

Town of Hamilton
Planning Board Meeting
Monday July 17, 2017, 7:30 PM
Hamilton Courthouse
60 Montgomery Street, Hamilton

Present: Chairman Darrell Griff, Elaine Hughes, Bettyann Miller, Mary Galvez, Bill Nolan, Town Attorney Scott Chatfield, Deputy Clerk Elisa Robertson, Town Clerk Sue Reymers

Others in Attendance: Mary Jane Miner, Steven Skollar, Ronald Burstein, Allie Dunham, Drew Dunham, Charles Whitmore, Roger Foster, William Heitz, Esq.

Chairman calls the meeting to order at 7:30 pm. Camp Fiver is on the agenda but will be tabled until the next meeting.

Mary Jane Miner, Earlville Road, Earlville, NY; Tax Map # 199.12-1-19, Subdivision follow – up

A subdivision was granted in November 2016. A number of transactions were supposed to take place to meet the conditions of the approval. There have been extenuating circumstances surrounding some of those properties. Chairman Griff asks Mary Jane Miner to give the Board an update on where things stand. Ms. Miner first became aware that she still owned some of the properties involved when she received her tax bill. She called to county to inquire. Nancy Miner decided not to participate in the land transfer. She has asked her lawyer to contact the County so that the property behind gets joined with her house property. That leaves only the piece of property that Nancy Miner was to purchase. Due to a death in the family and an illness; Nancy Miner is living in Ohio, there will be no conveyance of that property to her. Chairman Griff asks if that includes the lot readjustment as well, the reply is yes. She hopes that it may happen in the future.

Chairman Griff spoke with legal council today and the advice given was to table this for this month, and revisit it next month, before any solid action is taken. She was hoping to keep the areas in question as part of her property so that if in the future it would be possible for the conveyance to happen. She hopes to streamline the process when the situation presents itself. The main concern of the board at the time was that they did not want to create any landlocked lots. As it stands now some of the transfers have taken place and there is nothing that makes any illegal lots. Counsel's advice was that the Board table this and address it again next month.

Resolution 2017-47: Motion to table Mary Jane Miners lot conveyance until August.

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: Aye – 4 Nay – 0

ADOPTED

Poolville Country Store, Special Use Permit Application, 1245 Earlville Road, Poolville, Tax Map # 199.12-1-11,12, 13

The applicants contacted the Town Office about the feasibility of a self sound study. After consulting with the board and the Town Attorney, and considering the long history of the restaurant, it was decided to proceed with the understanding that this may not be all that was needed but that it would yield some information that may be useful. Some staff and board members met at the site to witness sound readings being taken with a sound meter that has been purchased by the town. Meter readings were taken from multiple locations around the property, and at the property line. Please see decibel readings included in the PCS supplementary materials. The decibel levels were not much different than the decibel levels that were previously taken by the county to establish the ambient noise levels. All other issues have been addressed, so it is up to the board whether to investigate this further or decide to set parameters. Board members were surprised at the amount of noise suppression the houses and the foliage provided. There is some discussion about the decibel numbers.

The parking has been addressed; the chairman refers to the SEQRA form part 2 where the potential issues have been listed. The solutions were also discussed at this time. Portable toilets will be used for waste water issues. The Board listed that there was no to minimal impact on all the issues except for those three. Those three are noise, parking, and waste water; all of which can be mitigated through the conditions. Procedure is discussed with Attorney Chatfield.

With regards to noise, some board members have firsthand knowledge of the noise study; there is a history of events being held there with no significant issues being raised. Deputy Clerk Robertson raises a question regarding the parking. The applicant had a variance for a remote parking area for their previous application and there is some concern as to whether it was issued specifically for that project and whether it is valid for this application. The ZBA reviewed it at a recent meeting (July 5, 2017) and felt that it was specific to that project.

Mr. Chatfield explains that, "In the absence of a formal determination from them... they have rendered a determination; the interpretation of that determination is up to the Zoning Enforcement Officer, in the first instance. If the Zoning Enforcement Officer has a question he can formally request the Zoning Board of Appeals to clarify their resolution." It would then be up to the ZBA to determine whether that variance can be applied to the Poolville Country Store. Town Clerk Reymers reports about the ZBA meeting on July 5, 2017. The language was specific to the events center.

