

Town of Hamburg
Planning Board Work Session
July 20, 2011
Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, July 20, 2011 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Gerard Koenig, Stephen McCabe, Sasha Yerkovich and Karen Rogers.

Others in attendance included Councilman Collins, Andrew Reilly, Sarah desJardins and Richard Lardo.

Excused: David Bellissimo

Chairman Reszka stated that the public hearing scheduled for the Granite Shop on South Park Avenue had been cancelled because the project is not going forward.

Public Hearing – Brookview Apartments

Mr. McCabe read the following public hearing notice:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Glenn Wetzl. The applicant proposes to construct an apartment community on approximately 14 acres of vacant land located on the south side of 4650 Southwestern Boulevard. In accordance with the Town of Hamburg Site Plan ordinance, a public hearing will be held on July 20, 2011 at 7:00 PM in Room 7B of Hamburg Town Hall.”

Chairman Reszka informed the public in attendance that no Planning Board decisions are made behind the scenes. He further stated that this project is not one that the Town has initiated and the Planning Board's job is to review projects that are proposed by developers to determine if they are good for the community and everyone involved.

Mr. Reilly stated that the property is zoned correctly for this use. He further stated that at this time the Planning Board has enough information to begin the environmental review process, which includes receiving input from various involved agencies, Town departments and the public. He noted that after the public input is received and the Board reviews the environmental documentation, the applicant will be given a list of concerns to be addressed, additional information to gather, etc.

Attorney Sean Hopkins, representing the applicant, stated that the project consists of 168 apartment units and that, if approved, the applicant hopes to construct the project in stages, starting close to Southwestern Boulevard and working his way to the rear of the site based on demand.

Attorney Hopkins stated that the original plan for this project was presented to the Planning Board in January 2011 and included a row of apartment buildings right on the

required 50-foot setback line behind the existing homes on Summerway Lane. He further stated that as a result of a meeting with the Summerway Lane residents at which they indicated a desire to see the apartment buildings moved further away from their rear lot lines, the 50-foot setback was increased to 75 feet for buildings and parking spaces.

Attorney Hopkins stated that the plan as presented shows 60 feet of conservation area along the rear portion of the property. He further stated that he has prepared a document that ensures that conditions such as the 60-foot conservation area will be in place in perpetuity. He distributed the document and reviewed it with the Board and the members of the audience.

Attorney Hopkins stated that if this project is approved, the applicant will propose several conditions that he will ask the Board to consider that are largely the result of discussions with the neighbors, as well as with the Board. He stated that conditions need to be enforceable and also need to be remembered, no matter who owns the property. He further stated that the applicant proposes that the conditions that the Planning Board ultimately imposes take the form of deed restrictions. He noted that a document would be recorded at the Erie County Clerk's office against the title to the property, which would mean that not only Mr. Wetzl, but any future owner, would be subject to the restrictions.

The deed restrictions proposed by the applicant include the following:

1. At no point in the future will Mr. Wetzl or any subsequent owner propose a public roadway connection to Summerway Lane via the existing stub street or a private roadway connection to Summerway Lane. (However, if the Board determines that there is a need for a gated emergency access between the two sites, it will have to be included).
2. At no point in the future will Mr. Wetzl or any subsequent owner construct a sidewalk, recreational trail, bike path or any other kind of connection to the existing subdivision.
3. The southernmost 60 feet will be preserved permanently in perpetuity as conservation area.
4. Mr. Wetzl or any subsequent owner of this site will be required to provide any contractor who does work on the site with a copy of these deed restrictions so that no encroachment occurs in the 60-foot conservation area.
5. Mr. Wetzl or any subsequent owner of this site is prohibited from removing any vegetation from the 60-foot conservation area. If the property owner wishes to remove any dead or diseased trees, he must obtain the recommendation of an arborist or licensed registered landscape architect and bring the report with recommendations to the Planning Board for its review and authorization to go forward with the removal of the dead diseased trees.
6. Regarding the rear of the site that adjoins Summerway Lane, the setback of any buildings, parking, garages or any other type of improvements on this site will be 75 feet.

