

**TOWN OF NEW HARTFORD
PLANNING BOARD MINUTES
MONDAY, JUNE 11, 2012
NEW HARTFORD PUBLIC LIBRARY**

The Regular Meeting was called to order by Chairman Elis DeLia at 5:30 P.M. at which time the Pledge of Allegiance was recited. In attendance were Board Members Jerome Donovan, Peggy Rotton, Julius Fuks, Jr., Ellen Rayhill, and Heather Mowat. Board Member absent: G. Brymer Humphreys. Also in attendance were Town Attorney Herbert Cully, Codes Officer Joseph Booth, Mr. Richard Sherman, Highway Superintendent, Mr. Paul Miscione, Councilman, Mr. Chuck White, P.E. of Barton & Loguidice, and Recording Secretary Dory Shaw.

Draft minutes of the May 14, 2012 meeting were received by each Board Member. Motion was made by Board Member Peggy Rotton to approve these minutes; seconded by Board Member Jerome Donovan. Motion passed by a vote of 6 – 0.

Longeretta Law Firm for Cristiano property on Lindale Avenue. Amendment to Final Subdivision Approval. Tax Map #340.000-1-36.1; Zoning: Residential/Agricultural 1. David Longeretta, Esq., Mr. Al Forte of Octagon Engineering and Mr. Frank Cristiano appeared before the Board.

Attorney Longeretta stated that there may be some concessions to come to a resolution on this project. It is for the Town to take over the turnaround and Mr. Cristiano to extend the roadway by 2' on each side from Mr. Cristiano's driveway to the road.

At this time, Town Attorney Cully gave a brief history of what transpired on this property. He further stated that Highway Superintendent Rick Sherman is in agreement to a widening of the driveway by 2' on each side from Mr. Cristiano's driveway to the road, and which would then enlarge the hammerhead so the snow plow can turnaround. Then the responsibility would be for the Town to plow and maintain it. Mr. Sherman said when they top the hammerhead, that the construction be near completion before the construction of the proposed house and this was agreed to by the applicant. Attorney Longeretta agreed. Mr. Forte said the plans show a shaded area of the 1" resurfacing and widening of the driveway. Mr. Forte also referred to the Town Board minutes of July 2005 where it addresses this road issue. Mr. Sherman agrees that the plans submitted by Mr. Forte this evening reflect these changes.

Board Member Donovan stated once the road is dedicated it can't be delegated. Attorney Longeretta referred to this and case law (which has been made a part of the file). Town Attorney Cully also contacted the Association of Towns in that a Town accepted road can't be dedicated to someone else to maintain.

Board Member Donovan asked that once the requirements of dedication have been met, the road would be accepted – which he said was never accepted. He also asked the Town Attorney if there is any doubt that the Town Board will accept the road since the conditions haven't been met in the last five (5) years. Attorney Cully can't give any assurances at this time – Attorney Longeretta referred to some cases of law with the same situation.

Board Member Fuks asked if any landowners would be impacted by this – Mr. Forte said no – they are just putting 1” of blacktop and widening 2’ on each side 30’ long. Board Member Fuks referred to soil and erosion, and also Item 4. He would like this within 14 days – Mr. Forte wrote this on the plan that it would be done within 14 days.

Board Member Fuks asked if this would be a problem if it isn’t met before the winter time. The property owner will build her house this summer. Mr. Forte said as soon as the concrete is finished, Mr. Cristiano will do what is needed to comply.

Motion was made by Board Member Peggy Rotton to grant Amendment to Final on the Cristiano application, plan dated April 24, 2012 with a revision date of June 5, 2012 with the conditions that Mr. Cristiano enlarge the size of the hammerhead 2’ on each side, 30’ long so the snowplows can turn around; seconded by Board Member Ellen Rayhill. All in favor.

Aspen Dental Plaza, 4630 Commercial Drive, New Hartford. Final Site Plan review for a 2900 sf free standing building on the site. Tax Map #38.008-1-8.1; Lot Size: 1.35 Acres; Zoning: Retail Business 1. Mr. Larry Adler of New Hartford Office Group appeared before the Board.

Mr. Chuck White addressed the SEQR responses. He does not have any comments and it is his understanding from a drainage standpoint and site development, that the applicant has addressd the comments that were received. They are not increasing impervious area; therefore, runoff would not be increased.

Chairman DeLia said there were no findings of significance and asked the Board Members if they had any questions.