Mr. Chatfield states that there was not anything formal, it is an informal expression of their opinion. They can only legally clarify the language of the resolution on if it is done with notice to the applicant with the opportunity to be heard. There is nothing that bars this board from using its judgment; and addressing the issues that are before it based on what it believes to be the appropriate determination.

There may be an issue if the CEO reads that resolution and reaches the same conclusion as the ZBA did informally. If so, then it has to go to the ZBA for clarification, formally. The Deputy Clerk asks some questions about Zoning Law page 14 regarding the location of the parking. Mr. Chatfield clarifies things for her.

Everything in the SEQRA part 2 has been addressed including numbers 3, 5, and 7 which includes noise, parking, and waste water facilities. Notes have been made on the back concerning mitigation.

Resolution 2017-48: Motion to agree that in terms of the noise assessment question (#3) of the EAF (SEQRA) form, that with the imposition of a condition that noise not be in excess of 80 decibels at the source, the potential adverse environmental impact of noise is mitigated to the degree that a negative declaration is appropriate.

Motion: Bill Nolan

Second: Elaine Hughes

Vote: Aye – 4 Nay – 0

ADOPTED

Mary Galvez recused.

Resolution 2017-49: Motion to authorize the Chairman to execute part 3 of the EAF (SEQRA) form, issuing a Negative Declaration based on the analysis that has been done at the last two meetings.

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Aye – 4 Nay – 0

ADOPTED

Mary Galvez recused

Chairman Griff reads and checks Box B with the following notations:

- Sanitary concerns to be addressed by using portable toilets
- Parking concerns to be addressed by using a shuttle to and from remote parking area
- Noise concerns to be addressed by not exceeding 80 db at the source

Resolution 2017-50: Motion to sign part 3 of the EAF (SEQRA) form.

Motion: Elaine Hughes

Second: Bettyann Miller

Vote: Aye – 4 Nay – 0

ADOPTED

Mary Galvez recused.

The Board consults the Town of Hamilton Zoning Law book page 60 section 8.4. They wish to check the requirements for issuing a Special Use Permit, and confirm that no other action needs to be made.

Attorney Chatfield explains some of the details regarding Special Use Permits. The permit goes with the land; review dates are not truly appropriate unless there is something of which the board cannot be 100 % certain about. When a permit is granted it is in perpetuity, unless the conditions are violated. If the CEO determines a violation he can cite them and they then can appeal, then it may go back before the board. A sunset provision is different, the permit is granted but if the holder does not exercise the rights granted within a given period of time, then those rights go away.

Complaints would be handled by the CEO. He can issue a fine. If it is consistent problem, the applicant can come back to the board to seek a change if they are frequently in violation. A cease and desist order is issued when it is not a temporary situation, ie. building a permanent structure when a tent has been approved. Board member Galvez asks what a community's recourse is once a permit is issued. Her concern is that an applicant may just figure the fines in as "cost of doing business". Community members would have to go to the Town Board and the board could seek an injunction with the Supreme Court. Time limitations are non-enforceable. The applicant can come back for modifications to conditions later on.

Resolution 2017-51: The Board having considered these issues concludes that: Vehicular Access, Circulation, and Parking are addressed by our negative declaration through use of a shuttle for parking; Compatability, by limiting sound to 80 db at the source; and Heath and Safety by the use of portable waste facilities. The Special Use permit shall be granted with the previous conditions.

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: Aye – 4 Nay – 0

ADOPTED

Mary Galvez is recused

Drew Dunham, Special Use Permit Application, 1647 Poolville Road, Earlville, Tax Map #184.-1-35,36,37

According to last month's minutes the board was going to contact the Dunhams with information on Sound Engineers and their cost. The applicant asked to reserve the right to approval of that expenditure. The Deputy Clerk sent them that information.

Ms. Allie Dunham states that they would like a quote, there is the price list but they do not know what it would entail for the expert to do their evaluation. Mr. Robert Andres of Environmental Safety Associates is the sound expert that the town has found. Mr. Andres stated that he would need to consult with the town to decide what they wanted done.

