

Town of Hamburg
Planning Board Work Session
August 17, 2011
Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, August 17, 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, David Bellissimo and Karen Rogers.

Others in attendance included Andrew Reilly, Sarah desJardins, Attorney Cheryl McFaddon-Zak and Richard Lardo.

Public Hearing – Realty USA

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 Realty USA. The applicant proposes to construct a +/- 2,700 square foot building for Quest Diagnostics at 3674 Commerce Place. In accordance with the Town of Hamburg Site Plan ordinance, a public hearing will be held on August 17, 2011 at 7:00 PM in Room 7B of Hamburg Town Hall.”

Mr. Reilly stated that the applicant notified the Planning Department that no one representing the project could appear at the public hearing and asked that the public hearing be postponed. Board members agreed that the public hearing would be held and the project tabled.

Chairman Reszka declared the public hearing open. No one spoke.

Chairman Reszka declared the public hearing closed.

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

Engineering Department comments have been filed with the Planning Department.

Public Hearing - Woods at Versailles Subdivision, Part IV

Mr. McCabe read the following public hearing notice:

"Notice is hereby given that the Town of Hamburg Planning Board will hold a public hearing on a 53-lot subdivision known as Woods at Versailles Subdivision, Part 4 to be located on +/- 27.6 acres of vacant land south of Shadow Lane. The applicant is requesting Planning Board approval of an amended Preliminary Plat. The public hearing will be held on August 17, 2011 in Room 7B of Hamburg Town Hall at 7:00 P.M."

Mr. Reilly stated that this phase of the Woods at Versailles subdivision received Preliminary Plat approval several years ago and the Planning Board approved an amended Preliminary Plat in August 2008. Design plans for this phase were submitted to the Engineering Department in early 2011 and at that time the Engineering Department determined that the Preliminary Plat had changed. The Engineering Department brought this to the Planning Board's attention and the Board determined that the change was substantial enough to warrant a public hearing to receive input from the surrounding residents. Mr. Reilly stated that the conservation area located behind the homes on Fox Chase is the area in which changes have been noted.

Mr. Reilly stated that the Planning Board must decide if the change is substantial or not and if it determines that the change is substantial, it must be decide whether to re-approve the Preliminary Plat with the modification, disapprove the Preliminary Plat or request additional changes to the Preliminary Plat.

Attorney Jeffrey Palumbo from Damon Morey, representing the developer, stated that he believes there are two (2) issues to be discussed. One issue is the question of whether or not the mitigation of the wetlands was intended to be on-site or off-site. He further stated that the Negative Declaration issued by the Planning Board confirmed that the wetland mitigation was to take place on-site. He noted that the Planning Board minutes show that on-site mitigation was discussed during several meetings. He stated that the second issue is the question of whether the proposed mitigation has changed significantly. He noted that the developer believes that the proposed mitigation has changed, but not significantly, and the minor changes that are proposed are actually for the better because the number of trees that will be cleared as a result of the mitigation will be fewer than originally planned.

Attorney Palumbo stated that the original wetlands mitigation plan was approved by the Army Corps of Engineers (ACOE) and submitted to the Planning Board in 2008. He further stated that this plan called for a thirty-foot buffer along the conservation area's north property line and a fifteen-foot buffer along the southern property line. He noted that a letter submitted to the Planning Board by Scott Livingstone from Earth Dimensions in 2008 stated that the mitigation would be taking place on-site and it referred to the previously mentioned buffers.

Attorney Palumbo stated that what has changed is that the developer proposes to construct a one-foot berm approximately 26 feet from the rear property lines of the homes on Fox Chase that would run behind the properties. He stated that the idea of the berm is to encapsulate the water within the site, which would create the wetland that is necessary to make up for the wetland that will be impacted as a result of the development. He noted that by creating the berm, the need to clear a large portion of the existing trees in the conservation area will be eliminated.

Attorney Palumbo stated that the areas to be cleared in the new mitigation plan are the area around the pond and the area within the berm. He further stated that there would be no reconfiguration of the sub lots in the subdivision and that the area that is technically changed is within the conservation area.

Don Owens from Earth Dimensions stated that the current mitigation plan involves clearing minimal land area, taking down fewer trees and leaving the conservation area in its natural setting. He further stated that the plan protects the neighbors to the north from much change in the conservation area. He noted that he believes the change in the mitigation plan is minimal and he does not expect much change in the hydrology of the area.

