

**MINUTES OF THE REGULAR MEETING**  
**OCTOBER 25, 2004**

The Regular Meeting was called to order by Chairman Joseph Yagey at 6:00 P.M. at which time the Pledge of Allegiance was recited. Board Members present were Gerald Green, Ronald Morelle, Jerome Donovan, Bob Wood and Bob Imobersteg. Absent: Board Member Hans Arnold. Also in attendance were Town Supervisor Ralph Humphreys; Town Planner Kurt L. Schwenzfeier, AICP; John Meagher, Senior Engineer; and Secretary Dory Shaw.

Minutes of the August 23, 2004 Planning Board meeting were distributed to all members for review. Motion was made by Board Member Bob Wood to approve these minutes as written; seconded by Board Member Bob Imobersteg. All in favor.

Chairman Yagey explained that the agenda would be in two (2) parts; Part 1 for discussion on several projects to update the Board on material received and to get input on what additional information may be needed; and Part 2 a Public Hearing for a three-lot Subdivision.

Also, Chairman Yagey addressed the Board regarding the request for independent legal advice. It was discussed by the Town Attorney and Supervisor Humphreys and determined that this Board may request an independent attorney on a specific project. A request has to be made by the entire Planning Board. Chairman Yagey was advised that a Resolution was made regarding this issue as part of the Town Board minutes of October 20, 2004 (which has not been received to date). If possible, Town Attorney Rossi may handle the request himself, but we are open to request private counsel as long as Attorney Rossi is aware of it. This also offers Police Chief Philo an opportunity to refer questions he may have on specific projects.

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**DISCUSSION ONLY FOR THE FOLLOWING PROJECTS:**

**1) Eckerd's, Commercial Drive/Henderson Street.** Proposed pharmacy in the Town of New Hartford and Village of New York Mills on approximately 3.91 acres. Zoning: Retail Business 1. Chairman Yagey stated that NYSDOT has not given a firm response under SEQR as they would like additional traffic studies of the area, that being Commercial Drive and Henderson Street. Also, NYSDOT would like to know what

impact Judd Road may have on this project. Their comments also relate to not having more than one (1) driveway on both streets. Without this information, we shouldn't hold a Public Hearing.

Town Planner Schwenzfeier said he just received information from FRA Engineering (Benderson's engineer) and related the comments to the Board. The Planning Board Members should have all the information on SEQR comments with the exception of the Water Board, which addressed the water main extension.

Reference was made to a possible annexation of this subject parcel. It was stated that this annexation, if accomplished, could take about 2-3 years. Board Member Green asked if this Board was still Lead Agency – yes. Board Member Bob Wood said New York Mills is on the same track as New Hartford.

Board Member Green also referred to a potential coordinated review with Whitestown (Town Planner Schwenzfeier stated he spoke to Whitestown and it was determined that this is not required).

Chairman Yagey stated that Board Member Arnold wanted to request Benderson to submit a full build out to further address traffic counts. Benderson's reply is that there is no full build out. The Board also addressed the existing curb cuts. Further, Board Member Green referred to a proposed project across from the Eckerd's project and how it may impact this area, i.e., traffic.

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Note: Chairman Yagey stated that Police Chief Ray Philo was present to address this Board regarding a project that may be before us at Alfredo's property on Seneca Turnpike. Police Chief Philo said he will officially respond to SEQR when contacted, but he wants this Board to be aware that he is very cognizant of this area regarding traffic and speed problems. The Town has petitioned NYSDOT to look at the speed reduction in this area and he will be looking at it very carefully. He said this is a unique corridor as there is lane compression from 4 to 2 and there is a significant accident history in this area. He will generate a lot of statistics and these statistics will prove the problem exists.

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**2) Longworth Acres, Tibbitts Road.** Proposed 14-lot Major Subdivision for residential homes on Tibbitts Road and Snowden Hill Road, New Hartford; property is approximately 80 acres owned by the Owens family. There is no public water currently on site, but sewers are available. Zoning: Residential/Agricultural 2. Chairman Yagey

Stated that over the last month, questions and concerns have been raised by the Planning Board Members. Before any Public Hearing is held, we need to re-review it and update us on the water situation and advise the Planning Board what the observations have been, which is affected by Jubilee Estates. If any additional information is needed, we could get it.

Town Planner Schwenzfeier referred to a letter submitted by Shumaker Consulting Engineers (hired by the Town) who reviewed the storm water calculations and they indicated some additional studies might be undertaken to alleviate some of the downstream impacts. This study should be done by the developer under the subdivision review or through some Town study. Has Shoemaker related this to Jubilee Estates – it was stated no. Board Member Green asked if this should be undertaken? Town Planner Schwenzfeier said something should be done, but he is not a storm water engineer. We would have to check with the developer to see what they are willing to contribute to it, but it is the Planner's recommendation to go ahead with further storm water study. The Board discussed the storm water problems along Tibbitts Road and subject area.