The board reviews the minutes from last month where it is stated that Chairman Griff asked for Mr. Zinsmeyer to do some calculations regarding different decibels levels at the source to calculate what they may be at the different locations around the property.

It is stated in the minutes that the applicant asks that this matter be tabled until a, "quotation from a qualified expert of the anticipated cost, or range of costs, to provide adequate guidance

to the Planning Board under these circumstances which will be shared with the applicant hopefully by the next meeting.”

Mr. Chatfield explains that there is a formal process if a positive declaration is declared, it is called scoping, this would address some of the concerns the applicant has. In the absence of a pos. dec. there are not any formal procedures to do what they are asking. Mr. Chatfield reads from the Regulations (617.13 – Fees and Costs) that the cost shall not exceed more than ½ of 1% of the total value. This is only applicable if a Positive Declaration has been issued. During the scoping session the board describes in a narrative exactly what kind of information that they are looking for.

In this instance we are trying to avoid the issuance of a pos. dec. in hopes to keep things less complicated. The best way to move forward without issuing a pos. dec. is to have this expert come in and listen to the boards concerns and ask him/her what sorts of testing would give us the best base upon which to evaluate these issues.

Mr. Drew Dunham asks if that pertains to new construction or renovation. It applies to all. It is fairly generically written, to cover many projects of different scope. There is really only one big obstacle facing this board with this application, so if there is a more effective, less expensive, less involved way to get around this, that would be more advantageous.

Mr. Drew Dunham introduces their representation. Mr. Heitz asks why the board why they cannot just issue an approval using the 80 db limit as they did for the previous application? Mr. Griff explains that the applications are different enough that they cannot be judged the same. Whether it is the topography, ambient noise, shape of the building or whatever; there is considerable concern about noise. A condition that may be applicable for one application may not be applicable for another. The expectations of surrounding property owners may be different as well.

The board is looking for guidance from an expert on decibel levels and how they can be interpreted.

Mr. Heitz asks about the sound study that was done by the PCS and can they use that expert. Mr. Chatfield explains that the board was present and that the noise at the property lines did not exceed ambient noise levels. The expectations of the neighbors may be different as well, in the Hamlet you hear your neighbors.

It is not the Boards job to identify experts and tell the applicant who they have to use. Our obligation is to tell them what we need and not keep the applicant returning again and again. Some cooperation from the board as to what kinds of information they want would be beneficial. There is no officially adopted procedure on how to go about this without a formal declaration.

Mr. Heitz inquires as to what was unsatisfactory about the sound study that was done and what additional information the board needs. He also questions the additional expense of hiring

another expert to hit an arbitrary goal. He goes on to say, "If the ultimate goal is to get you the information you need so you can set the standards you feel are reasonable, we are 100 % for that but maybe 80 db, for example, isn't the standard that you want to shoot for. It might be something different. But whatever information you need to make that determination, we are willing to do, with that guidance."

Audience member attempts to interject; Chairman Griff explains that the public hearing portion of this application has been closed. It is acknowledged that we have received his letters of concern.

He asks if he can ask a question of the Board.

Chairman Griff says one question.

Steve Skollar: "After reading the letters it seems to me that there are more issues than just sound."

Chairman Griff says that that will be taken into consideration.

Mr. Chatfield tries to explain what he feels the board is concerned with, like the frequency and whether the sound is expected or not. Whether there is compatibility of the project, even decibel levels are woefully inadequate for the measurement and perception of sound.

Mr. Heitz asks if what they need is someone to interpret the existing report.

Mr. Chatfield cautions that the board doesn't really know what it needs, so to do that may just be a waste of time, if what they need is more extensive than that.

Mr. Heitz expresses that the applicant is put in a difficult position because all of this information is very subjective. He states that by not telling the applicant what the board needs that they are setting them up for failure.

Board Member Nolan states: "Mr. Napierala was at a meeting and he was asked to provide us with what it would be out at the neighbors if the sound level decibels at the source was reduced 10-20. He said he could do that, but he hasn't."

Mr. Heitz: "So, that is one thing we can do for you."

Mr. Nolan: "Now it is too late, he has already submitted again. That why we decided to go with an expert, our own."