Mr. Owens stated that the new mitigation plan changes the hydrology of the conservation area because they want the new growth that is coming in to be more hydrophitic vegetation, such as red maples. He further stated that in a few years people will hardly notice the change in the conservation area.

In response to a question from Mrs. desJardins, Mr. Owens stated that the developer decided to pursue the new mitigation plan instead of the original plan because technology (understanding wetland mitigation) has changed and it has been determined that the least amount of land disturbance is the best and that if the hydrology can be changed in a very minor way, the same goal can be accomplished. He noted that less soil can be exposed and less equipment is utilized.

LeAnne Voit from Greenman-Pederson, representing the developer, stated that they were going through the Preliminary Plat approval process at the same time they were going through the review by the ACOE of the original mitigation plan. She further stated that there was a preliminary approval letter from the ACOE for the original mitigation plan at that time. She noted that after the project received Preliminary Plat approval from the Planning Board, through discussions with the ACOE and understanding wetland hydrology a bit better and also understanding the residents' and the Town's concerns, the decision was made to remove fewer trees and impact the land as little as possible.

Ms,. Voit stated that she compared the original mitigation plan with the new one and found that the key difference between the two plans is the areas where the developer will be clearing trees and encouraging a re-vegetation process. She further stated the original mitigation plan impacted 2.58 acres, which was the entire wetland mitigation area, and the new plan impacts .44 acres. She stated that the total area of existing trees to be removed would be 3.3 acres in the original mitigation plan and 1.5 acres in the plan the developer would like to implement.

Ms. Voit stated that, as far as what surrounding residents would see, a lot more trees would be removed with the original mitigation plan and young trees would be planted in their place. She noted that with the plan the developer would like to implement, a very minor amount of trees would be removed and some of the area would be replanted.

Ms. Voit stated that, in terms of water, the original mitigation plan involved removing trees and re-grading the area, which would have allowed the area to fill up with water. She stated that if the new mitigation plan is put in place, the trees will not be

removed, the land will not be re-graded and the land will be allowed to be naturally wet after storms and snowfall. She further stated that this will allow the hydrophitic vegetation to grow in its place.

Mr. Owens stated that the berm will prevent the water from flowing to the residential area to the north and encourage the water to sheet flow to the east into the existing wetland.

Ms. Voit stated that with the original mitigation plan the residents who border the north property line of the conservation area would have had a thirty-foot buffer of existing trees behind their properties, but beyond that area the conservation area would have been cleared.

Mr. McCabe asked why that area would have been cleared, noting that it was his impression that the area Ms. Voit described as being cleared is part of the conservation area and was not to be touched. Ms. Voit responded that the conservation area is put into place after all of the improvements are made and it conserves everything that remains in that space.

Mr. McCabe asked why the developer would cut down trees to plant trees. Ms. Voit responded that part of the original mitigation plan was to re-grade the site in the conservation area and that the conservation area would not be filed until after the improvements were made.

Ms. Voit stated that when a Preliminary Plat is filed the conservation area is designated on the plan but the Preliminary Plat would be filed after the improvements are made and this would protect the area once the improvements are made. She noted that the original mitigation plan is not going forward and the conservation area will not be cleared.

In response to a question from Mr. Bellissimo, Ms. Voit stated that the proposed berm would be one (1) foot high and approximately four (4) feet wide. She further stated that there would be an approximately eight to ten foot swath that will need to be cleared during construction. She noted that the berm would meander to avoid any significant trees. She stated that the berm area would not be mowed so that over time natural grasses and taller meadow plants would grow.

In response to a question from Chairman Reszka, Ms. Voit stated that the beginning of the proposed berm is shown 26 feet from the property lines of the homes to the north of the area. Chairman Reszka stated that at the Board's last meeting Ms. Voit stated that the berm would be five (5) feet from the property lines. He asked what had changed in the interim. Ms. Voit responded that the plan Mr. Reszka referred to was presented to the Board at a work session. She stated that the developer plans to move ahead with the plan currently being presented to the Board because this plan is what was initially presented at the Board's official meeting and what is shown on the construction plans that will be submitted to the Engineering Department. She further stated that the plan being presented at this time reflects the current ACOE mitigation permit.

Mr. Bellissimo stated that he has a hard time understanding why the developer plans to cut through an area and then set up a berm to retain water. Mr. Owens responded that the idea is to prevent water from escaping to the north and allow it to stay on site

and then migrate to the east. He further stated that the berm is necessary in order to change the flow of the water to the east and stressed that it would be a minor manipulation of the landscape.