Attorney Hopkins noted that the setback for parking spaces is five (5) feet and that Mr. Wetzl proposes to maintain a 75-foot setback for parking instead.

Mr. Koenig asked whether the Planning Board would be the appropriate Board to approve a plan for removing dead or diseased trees in the conservation area.

Mr. Reilly stated that, if the area to be preserved is placed in a conservation easement in the name of the Town of Hamburg, the Town Board would be the only Board that could authorize any work in that area. He noted that it would be appropriate for the Conservation Advisory Board to review the arborist's plan and then recommend to the Town Board whether the plan should be approved. Attorney Hopkins agreed.

In response to a question from Mr. Koenig, Chris Wood from Carmina, Wood, Morris (Mr. Wetzl's engineer) stated that the property would not be completely cleared when the first phase of construction is begun. He further stated that clearing would be done in phases, along with the corresponding construction.

Mr. Koenig asked if the Planning Department has received input from the Fire Chief regarding whether he feels a gated emergency access should be required for this site. Mrs. desJardins responded that she has asked for his input and has not received a response yet.

Regarding the proposed site plan, Attorney Hopkins stated that all of the apartment buildings would be two-story and the required number of parking spaces per the Town Code are provided. He further stated that landscaping is proposed around the buildings and a community center is proposed.

Attorney Hopkins reviewed the following potential environmental impacts:

- Wetlands – A few small wetland areas exist on the site but they will not be impacted except in the area where the creek will be crossed.
- Floodplain and floodway – The current site plan shows the current boundary of the Federal Emergency Management Agency (FEMA) floodway/floodplain. FEMA is in the process of coming out with new tentative floodway/floodplain maps that have been reviewed by the Town of Hamburg and, with respect to this property, the new maps do not change much.
- Traffic – Comments from the New York Department of Transportation (NYSDOT), which has jurisdiction over Southwestern Boulevard, are still outstanding but when they are received the applicant will have to give them appropriate consideration.
- Community character – The applicant is aware that the nearby residents would rather that nothing ever be built on this vacant land, but he is trying to address the residents' concerns and will honor his commitments.
- Drainage – The applicant's engineer will be responsible for preparing a drainage plan for the entire site, which will be submitted to the Hamburg

Engineering Department for its review. The New York Department of Environmental Conservation (NYSDEC) has promulgated very stringent standards that regulate runoff and the quality of that runoff.

Chairman Reszka declared the public hearing open. The following people spoke:

1. James Boguslawski stated that there are apartment complexes on Southwestern Boulevard that do not have a secondary means of egress in the rear of the sites. He asked why it is so important to have one for this proposed project. He asked if the Four Seasons subdivision did not exist, would the applicant be required to put an emergency road all the way out to Sowles Road. He asked the Board to look into a secondary access closer to Southwestern Boulevard.
2. Elizabeth Gee stated that she agrees with Mr. Boguslawski. She stated that she lives at 3960 Summerway Lane and that she and her husband have been opposed to this project from the beginning. She stated that she is concerned about the number of trees that would be taken down and the effect that would have on the wildlife in the area. She is opposed to the construction of the secondary means of egress onto Sunway Lane and feels that a privacy fence along the 60-foot conservation area line would be essential because of the close proximity of the buildings in the rear of the project site. She stated that the fence would give the Summerway Lane residents a feeling of safety, security and privacy.
3. Thomas Brownell stated that he is concerned about the destruction of wetlands, the destruction of the wildlife habitat, the worsening of existing drainage problems in the area and the introduction of social problems to the Four Season subdivision that do not exist currently. He stated that the project would bring additional foot and vehicle traffic to the area, as well as increased pollution and noise. He is concerned that an apartment complex will bring a level of residents to the area that is lower than that of the surrounding community, as well as vagrants who might make the area unsafe for the children in the area. He stated that an apartment complex would bring an increase in the number of emergency calls, as well as the incidence of crimes such as burglary, theft, vandalism, assaults, illegal drug activity, home invasions, trespassing and street gangs. He stated that he is a retired police officer and an expert in narcotics and street gangs and is concerned about sex offenders living in apartments. He stated that he purchased his home in Four Seasons because there is only one way in and out of the development and there is a playground, as well as the woods. He is opposed to the project.
4. Carole Enser distributed a map of the flood plain in the area of the proposed project and asked how deep the detention pond would be and how much water would flow into it from the floodplain area. She also asked if the detention pond would be able to take all the water that might need to flow into it in the event of a flood so that a connection to Four Seasons would not be necessary. She stated that the residents of Four Seasons have been able to live there for many years without the need for a secondary means of egress and does not see how