The Chairman reads from the minutes where the applicant agrees to an expert with the condition of seeing the cost up front.

Mr. Chatfield states that the board does not need the applicant's permission.

Mr. Griff replies that this is a small town and that he would like to see to everything as neighborly as we can.

Mr. Chatfield suggests that the board bring in the expert for a consultation, or work session.

Mr. Heitz asks if the board has ever asked this of any other applicant, to go through this extreme?

The answer is yes, the gravel pit had to do noise studies.

Attorney Chatfield explains that it does not matter if it has or has not, that the board perceives the circumstances of each case to be sufficiently different, so that as long as their decision is reasonable under the facts and circumstances, it is supportable. And they are comfortable

based on the information that they have received thus far there is a legitimate concern with respect to the noise levels that will be generated by the Dunham's proposal having a significant adverse effect on the neighbors. But they are not ready to conclude that yet because they don't have sufficient data. The only alternative, if we are at an impasse, is to go into the formal process; issue a positive declaration, go through the scoping process in which we then do engage the services of an expert. Then draft up a scope for the positive declaration and ask the applicant to prepare a draft environmental impact statement.

Attorney Heitz asks if this is the only issue facing this application before a determination can be made?

Mr. Chatfield responds that is the only one that has been identified thus far, but that could change if it goes to a scoping session. He explains that the board can consider other issues if more information comes to light.

Chairman Griff asks where they should go from here.

Mr. Chatfield suggests getting an expert to come meet with the board for a consultation; at that meeting come up with a scope of what the board wants and a potential cost for those services. This would be at a public meeting, the applicant are given special status, so they can give input. Mr. Heitz clarifies for the applicants, as well as confirms the direction in which this application is headed for the next meeting.

Board Member Mary Galvez asks how quickly we can get this done.

Mr. Drew Dunham asks if the board can have a special meeting. Chairman Griff states that yes but it must be advertised because it is a public meeting. He also comments that we will have to make sure everyone's schedules can accommodate.

Resolution 2017-52: Motion to have a consultation with Mr. Robert Andres of Environmental and Safety Associates to review the sound information that has already been given to the Board, educate the board on noise, and noise mitigation, and view the site regarding the Dunham Project.

Motion: Bettyann Miller

Second: Bill Nolan

Vote: Aye – 4 Nay – 0

ADOPTED

Mr. Heitz requests that the applicants have the permission to reserve the right to rebut any conclusions that the consultant may or may not make with their own evidence in the event that they need to. He does not want the fact finding to close during a consultation.

Mr. Chatfield objects. If the board, in its wisdom, concludes that; based on the expert opinion that they want to go in a certain direction, then that is the direction you go in. If the applicant believes that is an improper, arbitrary, or capricious determination he has remedies that are available to him. But giving a veto power to an applicant over a study that you are commissioning yourself is inappropriate.

Mr. Heitz states that they are not asking for veto power just to hear what is said at the meeting and if additional information is sought by the board that they have the ability to gather that information before the issue is closed.

The board and attorney have no problem with that.

Camp Fiver, Special Use Permit Application, 7464 Mill Street, Poolville, Tax Map # 199.-1-31

The applicant has asked for their application to be tabled, to amend or modify their application.

Resolution 2017-53: Motion to table any discussion on Camp Fiver until next meeting.

Motion: Mary Galvez

Second: Bill Nolan

Vote: Aye – 4 Nay – 0

ADOPTED

With regard to the Minutes dated June 19, 2017

Board member Bettyann Miller asks that the “E” be removed from her name and Town Clerk Sue Reymers asks that Ms. Beth Dubois name be added at the appropriate section where she gives permission for parking to the PCS.

Resolution 2017-54: Motion to approve minutes with recommended changes.

Motion: Mary Galvez

Second: Bill Nolan

Vote: Aye – 4 Nay – 0

ADOPTED

Next scheduled meeting will be held at 7:00 pm on August 8, 2017.

Resolution 2017-55: Motion to adjourn. (9:16pm)

Motion: Mary Galvez

Second: Bettyann Miller

Vote: Aye – 4 Nay – 0

ADOPTED

Respectfully submitted by:
Elisa E. Robertson
Deputy Clerk, Town of Hamilton