Chairman Reszka stated that part of the confusion appears to come from the fact that on May 21, 2008 Mr. Morse from Earth Dimensions stated at a Planning Board meeting that the applicant would like to mitigate on-site in the area that is shown as a pond in the conservation area. He noted that Mr. Morse's statement led him to believe that mitigation was going to be the pond and the area immediately surrounding the pond. He further stated that when the Planning Board granted Preliminary Approval for this phase of the subdivision, this was based on the statement by Mr. Morse that the mitigation was going to be the pond and not the entire conservation area.

Mrs. Yerkovich stated that what was represented to the Planning Board and the public is not what the developer is exhibiting at this time.

Attorney Palumbo stated that he does not think Mr. Morse meant that the pond would be the only area that would be mitigated. He further stated that subsequent Planning Board meeting minutes reflect that the applicant spoke of mitigating on-site and of the thirty-foot buffer. He stated that the Board cannot pick one statement out over a period of five months. He further stated that it was very clear to him that the mitigation was going to take place exactly the way it is presented.

Mr. Owens stated that the ACOE generally does not consider detention basins as mitigation options because detention basins require maintenance. He further noted that the ACOE strongly discourages using detention basins for mitigation.

Mr. Lardo asked Ms. Voit if the clearing plan she prepared showed clearing in the conservation area. Ms. Voit responded that the plan she has revised to submit to the Engineering Department does show clearing in the conservation area. Mr. Lardo responded that the key word is "revised".

Ms. Voit stated that when she is preparing Engineering drawings, she does not always include the actual mitigation because her firm does not design the mitigation. She further stated that once Mr. Lardo requested that information, she looked into it and included it on the plans she will resubmit to his department. She noted that she does not want to stamp work that she is not designing.

Chairman Reszka stated that the Planning Department received 23 letters regarding this issue, noting that they are all the same. The letters read as follows:

"Mr. Reszka and Planning Board members, as a resident living on Fox Chase Road, I wish to express my opposition to the plans to turn the woods located behind homes on Fox Chase Road into wetlands. This proposal would change what was originally approved. Significant clearing will be required to construct the proposed berm and storm water runoff will collect in the berm area. This will encourage mosquitoes to breed and will be a health hazard. This proposal will have a major impact on the area and I/we urge you to vote no."

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

1. Jason Luna, 2181 Fox Chase, stated that the residents who live on Fox Chase immediately adjacent to the affected area consider this a significant change.

He stated that many of these residents have small children and the berm increases the risk that a small child might wander into the affected area. He stated that it sounds to him like there would be standing water in the conservation area and noted that there have been two (2) deaths recently from encephalitis related to mosquito bites. He stated that although the risk is rare, it is real. He stated that he does not see any benefit to any of the homes that are adjacent to the proposed mitigation area. He stated that he believes that some of these residents will decide to sell their homes and they will have trouble selling because of the standing water so close to the property lines. He stated that adding wetlands to the conservation area could prove to be dangerous to the young children in the area.

2. Mike Bartlett, 2196 Fox Chase Road, stated that it was his understanding that the Preliminary Approval for this subdivision took place in 2008 and what is now being proposed is mitigation in an area that was designated as a conservation easement to the Town of Hamburg. He stated that he believes that a large portion of the existing trees are going to be lost, including those lost due to the developer's machinery as it moves from the pond to the berm. He stated that the developer's plan would transform the conservation easement area from upland woodland to wetland and he feels this is substantially significant. He stated that he believes that all of the Planning Board minutes regarding this phase of the subdivision indicate that the conservation easement would never be touched and noted that the fact that the developer cannot mitigate off-site does not make a difference to the nearby residents. He stated that the Planning Board's approval of this subdivision did not include touching the conservation easement area. He stated that allowing this developer to amend this subdivision plan after approving it could set precedence for other developers. He stated that the trees that were to be saved between Fox Chase and Hunters Hollow were mostly destroyed, which leaves the residents to question statements from the developer's representatives concerning the effort to preserve trees in the proposed wetlands. He asked if the Planning Board is willing to approve plans knowing that it could create a dangerous situation.
3. Robert Morford, 2296 Hobblebush, stated that he lives on the south side of this proposed development. He stated that there is no buffer between this development and Buttermilk Falls or Pine Lakes and stated that if the residents on Fox Chase are getting a buffer, he would like one, as well. He stated that there probably already are mosquitoes in the conservation area. He asked if anything will be put in the pond to clear up the algae. He further stated that he feels that anything done in this conservation area relative to wetlands could also impact properties on Hobblebush.
4. Jim Rudolph, 2260 Hobblebush, stated that he is concerned that there will not be a buffer between this subdivision and Hobblebush and he is concerned about the wetlands.
5. Sean, 2186 Fox Chase, stated that he is concerned about how long the developer's machinery would be in the conservation area, the safety of nearby children and the possibility of oil, hydraulic fluid, etc from the machinery ending

up in the pond and contaminating the conservation area.