230 cars from the apartment complex using Four Seasons as an emergency route would be good for the subdivision.

5. Jeanne Kyte asked if the applicant would fill in any empty spaces in the conservation area with trees. She asked if there is a map that shows exactly where the first phase of the project would be located and she asked why, if an emergency means of egress is necessary, it could not be constructed adjacent to the NYSDOT property. She stated that she agrees that a fence as proposed by Mrs. Gee would be wonderful.
6. Rosemarie Glenn stated that she resides at 3927 Summerway Lane and is concerned about two different zones being connected by the emergency access. She stated that she opposes the connection because she wants to keep the subdivision safe and secure and she likes the fact that there is only one way in and out of her subdivision. She stated that she is concerned that the apartment tenants would not be invested in their property or the Town and does not want the tenants to be able to roam her neighborhood or park and have access to the homes and children in the area. She is concerned about strangers using the paved emergency access to enter her neighborhood and feels that any connection between the two developments will spoil the value and safety and unique quality of living of her neighborhood. She stated that if a connection is necessary, she would rather see the project connected to Bethel Estates or Maplewood Apartments because they are zoned the same. She is concerned about whether the schools have the room for more children to attend. She stated that she has a petition with signatures opposing the emergency means of egress through Sunway Lane.
7. Miriam Winokur stated that the emergency means of egress is a continuous concern to the residents of Four Seasons. She stated that Four Seasons has no direct road in or out of the neighborhood for emergency vehicles and unless the Fire Chief can show that the emergency egress would be a viable and logical route to use as an emergency exit, she feels the Planning Board would have to look for an alternative for the safety of the apartment dwellers.
8. Armondo Capozzi stated that he resides at 3987 Autumnway Lane and he chose Four Seasons because there is only one way in and out of the subdivision. He does not think that 75 feet is enough space between the two developments and he is concerned that apartment dwellers are transient people who will not have a stake in the neighborhood. He is concerned about the safety of the Four Seasons residents, especially the small children.
9. Cheryl McAllister stated that she is worried about crime, people destroying her property, home invasions, the loss of wildlife habitat, the loss of the beautiful woods, the loss of a feeling of security in her neighborhood, wetlands and the possible reduction in her property values and increases in her taxes.
10. Patricia Burke stated that she resides at 3959 Summerway Lane. She asked whether, if the project is not approved, the Planning Board would ever consider installing a roadway connection from Four Seasons to Southwestern Boulevard if it is so concerned about the safety of the Four Seasons residents. She stated that she would be opposed to that.

In response to Ms. Burke's question, Mr. Reilly stated that the Town does not build roads – developers do. He noted that the emergency means of egress is being considered because of the safety of the apartment complex residents.

Mr. McCabe stated that if Mr. Wetzl was proposing a single-family development, the two subdivisions would be connected by the stub street on Sunway Lane.

Mrs., Yerkovich noted that the Town does not own the land Mr. Wetzl proposes to develop.

11. Diane Rush, Sunway Lane, asked if the Planning Board is considering a connection between Four Seasons and the new development just because they can. She stated that the connection would not be between equal properties and she is under the impression that the builder does not want the connection. She stated that the Four Seasons subdivision has been there for over 30 years and she just wants to be left alone.

Mrs. Rogers read a letter from a Summerway Lane resident, Angela Coughlin, asking that the Planning Board keep the Four Seasons subdivision separate from the proposed development. Ms. Coughlin further asks that a permanent structure, such as a tall, sturdy fence be erected along the shared property line between the two developments.