Motion was made by Board Member Heather Mowat to close SEQR, as there were no findings of significance and with a Negative Declaration; seconded by Board Member Ellen Rayhill. All in favor.

Motion was made by Board Member Peggy Rotton to grant Final Approval for this application on map dated January 16, 2012 by Napierala Consulting; seconded by Board Member Ellen Rayhill. All in favor.

McDonald’s USA, LLC, 8522 Seneca Turnpike, New Hartford. Final Site Plan review of the demolition of the existing restaurant and construction of a new 4,317 sf restaurant building with associated site improvements consisting of new dumpster enclosure/shed, asphalt parking utilities, landscaping, lighting and signage. Tax Map #328.012-1-57; Lot Size: 180’ x 190’; Zoning: Retail Business 1. Mr. Jack Bucholz of Ty-lin International appeared before the Board.

Mr. Bucholz is representing Mr. Rob Bebout of Ty-Lin who could not be here. There were 74 seats but now it has been reduced to 66 seats. The site work requested has been indicated and shown on the plan. Concrete all across the site. Asbestos report was sent in. There was an issue with NYSDOT about runoff from the site. Mr. Bucholz said two (2) dry wells were put in with oversized pipe. This would reduce the rate and volume of runoff.

Mr. Chuck White said NYSDOT had asked them to go above and beyond storm water. They have a fair volume of storage and runoff. There is a plan by them to reduce discharge from the site. From a storm water perspective, it is a good idea. This site is less than an acre. They will have to address soil and erosion. Mr. White said NYSDOT has not given a final signoff on this drainage, but from his perspective, it is good. The final approval from the NYSDOT is within the Highway Work Permit when they secure it. If NYSDOT has additional comments, they will have to comply to get the permit. He has no other engineering concerns.

Chairman DeLia addressed the SEQR comments – Mr. White said some of the comments were with NYSDOT and storm water has been addressed.

Board Member Mowat asked how much distance from the grass to the road – Mr. Bucholz said about 30'. She has concerns with headlights with oncoming traffic, i.e., traffic traveling on Seneca Turnpike from west to east and the cars in the drive-thru lane, would headlights from the drive-thru lane point into the direction of traffic when they come around the corner? Also, any blind spots? Mr. Bucholz said he didn't think there was a problem as cars are parked on site also. He also said there are some shrubs planted on site (he named a few), but this didn't know if this came up before. Board Member Mowat still feels there could be a blind spot and headlight problem.

Board Member Donovan referred to stacking as he has seen cars on Seneca Turnpike waiting to get into McDonald's, and that this building sets closer to the road. Mr. Bucholz explained the new setup at this site with new kitchen facilities and two (2) ordering lanes – cars would be moving along faster on the site. Mr. Bucholz said this sits about 20' closer to the road.

Chairman DeLia stated this is the same type of setup as the one in South Utica.

There being no further questions, motion was made by Board Member Jerome Donovan to close SEQR as there are no findings of significance and with a Negative Declaration; seconded by Board Member Julius Fuks. All in favor.

Motion was made by Board Member Peggy Rotton to grant Final Approval to this application with map dated June 4, 2012; seconded by Board Member Heather Mowat.

Mr. Chuck White addressed the Board before the final vote regarding the storm water codes requirement to allow the Town to require a maintenance agreement. This is new to our Code. He doesn't know if this is the venue for this but the whole purpose of this agreement between the Town and landowner is that it puts an agreement into place that the landowner will maintain and in good operating condition the storm water on site. It keeps it functioning like it is intended to for the life of it.

Board Member Mowat asked if this is something the Planning Board is charged with – Mr. White said yes. He said it is the at the Town's discretion.

Board Member Donovan felt it should be a condition as part of the final that this will be completed and the execution of the agreement providing for storm water maintenance of this system. Town Attorney Cully mentioned that it can be incorporated in the Pre-development Agreement by the property owner.

Board Member Peggy Rotton would like this included into her motion, therefore, motion is rewritten as motion was made by Board Member Peggy Rotton to grant Final Approval to this application with map dated June 4, 2012 with an agreement between the Town and landowner that the landowner will maintain, and keep in good operating condition, the storm water on site; seconded by Board Member Heather Mowat. All in favor.

Mr. Bucholz agreed to this agreement as part of the motion for Final Approval.