6. Jake Minniefield, 2156 Fox Chase, stated that he is concerned about the safety of his children with a pond in the conservation area. He stated that the quality of life of the nearby residents will change and he is worried about the increase in mosquitoes in the area. He stated that is concerned that more than eight to ten feet of trees will be cleared to construct the berm and noted that the developer did not do as he promised regarding the area between Hunters Hollow and Fox Chase. He stated that he moved to Fox Chase from Lackawanna and does not want to move from one swamp to another.
7. Mary Bartlett, 2196 Fox Chase Road, stated that several people paid extra for homes with the trees behind them and asked if that money is recoverable if the trees are removed. She stated that she is concerned about the possibility of problems arising due to the berm (flooding, etc.) and asked who she should contact in that event. Chairman Reszka advised her to speak with her attorney.
8. Mary Medynski, 2216 Fox Chase Road, asked how deep the pond will be. Ms. Voit responded that the pond will be between six and eight feet deep.
9. Jacob Metzger, 2192 Fox Chase Road, stated that he is a civil engineer and does have some knowledge regarding the design of ponds and drainage for sites. He stated that he is concerned that what is on the plans is not what will be left when the contractor comes through. He stated that it will be easier for the contractor to simply blaze a trail from the pond to the berm and not avoid trees along the way.

Chairman Reszka declared the public hearing closed.

Mr. McCabe stated the issue is that the developer wants to transform upland hardwood into wetland. He further stated that that is not what the Planning Board was led to believe was going to happen.

Attorney Palumbo stated that the report submitted to the Planning Board by Don Owens and Scott Livingstone in July 2008 outlined what was going to take place. He further stated that the plan was submitted to the Board and the Board approved the Preliminary Plat three weeks later.

Chairman Reszka stated that the Board has Mr. Livingstone's letter of the 16th of July, it does mention the thirty-foot forested buffer, it does mention replanting and everything that was said before that time mentioned mitigation around the pond. He further stated that he assumed based on what was said and what was in the letter that the mitigation would be all around the pond.

Attorney Palumbo stated that the plan that was submitted with the letter that referenced the thirty-foot buffer shows very clearly that the clearing was going to take place in areas other than the pond. He further stated that the only options for the Board are to either determine that the difference between the original mitigation plan and the current one is not significant or determine that it is, and in that case the developer will go back to the original plan and all those trees will come down that would be saved with the current mitigation plan.

Mr. Owens stated that if the current mitigation plan is implemented, he will be at the

site to make sure that the details of the plan will be honored and that key trees will be avoided.

Mr. Reilly stated that even the report from 2008 makes it sound like the developer is going to preserve the trees in the conservation area and plant new trees. He further stated that the report does not indicate that the plan is to clear the whole site, noting that the plans never showed the area being cleared of trees.

Mr. Reilly stated that if the Planning Board determines that the current mitigation plan is acceptable, it would have to reapprove the subdivision because it would not meet the thirty-foot buffer requirement because the berm would be located closer than thirty feet from the Fox Chase residents' property lines.

Mrs. Yerkovich asked if mitigating the wetlands off-site is an option at this point. Attorney Palumbo stated that it is not an option.

Ms. Voit stated that all options to mitigate off-site have been explored, noting that they have been turned down by the Town's Nike Base and Penn Dixie.

Mr. Owens stated that the ACOE would much prefer that mitigation be done on-site.

Mrs. Rogers asked Ms. Voit if the developer has contacted the Taylor Road facility in regard to mitigation the wetlands on that property. She stated that she would like the applicant to investigate that possibility.

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

Brookview Apartments

Chairman Reszka stated that the Planning Board received written comments from the Big Tree Fire Department Chief. The correspondence reads as follows:

“Sorry for the late response but the Fire Company would like a gate between the back of the apartment project and the Four Seasons subdivision. Yes, they want it gated with it being paved so we can get vehicles back and forth. Thanks, Ed Hughes, Chief.”