Town Planner Schwenzfeier said a NYSDEC permit is based on the entire development – anything over an acre gets reviewed by NYSDEC. Board Member Green asked, is that part of the downstream impact study – Town Planner Schwenzfeier said that is something that the Town is looking into. Also, Board Member Green asked, who designs and recommends – is that something with the developer and how is the developer notified – Town Planner Schwenzfeier said yes because we would need easements, and he notified the developer of Shumaker's analysis.

Board Member Donovan has a concern regarding the original storm water management as it relates to a ten-year storm. Once that gets developed, the ten years diminishes. Chairman Yagey said he hopes Shumaker will look at where the water comes from.

Board Member Green stated that in the sequence of priorities, the recommendation of Shumaker would come first before a hydro-geologist? Town Planner Schwenzfeier said these are separate issues and they are being done simultaneously. At this time, Mr. Donald D. Ehre, P.E., stated that Bates Well drilling is drilling at this time and they have permission from five (5) adjacent property owners to do tests. Board Member Green addressed the Board asking if this is something that we should be monitoring and how it the monitoring done. Chairman Yagey explained that Mr. Ehre would get a report from whoever they hired and we look at that report to deem it valid or not. We could give it to Shumaker to review.

Board Member Green noted that the Town Planner wrote to the Town Attorney regarding some issues, and which he discussed with the Town Attorney himself. One of the representations by the attorney for the developer, Herbert Cully (that was made in discussion with Board Member Green), is that this is a Permitted Use and there is very little this Board can do to prevent this project from going forward. Board Member Green wanted to know if this is accurate. He would like Attorney Peter Rayhill to do research on this so we understand this issue. He would be happy to write a letter, along with the Town Planner, to Attorney Rayhill to get something in writing. Chairman Yagey would also like to know what our legal grounds are as the ability to approve or disapprove a project (any project, but this one in particular) especially when it is a Permitted Use. The Board Members agreed that Board Member Green and Town Planner Schwenzfeier would work on this.

The Board directed their attention to the letter from the Water Board, which stated water is available to the bottom three (3) lots and there is concern about fire protection. Board Member Green asked, did the Water Board state to the Town Planner for those three (3) lots who can get water, is it on the table or can a separate water district be formed – Chairman Yagey said as far as this developer is concerned, it is on the table.

It was recommended that Shumaker inspects and monitors the well tests being done with Mr. Donald Ehre. We will notify Mr. Ehre to let us know when they are going to do the well tests to enable Shumaker to decide whether the test is accurate or not.

The Board asked Town Planner Schwenzfeier to contact Shumaker on Tuesday, October 26, 2004 to be at the drilling site to verify the position of the wells and that the Town Planner advise Mr. Donald Ehre that we have asked Shumaker to do this, and also coordinate with him or the tests won't be accepted. Mr. Ehre is not to do the tests meet without coordinating with Shumaker.

Board Member Green stated for the record that he misquoted Attorney Cully with regard to the legal basis or circumstances under which a Permitted Use can be denied.

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**3) Valley Gymnastics, New Hartford Street, New Hartford.** Proposal to convert the rear cold storage building to gym and office use. Continued use of the rear 20 feet of this building would be used for storage of gym equipment, but improvement to the front portion of the building to provide a larger area for the karate school, additional bathrooms and rental office space. By moving the karate school out of the front building, viewing areas for the dance studio can be expanded and a small office or storage area created in its place. Zoning: Retail Business 2.

Town Planner Schwenzfeier stated that they want to convert an existing building in the rear and add twenty-two (22) parking spaces. He stated that Codes Enforcement Officer Back has some concerns with traffic and the types of uses proposed and this area becoming a shopping center as he has had some complaints from individuals living on New Hartford Street.

Board Member Green asked if Valley Gymnastics was granted for a specific use – it was granted for a gymnastics area and associated uses. He also asked if they are doing anything there not gym related – Town Planner Schwenzfeier said he didn't think so, that basically they are using it for gymnastics and karate. The proposed use is moving some of the uses of the existing building to the back.

This project will go through the process for Site Plan Review.

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Board Member Green asked Chairman Yagey to update the Board about Partner's Trust Bank at Consumer Square (the former SBU) for the record. Chairman Yagey stated that the bank opened without a Certificate of Occupancy. He went to the Codes Office and Staff regarding this issue, as there were some items that were not completed. The Codes Officers and Staff went to the site for an inspection and things were done immediately and later that day they were issued a conditional Certificate of Occupancy.

Board Member Donovan, for the record, stated that the bank had put out a Press Release in advance of them opening. He feels there was a lack of communication between the Staff and the development representatives.

Discussion ensued regarding this issue and also what the Codes Department could or would need to prevent a project from opening.

Board Member Green asked if the lighting issue was resolved. Town Planner Schwenzfeier said yes. Board Member Bob Wood wanted the Town Planner to go to the bank site and check on one (1) light that is on the building that shines on the parking lot – the Town Planner will check into this.