Chairman Reszka declared the public hearing closed.

Chairman Reszka informed the audience that every concern raised at the public hearing will be addressed by the applicant and that every decision made regarding this proposal will be made by the Planning Board.

Ms. Enser asked the Board if, when the Fire Chief's comments are received, the Four Seasons residents could be contacted in some way to inform them that the comments have been received. Chairman Reszka responded that the Planning Board cannot contact the residents because if someone is missed, it becomes a legal liability for the Planning Board. He further stated that the residents can go on the Town's website to see when this project will be discussed next by the Board and they can read the Board's public notices in the Hamburg Sun, as well as the Front Page.

Mr. Reilly stated that the residents are also welcome to call the Planning Department to inquire if any new information has been received and if it has, they are welcome to visit the office and review the new information.

Ms. Glenn asked if, when the Board is considering the gated emergency access, the police department will be asked to comment on how this would affect the Four Seasons subdivision. She further stated that she does not believe that when the gate is open so that the access can be plowed in the winter it will be closed afterwards.

Mrs. Winokur stated that she was under the impression that the developer does not intend on constructing, and clearing land for, the emergency access unless in the future the Fire Department, or whomever, makes the decision that Sunway Lane must be opened up for an emergency exit. She further stated that she was also under the impression that at that time the Planning Board would consider whether to require the emergency access or not.

Attorney Hopkins stated that the developer is not proposing any connection now or at any point in the future but if the Town requires the developer to put an emergency connection in, he will have to do so.

Michael Damico, 3981 Autumnway Lane, asked if the emergency access would be built, if it is required by the Board, concurrent with Phase One of the project.

Mr. Reilly stated, for the record, that when the Planning Board looks at subdivision proposals, it looks at whether a secondary means of egress is appropriate. He further stated that, when considering whether a secondary means of egress should be required, the Board looks at what the chances are that the main road could become blocked, the number of people who would potentially live in the development and whether there is availability of a secondary means of egress.

Mr. Reilly noted that when the Four Seasons subdivision was built, a stub street was constructed, the purpose of which was to potentially tie the subdivision in to a future development. He further stated that, if the Planning Board requires the emergency access, it could decide that it will not need to be constructed concurrent with Phase One, depending upon how many buildings are built in the first phase.

Mr. Reilly stated that the Planning Board cannot by law consider the type of individuals who might live in a development because that is discrimination.

Councilman Collins stated that he has no vote on this matter and his function as liaison is to listen to the public and keep the Town Board informed.

The Planning Board reviewed Part 2 of the Environmental Assessment Form regarding this proposal as follows:

- The project will have an impact on the land. The applicant has indicated that there will be construction on land where bedrock is exposed or generally within three feet of existing ground surface. Construction will continue for more than one year or involve more than one phase or stage. Construction will occur in a designated floodway (crossing the existing creek). Applicant will have to show the Board how he proposes to cross the creek.
- There will be no effect on any unique or unusual land forms on the site.
- The project will have an impact on water. The project would impact a protected body of water (existing wetlands). A report will be submitted by the applicant indicating how the wetlands would be impacted.