Mr. Reilly stated that he spoke with the Town Highway Superintendent, who indicated that his department will maintain the existing road (Sunway Lane) up to the property line. He stated that the Highway Superintendent also indicated that if there is an emergency exit and entrance up to that property line, the apartment complex owner would be responsible for keeping that side maintained.

It was determined that the Fire Company would have the key to the gate.

Chairman Reszka read a letter received on August 17, 2011 from the New York State Department of Transportation (NYSDOT) indicating that additional traffic generated by the proposed project will not have a significant impact on the state highway system and that it would like the driveway onto Southwestern Boulevard shifted slightly west to align with Buckingham Lane.

Attorney Sean Hopkins, representing the applicant, stated that the proposed deed restrictions have been updated based on comments received at the Board's last meeting. He noted that, in the event that trees need to be removed from the

conservation area due to death or disease, the Town Board will review the matter instead of the Planning Board and language was added to require the replacement of those trees. He further stated that the second change is the addition of the following sentence to the document: "The restrictions contained herein are intended to permanently benefit and protect the owners of the single family homes within the existing residential subdivision directly south of the project site including, but not limited to, the owners of the single family homes on Summerway Lane". He noted that the above-mentioned sentence was added to the deed restrictions so that many years from now it will still be clear who the restrictions are intended to benefit and if in the future someone violates the deed restrictions, the neighbors will not have to rely on the Town to take action because they will have their own right to do so.

Attorney Hopkins distributed a wetland delineation done by Wilson Environmental Technologies, noting that the report indicates that a small additional wetland area exists on the site along Summerway Lane that measures approximately .17 acres in size. He stated that this additional wetland area has been added to the map and that it will not be touched.

Attorney Hopkins stated that there are three (3) wetlands on the project site that total less than one (1) acre in size and will not be touched and therefore no wetland mitigation will be necessary. He further stated that the only permit that the applicant may need from the ACOE is for the roadway crossing of Foster Brook.

Attorney Hopkins stated that a sixty-foot clearing limit is shown on the plan in the rear portion of the site and within that sixty-foot clearing limit there will be a fifty-foot permanent conservation easement, subject to the caveat that if the Planning Board requires that an emergency access road be constructed, it would have to cross through a portion of the conservation easement area.

Attorney Hopkins stated that if the Planning Board requires the secondary gated emergency access, the applicant asks that the Board clarify when it should be constructed. He noted that a phasing plan has been submitted and the applicant proposes to construct the emergency access during the construction of Phase 4, if required. He further stated that if the Board requires that the emergency access be constructed in conjunction with one of the earlier phases, it would require the applicant to do a lot of clearing for development that may not get back there for many years.

Mr. Koenig stated that he believes that the applicant's phasing plan should be submitted to the fire department and the chief should be asked when he feels the emergency access should be required.

Attorney Hopkins noted that the phasing plan is conceptual and the ultimate build-out of this site will depend on market conditions and the applicant has no intention of building the entire project at once.

In response to a question from Chairman Reszka, Attorney Hopkins stated that the project engineer will ensure that the project's driveway will line up exactly with Buckingham Lane.

Mr. Reilly stated that the Planning Board has received correspondence regarding this project from the New York State Department of Environmental Conservation indicating

the presence of wetlands on the site and the fact that the site is in a 100-year flood plain. He further stated that correspondence was received from Erie County Department of Environment and Planning indicating that the one long roadway acting as the only access to and from this community is noted as a possible safety concern and asking if a secondary means of egress is being considered.

Mr. Reilly stated that he understands that there is adequate public water at the site.

Mr. Reilly reviewed the impacts of this project on land, water, air, threatened or endangered species, agriculture, archeology, open space and recreation, transportation, noise and odor, public health and safety and community character.

Attorney Hopkins stated that the applicant will show a recreation area on the site plan.

Mrs. Yerkovich made a motion, seconded by Mr. Koenig, to issue a Negative Declaration for this project based on the Board's review of the impacts of this project. Carried.

Chairman Reszka stated that a gated emergency means of egress should be required. Board members concurred.

Chairman Reszka directed the applicant to include an emergency means of egress on the site plan for this project. It was determined that the fire chief will be sent a copy of the phasing plan and asked to comment on when the fire department thinks the emergency access should be constructed.

Mr. Lardo stated that the phasing plan will have to be adjusted for hydrant locations and the ability of fire trucks to maneuver.

Mrs. Miriam Winokur, a resident of the Four Seasons subdivision, asked how the number of residents in the apartment development will determine that there has to be an emergency egress. Chairman Reszka responded that the Board plans to ask for the fire department's input on that question.