Affordable Senior Housing Opportunities of New York, Inc.: Final Site Plan Review for a proposed 126 unit senior housing complex at **4752-4756 Middle Settlement Road, New Hartford, NY**; Tax Map #316.016-6-64.1; 3165.016-20-1-3; 316.016-6-65; Zoning: Planned Development Mixed Use. Mr. Christopher Trevisani appeared before the Board.

Mr. Chuck White has been asked by a Board Member to clarify something for the record. He is sitting here today representing the Town of New Hartford as the engineer reviewing this project. Before he took on this responsibility, his firm had been doing work for this project - a wetland delineation for this project and habitat easement and endangered species. He wanted this Board to be clear on this and the Town Attorney is aware of this as well as the applicant.

Mr. Trevisani stated that since the Preliminary Approval, they submitted these plans to the various agencies for permits. They had a wetland impact and storm water provision plan. The previous plan had the storm water directed to the low point of the site. Given the history of this, it was part of the wetlands by Barton & Loguidice. There is a conflict with the Army Corps and NYSDEC that you cannot construct a storm water in a wetland area. They have modified the plans. They shifted it further on the side toward the building. They are under an acre threshold which does not require mitigation for the Corps and they comply with the NYSDEC regulations. These are the primary changes. They have 142 parking spaces; the building itself and parking around the building is the same, and the landscaping is also the same. They have resubmitted these plans to the NYSDEC and Army Corps. They modified the storm water pollution provision plan and sent it to Mr. White. They are seeking Final Approval subject to getting permits.

Chairman DeLia asked Mr. White if the wetlands was the primary issue – Mr. White said yes. They have rearranged the layout of the site, moved the basin in toward the building and changed the type of basin. This is more consistent with the design of the SPEDES permit. By doing so, they will no longer be in violation of the NYSDEC requirements.

Board Member Fuks asked, under the general permit, is it still a requirement for SWPP to do a weekly visit – Mr. White said yes. They do have to do those inspections at regular intervals. This is part of their permit process.

Board Member Fuks asked, and charged to their engineer? Mr. White said yes.

Mr. Trevisani said he agrees/approves the storm water agreement as part of this approval.

Board Member Mowat asked if this affects Mud Creek. Mr. White said he doesn't believe this project will have an impact or direct fill impact on Mud Creek. There will be permanent fill. Doing so is a "permitted thing to do through the Army Corps. The applicant is in the process of doing this. It is a joint permit through the Army Corps and NYSDEC. We do not have jurisdiction.

Reference was made to the Rayhill Trail and the location of this to this project. Board Members Donovan and Mowat asked Mr. Trevisani to explain. Mr. Trevisani said they cater to independent living but most of the time people in their facility stay in the building. They have an outdoor patio and long private driveway. If people wanted to enjoy the Rayhill Trail, they could. (The Rayhill Trail is located across the street from this development).

Motion was made to close SEQR with no findings of significance and with a Negative Declaration by Board Member Peggy Rotton; seconded by Board Member Jerome Donovan. All in favor.

Motion was made by Board Member Heather Mowat to grant Final Approval to this application with map dated March of 2012 and revised May 2012; with an agreement between the Town and landowner that the landowner will maintain, and keep in good operating condition, the storm water on site; seconded by Board Member Jerome Donovan. All in favor.

Board Member Donovan asked what the average age is at this facility – Mr. Trevisani said 75 with a main age of entrance to be 55. There is no income requirement and it is not tax exempt.

Recommendation to the Town Board: amendment to the Town Zoning Law wherein wind energy conversion systems would be required.

Attorney Cully explained Local Law D of 2012 proposed amendment to the Town Zoning Law for Wind Energy Conversion Systems. This was prepared by the Zoning Committee chaired by Codes Officer Joseph Booth. There is concern about regulating these systems. This is intended to regulate large and small wind energy facilities. It provides a detailed process along with completion of environmental forms. A Public Hearing was held at the Town Board level and someone appeared and expressed concern about setback requirements. Codes Officer Booth explained potential height of 500', which 5x that height is 2500'. Large systems are 500'; small residential up to 50' tower. Those setbacks are in accordance with accessory structure setbacks.

Chairman DeLia asked if this committee addressed the 2500' setback. The other members felt that 2.5 times was adequate. Board Member Rayhill referred to an event if one falls down, noise, etc. The Ordinance addressed each and every one but the setback distance can be problematic. At 2.5x it would be 1250' on the property owner's parcel from the property line. Board Member Donovan also

asked if this was a model law – Mr. Booth said it is based on the Columbia Law University model made more conservative than the model law.