Board Member Green stated that he feels the Codes Office is doing an excellent job.

Note: Board Member Donovan excused himself from the meeting and left at 7:10 P.M.

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Board Member Green referred to the change in **fencing for The Orchard**. Chairman Yagey said Mr. Adler will conform with what was approved – he is not going to change the fencing unless approved by this Board.

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**Public Hearing** for a proposed three-lot subdivision on **Lindale Avenue** in the Town of New Hartford. **Mr. Antonio Cristiano** owns the total parcel of 16.5 acres and he would like the parcel subdivided into three residential building lots. This project is before the Board for a Public Hearing, Preliminary and Final. Tax Map #340.000-1-36. Legal Notice was published in the Observer Dispatch on October 16, 2004 and residents within 500' were notified. Mr. Cristiano and Mr. Al forte, P.E., appeared before the Board.

Town Planner Schwenzfeier updated the Board with a discussion he had with Highway Superintendent Roger Cleveland with regard to the road extension that has to be in order to have frontage for the three (3) proposed lots. Mr. Cleveland likes the “T” configuration and if this Board concurs, he would like to have the existing cul-de-sac removed.

Board Member Green had spoken to the Highway Superintendent as he is proposing that when the asphalt is taken up, he will put in a new road then re-grade the sides and fix the driveway entrance for the two (2) homes directly affected. Board Member Green asked what this would cost – it is estimated at about \$15,000. The Town would then undedicated those portions of the cul-de-sac and turn it over to the residents. He also asked if the developer was going to pay for this in total – the Highway Superintendent said the Town should be willing to partner with the developer 50/50.

At this time, Chairman Yagey asked if there was anyone present to address this application. The residents reviewed the map. Town Supervisor Humphreys stated that the Town maintains cul-de-sacs and maintaining them around the Town has become time consuming and expensive.

-Mr. & Mrs. Gordon Cobb, 9491 Chapman Road. Mrs. Cobb questioned why Chapman Road doesn't get fixed – it was explained that Chapman Road is a County road and Lindale Avenue is a Town road. Mr. Cobb addressed water. Mr. Forte stated that water would be extended to feed the two (2) proposed homes.

A question arose about accessing water because the residents formed a water district in this area. Mr. Forte explained that they asked the Water Board if they could tap into this and they were given approval to do so. Mr. Forte also stated that whatever it costs to reestablish the road, it will be a shared cost – from that point back, it is all the developers.

-Mr. & Mrs. Dale Griffin, 4 Lindale Avenue. Mr. Griffin referred to the “T” affect and he wanted to know how far it would go in from the road – it was explained to Mr. Griffin the proposed plan. It would be a short distance from the existing road.

-Mr. Gary Pelland, 9407 Chapman Road. He referred to drainage because this particular area drains to his father-in-law’s backyard. Because of the new construction of Mr. Cristiano’s house, he feels there has been a major drainage concern created. Instead of running the drainage to the ditch, it drains on the property. He is worried about the same thing happening with the proposed new homes. Mr. Forte said Mr. Cristiano has done some improvements there with redirecting water to the ravine in the back. Mr. Forte said he will walk the area and make any improvements as needed.

Chairman Yagey asked Mr. Cristiano if they had any objection to changing the road going out with a 50/50 split with the Town – Mr. Cristiano said this was fine with him. We will need to get the Highway Superintendent’s comments on this.

Mr. Forte said he would work with Town Engineer John Meagher and Staff on this, and he will submit final drawings. The Town Planner will send a letter of finalization regarding what has transpired.

Discussion ensued regarding a drainage district – Town Planner Schwenzfeier said that would be directed through the Town Board, referred from this Board to the Town Board and a letter would be sent to the Town Board by the Town Planner.

There being no further input, the Public Hearing was closed by motion made by Board Member Bob Imobersteg; seconded by Board Member Ron Morelle – all in favor.

Motion was made by Board Member Bob Imobersteg to close SEQR with a negative declaration; seconded by Board Member Ronald Morelle. Vote taken:

Chairman Joseph Yagey – yes	Board Member Bob Imobersteg – yes
Board Member Ronald Morelle – yes	Board Member Gerald Green – yes
Board Member Bob Wood – yes	

Motion was passed by a vote of 5 – 0. (Board Member Jerome Donovan had left the meeting prior to this project review).

The Board reiterated to Mr. Forte that he contact Mr. Gary Pelland regarding the drainage concern, that he work with Staff and the Highway Superintendent about the cul-de-sac, and provide drawings which shows the surveys of the land. (This project could not be granted final approval at this time until the final drawings are submitted).

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Chairman Yagey referred back to the Partner's Trust C/O issue and that he would like to find out what the process is for closing a project down if they opened without a C/O.

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There being no further business, the meeting adjourned at 8:15 P.M.

Respectfully submitted,

Dolores Shaw  
Secretary

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