Mrs. Winokur stated that approximately 103 families live in the Four Seasons subdivision and apparently that number was deemed not to be sufficient enough to have an emergency egress for the people in that development. She further stated that her subdivision has one way in and out and it is not a straight road. She noted that some of the homes in her development back up to the Thruway and if there ever was an accident on the Thruway and a truck tipped over with hazardous material, for example, no one has seemed to worry about how the residents of her subdivision would get out of their development.

Chairman Reszka stated that if the Four Seasons subdivision was built today, there would be a second entrance because the way things are looked at have changed.

Mr. Reilly stated that, in providing this emergency means of egress between the two developments, the Town is fixing that problem.

Mr. Koenig stated that it could very well be that when the stub street at Sunway Lane was constructed, it was done so with the idea in mind that eventually it would connect to Southwestern Boulevard.

Mrs. Winokur stated that she would have preferred that the fire chief appear at the Planning Board meeting, rather than sending an email, given the magnitude of the

importance of this issue to the residents of Four Seasons. She asked how, in the event of an emergency where the apartment residents have to be evacuated, the fire department and any emergency vehicles would take the residents out to Sowles Road. She further stated that the configuration of the Four Seasons subdivision is such that if someone has to get emergency vehicles through it, there is no way to do it in any expeditious manner. She asked the Board to check the way the development is laid out and also where the Town Park is, noting that there is a large amount of traffic through the subdivision.

Mr. Bellissimo stated that the emergency vehicle drivers in Hamburg are very professional.

Mr. Reilly stated that emergency access is something that may never be needed, hopefully.

Mrs. Winokur asked how and when the builder will be required to put the roadway in from Sunway out to Southwestern Boulevard. Chairman Reszka responded that that question is being referred to the fire department.

Chairman Reszka stated that the emergency access would not be a through street, noting that the Planning Board realizes this will change the community, but it will be a gated street and not open to the public. He stated that there will never be access unless there is an emergency.

Mrs. Winokur asked what will be constructed on either side of the emergency access roadway that will cut through the conservation area. Mr. Bellissimo responded that it will be properly installed. Chairman Reszka stated that it will be a paved road and there will be no sidewalks and no lighting.

Mrs. Winokur stated that she would like to know what the edges of the road will look like and how wide the road will be.

Board members discussed the possible width of the emergency access. It was determined that the fire department chief will be asked what size road he would like constructed.

Mrs. Yerkovich stated that fire department officials are not required to appear before the Planning Board to discuss these projects, nor does their absence indicate the importance of this issue to them.

Attorney Zak stated that, despite the concerns of the residents, the Planning Board is not in any way, shape or form considering the type of people that may or may not reside in the apartments.

Mrs. Winokur stated that she was distinguishing between the home owners in her subdivision and the people who will be residing in the apartments.

Mr. Koenig stated that the project site is zoned R-3, which allows apartments.

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

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Board members discussed the Tops expansion project and the stand of trees that was left on the site per a Planning Board requirement associated with the approval of the project.

Mr. Bellissimo stated that he believes that the trees on the edge of the stand of trees are slowly dying.

Mr. Reilly stated that it cannot hurt to leave the trees there, as long as the developer grades the edges of the area correctly. He noted that it does look somewhat awkward at this point, but it does provide some level of screening.

Mr. Koenig stated that he believes the stand of trees should remain. Mrs. Rogers concurred.

Lalaine Podkulski, 4332 McKinley Parkway, stated that her family is in favor of keeping the stand of trees and further stated that at a previous Planning Board meeting, it was noted that the Engineering Department would work with the developer to properly grade the stand of trees.

Board members agreed that the stand of trees will remain and that it should be graded correctly.

Mrs. Yerkovich stated that the Planning Board made a decision to require the stand of trees to be left on the site based on an obligation by Tops and Benderson Development to make sure that the stand of trees is graded properly and looks good. She further stated that Tops and Benderson Development have a fiduciary responsibility to maintain the last stand of trees on the property.

Laura Podkulski asked who enforces what is said at Planning Board meetings, noting that she does not think anyone is doing anything to help her family. She stated that her family has had a terrible summer due to the construction next door. She further stated that the fence Benderson promised them has not been installed and the dust from the construction has been very bothersome.

Mr. Koenig made a motion, seconded by Mr. Bellissimo, to approve the minutes of August 3, 2011. Carried.

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

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board