- The project will affect a non-protected existing or new body of water because of the crossing of the creek and the creation of the detention pond.
- The project will affect surface or groundwater quality or quantity because it requires a potential discharge permit, which will be submitted to the Engineering Department. The applicant will attempt to get a letter from Erie County Health Department indicating there is enough capacity to handle sewerage. The project would use water in excess of 20,000 gallons per day.
- The project will alter drainage or flow patterns. A drainage report will be submitted to the Engineering Department showing that upstream and downstream drainage would not be affected by this project, as well as how the creek would be affected by the project's drainage.
- The project may affect air quality by virtue of the additional vehicles generated, but an air study is not mandated based on the size of the project.
- The applicant will submit proof that the project will not affect any threatened or endangered species.
- The project will affect non-threatened or non-endangered species because there is wildlife on the property and several acres of vegetation would be removed.
- There will be no impact on agricultural land resources.
- The project will have an impact on aesthetic resources of the area because some screening and views of the Four Seasons residents will be eliminated. The Planning Board will have to decide if the proposed mitigations by the applicant are adequate and whether or not a fence would be appropriate.
- The project will have no impact on historic and archaeological resources.
- The project will have an impact on open space and recreation. The applicant will be asked to provide some form of recreation on the property. A community building is proposed and some outdoor recreation area may be appropriate.
- The project will have no impact on Critical Environmental Areas.
- The project will have an impact on transportation. Traffic information will be submitted by the applicant and will be reviewed by the NYSDOT, Town Traffic Safety Advisory Board, etc. to insure that there are adequate site lines, etc. The applicant is not being asked to tie in to the stub street at Sunway Lane with a permanent roadway. The Fire Department has been contacted to obtain comments about an emergency means of egress at the stub street.
- The project will have an impact on energy because of the increased demand for electricity, gas, etc.
- The project will have an impact on noise and odor but there is nothing at this site that would generate terrible noise problems. The construction noise can be very bothersome. The applicant will be required to only disturb those areas that are necessary to disturb in order to minimize noise. Dumpsters should be located as far away from the existing homes as possible.
- The project will have an impact on public health and safety because of the entrance onto Southwestern Boulevard, drainage and the emergency connection.
- The project will have an impact on the growth and character of the community

or neighborhood. The property is zoned correctly and is accordance with the Town's Comprehensive Plan. The density of land use will be changed but not in a way that is different from what was planned for this site. The applicant does propose mitigation to attempt to separate the project from the existing adjacent subdivision.

- There is likely to be public controversy related to potential adverse environment impacts.

William McAllister, a member of the audience, stated that there are federally protected raptors on the property to be developed, as well as red tail fox. He further stated that he is concerned that teenagers will party in the woods.

A member of the audience asked if propane tanks would be allowed in the apartments.

Mrs. Yerkovich made a motion, seconded by Mr. McCabe, to table this project. Carried.

Mr. McCabe made a motion, seconded by Mrs. Yerkovich, that an unapproved copy of the minutes be sent to the developer so that he can see what was said during the public hearing. Carried.

Engineering Department comments have been filed with the Planning Department.

Granite Shop (South Park Avenue)

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Woods at Versailles Subdivision

LeAnne Voit from Greenman-Pederson, appearing on behalf of the developer, stated that she has spoken to the developer about a different idea for the on-site wetlands mitigation. She stated that she would like the Board's input on this new idea in order to decide which plan to present at the public hearing, assuming the Board schedules one.

Ms. Voit stated that the plan presented to the Board at the last meeting showed a treed buffer area behind the homes on Fox Chase Road, then a berm and the wetlands mitigation area. She noted that typically, along the rear property line of existing homes, rear yard drainage is installed that requires that some trees be taken down. She stated that the idea is to move the center line of the berm to five (5) feet from the rear property lines of the existing homes on Fox Chase Road. She stated that the benefits of this new idea are that it gives the developer more room to meander the berm in order to avoid trees that should be preserved and that the developer would be able to clearly delineate the end of people's properties and the edge of the conservation easement. She noted that this would provide a physical and visual

barrier and the conservation easement area would not be impacted by the existing homeowners.

Ms. Voit showed Board members a plan showing the clearing area for the berm, which would be approximately eight to ten feet.

Mr. McCabe stated that his initial reaction is that this new idea does not address the fundamental issue, which is that the conservation area would be transformed into wetland.

Ms. Voit stated that she believes that even if the conservation area is not used as a wetlands mitigation area, it will become wet in the future because of the adjacent wetland area and because it is relatively flat. Mr. McCabe responded that the purpose of the berm is to capture the water and speed up the process of that area becoming wetland.

Mr. Reilly stated that the Fox Chase Road residents who have spoken to him are very concerned about that conservation area becoming a swamp.

Ms. Voit stated that the developer already has a permit from the Army Corps of Engineers to mitigate the wetlands on site.