Board Member Fuks asked what defines a residence to Building Code – the Town Attorney addressed this – it can be capable of being occupied. It can fall on an adjoining property but not 2.5 times. He referred to Page 10 and setbacks – residential is not included in this.

Board Member Donovan asked about the drop zone for residential Wind Energy Conversion Systems (WECS) – Mr. Booth said depending on the zone it could be 10' or 5'. At 50' it could fall on an adjacent property.

Board Member Rotton addressed liability issues.

Board Member Donovan referred to Page 9C setbacks. Why the distinction between #1 and #2. There is a similar setback on residential and less than churches, schools, etc. Does the model provide a reason for the setback distances – Mr. Booth said no. What other agency regulates this - Mr. Booth said the FAA.

Board Member Fuks referred to the study on birds and bats and is there anything in this document for post evaluation and who becomes the responsible person for ensuring things. Response was yes. Board Member Fuks asked, does the local entity become the responsible entity – Mr. Booth said there is a requirement that an annual report be filed with the Town on the operation and maintenance of this system. He thinks it would have to operate with consistency and the annual report would have to show this. Board Member Fuks feels there should be responsibility up front because some of the rules compared to NYSDEC He also referred to road impacts. Is there something in this regarding the posting of a bond to protect the Town with any damage to Town facilities and/or roads, and does this requirement encompass everything if we ask for it at one place – why not ask for another. He referred to the city of Malone and various damage done to roads there. We have many County and Town roads. Town Attorney Cully said there is a bonding requirement and liability insurance is broad. Board Member Fuks asked if this coverage included damage during construction – Board Member Mowat also asked if damage was done to a property or storm water or catch basin, is it covered. Town Attorney Cully said the Town Board has full authority to approve the insurance. Codes Officer Booth thought we were covered under the standards of Planning Board review and the Pre-development Agreement on hours of operation, scrubbers, and entranceways.

Board Member Mowat referred to Page 13 Enforcement. Town Attorney Cully said it is the Codes Enforcement Officer's responsibility subject to procedures.

Chairman DeLia asked if this activity has to be allowed. Town Attorney Cully said it can be banned with justification.

Board Member Donovan asked the reason that the committee made a recommendation that towers would be permitted anywhere in the Town only governed by size because the preface talks about aesthetic impacts. He has no problem with wind towers in Agricultural districts particularly on higher elevation and why smaller towers are permitted in residential areas, i.e., subdivisions. Codes Officer Booth indicated we have to look at the purpose and intent.

Board Member Rotton referred to a study done on birds and bats and we should get a copy. Also, there are wind feasibility maps available. She questions whether this is good for the Town when they can go anywhere.

Board Member Donovan asked how high one can be in a commercial area, and he also stated there is no visual required for the smaller facilities, only the large. Mr. Booth said it could probably be 180'. Mr. Booth referred to a small wind system, which is Spring Farm Cares. The large wind systems would be allowed in the Agricultural zones provided it meets setbacks.

Board Member Donovan wanted clarification on Page 9. The Code talks about Planning Board, Town Board and Town of New Hartford Board – which Board are we talking about. Mr. Booth said the Planning Board. Further, on Page 11F paragraph B – again Town Board or Planning Board – he wants this clarified. On Page 12 under Bond C – Town Board or Planning Board – it was stated it may be the Town Board. Page 14 Property Tax Law- what is this. Town Attorney Cully and Mr. Booth didn't know at this time.

Board Member Rayhill asked what would happen right now for a wind project. Mr. Booth said he would deny the permit based on lack of legislation then send it to the Zoning Board of Appeals. It is not a permitted use in the Zoning Ordinance. He stated adding regulation is better than not having any.

Board Member Donovan suggests not moving forward without a Comprehensive Plan until we have a vision of what the Town would be.

Motion made by Board Member Jerome Donovan to recommend that the Town Board not approve the legislation on wind energy at this time in its present form based on the discussion between the Planning Board Members; seconded by Board Member Ellen Rayhill. Vote taken:

Chairman Elis DeLia – yes
Board Member Ellen Rayhill – yes
Board Member Peggy Rotton – yes

Board Member Jerome Donovan – yes
Board Member Julius Fuks - yes
Board Member Heather Mowat – yes

Motion not to recommend legislation was passed by a vote of 6 – 0.

There being no further business, the meeting adjourned at 6:50 P.M.

Respectfully submitted,

Dolores Shaw
Planning Board Secretary

dbS