region # 9 County: Erie Lead Agency: Town of Hamburg

Project Title: Kingsbury Subdivision

Contact Person: Andrew C. Reilly
 Firm/Govt. Name: Town of Hamburg Planning Department
 Address: S-6100 South Park Avenue
 City, St, Zip: Hamburg, NY 14075
 Phone: 649-2030 Fax: 648-0151 Email:

Project Location (include street address/municipality):

Old Lakeshore Road, Town of Hamburg, New York (SBL# 195.00-1-27)

Brief Project Description:

The action involves the subdivision of a 13.9-acre parcel into three lots for the future development of single-family homes

For Draft Negative Declaration/Draft EIS: Public Comment Period ends: ___/___/___

For Public Hearing/Scoping Session: Date: ___/___/___ Time: ___:___ am/pm

Location:

Scoping Session: Date for final written comments: ___/___/___

Location where draft scope available:

For Conditioned Negative Declaration: In summary, conditions include:

Deadline: Notices must be received by close of business Wednesday to be published in the following Wednesday's ENB.

Email to: enb@envbulletin.com
 Mail to: Business Environment Publications, Inc.
 6 Sevilla Dr., Clifton Park, NY 12065-5013

GroupWise address: enb
 Fax: 518-371-7419
 Phone: 518-383-1471

Environmental Notice Bulletin

Email to: enb@envbulletin.com

State Environmental Quality Review Act

NEGATIVE DECLARATION

Notice of Determination of Non-Significance

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law.

The Town of Hamburg Town Board, as SEQRA Lead Agency has determined that the proposed action described below will not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared.

Name of Action: Kingsbury Subdivision

SEQR Status: Type 1 Reason: Action proposed within a C.E.A.

Description of Action:

The subdivision of a 13.9-acre parcel into three lots for the future development of single-family homes.

Location:

Old Lakeshore Road, Town of Hamburg, Erie County, New York. (SBL #195.00-1-27)

Reasons Supporting this Documentation:

1. Impact on Land:

The 13.9-acre property will be divided into three lots measuring 9.56 acres, 2.09 acres and 2.29 acres. The largest lot will not be further subdivided in the future. In developing these lots every effort will be taken to preserve as many trees as possible, particularly large trees. Since the site is located within a designated critical environmental area (CEA), site design will be sensitive to the protection of important natural resources. Development will be located outside of the boundaries of the regulated flood plain. Measures will also be taken to mitigate the limitations associated with the installation of septic systems in potentially hydric soils. Hydric soils will not be disturbed. Development will also be situated closer

to the roadway to protect the creek and creek bank, and preserve the environmental characteristics of the CEA to the greatest extent practicable.

2. Impact on Water:

The subject property will be serviced by public water. The proposed action will not adversely affect Eighteen Mile Creek. The creek, creek bed and creek bank will in no way be altered by development. Proposed septic systems will be sited and designed in a manner that will reduce or prevent potential impacts to groundwater resources. Site construction and paving will change surface drainage patterns but this will not result in significant adverse impacts to Eighteen Mile Creek.

3. Impact on Plants and Animals:

The proposed project will preserve the maximum amount of natural vegetation and habitat possible. The southern-most portion of the site, which totals 3.5 acres and includes the creek bank, will be preserved as land forever wild through deed restrictions. In addition, the applicant will establish an easement across a 30-foot wide area of the lot for a nature trail, in accordance with the recommendations of the Town of Hamburg 2010 Comprehensive Plan. This project will not impact any State or Federally-regulated wetlands.

4. Impacts on Agricultural Resources:

This site has never been utilized for agricultural purposes. Furthermore, the development of three single-family homesites on 13.9 acres will have no adverse impacts on adjacent agricultural uses in the vicinity of the site.

5. Impacts on Archaeological and Historic Resources:

No significant historic or archaeological resources are known to exist on the project site. To prevent potential adverse impacts to cultural resources, only those portion of the project site that are required for the construction of the dwelling units and requisite septic systems will be disturbed. The preservation of over 3.5 acres of natural vegetation will preserve existing viewsheds in the vicinity of Eighteen Mile Creek.

6. Impact on Transportation:

The development of three single-family dwellings will have an insignificant impact on traffic and transportation in the vicinity of the site. For public and traffic safety purposes, the driveway for each unit will have a turn around area.

7. Impacts on Energy:

The proposed single-family dwellings will utilize energy resources for domestic purposes. The slight increase in the use of energy resources will not result in significant adverse impacts to local or regional supplies.

8. Noise and Odor Impacts:

The proposed three-lot subdivision will not result in significant adverse noise or odor impacts.

9. Impact on Public Health:

The proposed three-lot subdivision will not result in significant adverse impacts on public health and safety. No hazardous substances will be utilized in the development of this site or for post-development activities.

10. Impact on Growth and Character of the Community:

The development of three single-family dwelling units will generate an insignificant increase in population. These new residents will, in turn, create a minimal demand for community services. No expansion of services will be required to service these units, and no adverse impacts on the character of the local community will result from this action.

For Further Information:

Contact Person:

Drew Reilly
Town of Hamburg Planning Department
S-6100 South Park Avenue
Hamburg, New York 14075

Date: October 30, 1998

TOWN OF HAMBURG

2982 Lakeview Rd., Hamburg, NY 14075*(716)646-5145*Fax(716)646-5164



PATRICK H. HOAK
Supervisor

RECREATION DEPARTMENT

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Director of Recreation

MARTIN C. DENECKE
Asst. Director of Recreation

JOSEPH P. WENZEL
Recreation Specialist

CURT S. HERRMANN
Recreation Supervisor

CAROLYN M. MACHELSKI
Secretary

MORNA J. RANKIN
Secretary

MARY ELLEN EUSTACE
Recreation Attendant

PRISCILLA W. GRANVILLE
Recreation Attendant

TO: Duke Spittler, Chairman
Town Conservation Advisory Board

FROM: Richard E. Tripp, Director of Recreation *RET*

RE: Kingsbury 3 Lot Subdivision
Old Lakeview Road

Please be advised that I have discussed this subdivision with Councilman Cavalcoli and we are in agreement on the following points.

1. Preserve the 100 foot set back along the creek bank in its' natural state.
2. Accept a combination of money and an easement for possible future foot trail development.
3. Somehow insure that the prospective purchasers of the lots understand the easement.
4. Reduce the dollar amount per lot from \$600 to \$400 providing a trail easement is given.

If I can be of any further assistance regarding this matter feel free to contact me.

RET:mjr

CC: Dick Crandall, Planning Dept.