Chairman Reszka stated that his biggest problem, in addition to what would be happening to the woods, is that when the Planning Board reviewed this subdivision plan previously, it went back and forth with the developer about which lots would be allowed and which would not for a long time. He further stated that the Board approved the subdivision and now the developer wants to change it. He noted that his problem with this is that the woods would be replaced by a wetland and also that the developer is basically saying that he wants the Board to approve the revised subdivision.

Chairman Reszka stated that, unless the existing neighbors do not have a problem with what the developer is proposing, he would be reluctant to allow this change just because the developer says he cannot mitigate the wetlands off-site.

Ms. Voit stated that the Army Corps of Engineers prefers that mitigation take place on-site. She further stated that if it cannot be mitigated on-site, the Corps prefers that it be done within the same water shed the project site is located in.

Ms. Voit stated that the plat map would not change if the mitigation is done on-site because ultimately the conservation easement will be placed on the property line as originally planned.

Chairman Reszka asked Ms. Voit what would happen if the developer could not mitigate on-site. Ms. Voit responded that she does not know.

Mrs. desJardins asked Ms. Voit if it is an absolute fact that the developer cannot mitigate the wetlands anywhere off-site. Ms. Voit responded that the Nike Base and the Penn Dixie site were the developer's two options and he did not get permission to mitigate at either site. She stated that she would have to check with Earth Dimensions regarding whether there are other options off-site.

Board members discussed the difficulty of anyone convincing the surrounding residents that creating a wetland in the conservation area will be a positive thing for them.

Mr. Reilly stated, for the record, that Mr. Lardo performed his job well by making the Planning Board aware that there was a substantial change to the subdivision plan.

Robert Morford, 2296 Hobbleshush Lane, asked whether, if the Planning Board approves this change, that would set precedence for possibly reapproving with changes other projects that have already been approved. He stated that he is concerned that if the Board reapproves this project as revised, residents could worry that other projects that are approved by the Planning Board in the future might be changed at a later date.

Mr. Reilly stated that the change to this plan was an engineering one.

Mrs. Yerkovich made a motion, seconded by Mr. Koenig, to schedule a public hearing for August 17, 2011. Carried.

Ms. Voit stated that she hopes the public hearing will only deal with the proposed on-site wetland mitigation and the issue of whether the Board will allow the developer to not install sidewalks along the wetland area. Mr. Reilly responded that, because the developer is asking to create wetlands on-site, the Planning Board could require additional mitigation and/or ask for changes in the plan.

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Randy's Two-Lot Subdivision

Randy Burgwardt, applicant, stated that he is requesting permission to subdivide a piece of his property off that contains a newly built storage building.

Mr. Reilly stated that the biggest issue is that if the Board approves the subdivision, there will be a use on the newly created lot that may not be an allowable use in the R-A zone. He further stated that the storage building as an accessory use to his residence is allowed but a storage building on its own lot may not be.

Mr. Reilly stated that Mr. Burgwardt may have to ask for a use variance from the Zoning Board of Appeals.

Mr. Reilly stated that the subdivision of land would meet all of the criteria for a two-lot subdivision but the problem becomes the building on the new lot.

Mrs. Yerkovich stated that a determination from the Supervising Building Inspector is essential as to whether this use on its own lot would be allowable in the R-A zone.

Chairman Reszka stated that the applicant has not received a Certificate of Occupancy for the storage building.

In response to a question from Mrs. Yerkovich, Mr. Burgwardt stated that hay wagons, tractors, etc. would be stored in the building.

In response to a question from Mrs. desJardins, Mr. Burgwardt stated that Mr. Tom Notaro will be the owner of the newly created lot and storage building.

OTHER BUSINESS

The Board discussed property on Old Lakeview Road that the owner would like to split into two lots. Board members agreed that they probably would not impose the South Central Overlay District requirement that the bulk regulations for each lot be increased by 50% because of the location and nature of the property.

Mr. Koenig made a motion, seconded by Mrs. Yerkovich, to approve the minutes of July 6, 2011. Carried.

Mr. McCabe made a motion, seconded by Mr. Koenig, to adjourn the meeting. The meeting was adjourned at 9:25 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board