

PLANNING BOARD MINUTES

Wednesday September 29, 3004

WORK SESSION 6:30 P.M.

Roll call      Miscellaneous  
Minutes      Agenda items  
Sign review    Communications  
Update on pending items  
Committee reports  
Zoning reports

AGENDA ITEMS 7:30 P.M.

ITEM I

Jim Bevilaqua  
Major Arterial/Commercial

REQUESTS CONCEPT PLAN APPROVAL FOR  
DEVELOPMENT OF A COMMERCIAL PARK  
AT 6475 TRANSIT ROAD.

ITEM II

Cingular Wireless  
Major Arterial/Agricultural

REQUESTS SPECIAL EXCEPTION USE  
PERMIT AND SITE PLAN APPROVAL FOR A  
TELECOMMUNICATIONS TOWER LOCATED AT  
7377 TRANSIT ROAD.

ITEM III

Lou Visone  
Agricultural

REQUESTS CONCEPT PLAN APPROVAL FOR  
THE DEVELOPMENT OF A 4 LOT OPEN  
DEVELOPMENT AREA LOCATED AT 4640  
GOODRICH ROAD.

ITEM IV

ZONING LAW REVIEW.

ITEM V

SUBDIVISION LAW REVIEW.

ATTENDING: Patricia Powers  
Wendy Salvati  
Joseph Floss  
Roy McCready  
Tim Pazda  
George Van Nest  
Jeff Grenzebach

INTERESTED  
PERSONS: Councilman Scott Bylewski  
Gary Ferrara  
James Blum  
Jim Bevilacqua  
John Bevilacqua  
Bill Schutt  
Lou Visone  
Mike Metzger  
Mr & Mrs Harold Gates  
Gladys Fitzsimmons  
Mike Fitzsimmons

MINUTES

Motion by Joseph Floss, seconded by Jeff Grenzebach  
to approve the minutes of the meeting held on  
September 1, 2004 as written.

ALL VOTING AYE. MOTION CARRIED.

ITEM I  
Jim Bevilacqua  
Major Arterial/Commercial

REQUESTS CONCEPT PLAN APPROVAL FOR THE  
DEVELOPMENT OF A COMMERCIAL PARK AT 6475  
TRANSIT ROAD.

DISCUSSION:

Jim Callahan gave the background on this project. The property is located on the east side of Transit Road south of Miles Road. It consists of approximately 5.5 acres in the Major Arterial and Commercial zoning classifications. The applicant is seeking concept plan approval for the development of a commercial park as presented. The Town Board has referred this project for review and comment by the Planning Board. This represents the initial presentation to the Planning Board. Bill Schutt represented the petitioner Mr. Jim Bevilacqua and his son John Bevilacqua. This project is proposed as a medical office campus on 3.88 acres north of the Floss Building, and south of the HSBC Bank. The first 300 feet are zoned Major Arterial, the remainder of the site is zoned Commercial. The project is permitted under the current zoning, so there will not be a re-zoning involved. Mr. Bevilacqua has already closed on the property, and is anxious to move this project forward. He has received a lot of interest in the medical office buildings, and already has contracts on three of the five proposed medical buildings. The site is serviced by Erie County Sewer District # 5 and there is a letter from them indicating they have sewer service for this project. They have already submitted a SEQR EAF to the Town. They also have access from the Erie County Water Authority for water lines and storm sewers, and street access from the Department of Transportation. Other utilities they will need to support this project are out on Transit Road as well. The site is laid out as a campus format with four of the buildings clustered around a common landscaped area. One of the purposes is to keep the buildings as far away as possible from adjacent residential, which is two lots on Centre Lane. Mr. Bevilacqua has met with those two property owners, and has shown them this plan. They have not had any objections. Those homes have heavily treed rear yards, and we would supplement those with some more plantings on our project as well. All the buildings will be serviced by a central private entrance drive, and will serve as a spine for the utilities. Each building is being offered for sale or lease. All six buildings together total 30,400 square feet. A lot

of the parking is shared throughout the site, and all the parcels are inter-connected either with themselves or the common entrance drive. We also have an opportunity to interconnect externally with the Floss Building or the HSBC Bank. The site has been substantially disturbed over the years, and most recently by the reconstruction of Transit Road. We believe there are no environmental issues outstanding that need to be addressed. We also know that this site was proposed as a combination commercial and town house project back in the late 1990's, and went through the entire review process. It received a negative declaration, but the applicant never followed through with the project. The architectural style will be wood framing with a brick facade, glass, hip roofs, and they will all be the same style. There will be a ten foot planting area consisting of evergreens to buffer the neighbors. The percentage of green space is 22%. Wendy Salvati asked "Is it possible that the front building could be lined up with the other building, so there is consistency and there isn't so much parking toward the front of the building? Could you put the parking behind it?" Bill Schutt said "Yes, it is possible. We have that because ideally there will be a commercial retail building there, and naturally the demand for parking is in the front. We have developed an alternate plan which has that as a medical building similar to the other buildings. That would depend on Mr. Bevilacqua's marketing efforts if that plan would go through. That plan would have that building consistent with the 135 foot setback. They have envisioned a small retail plaza. There are approximately 220 parking spaces for the project. Tim Pazda said he has a concern for the neighbors, should the use of these buildings change in the future. Wendy Salvati said the previous approval for this property had been approved with a berm to buffer the residents. Mr. Schutt said he was concerned with a berm because of the contour of the land. All the land slopes to the west, so if you put a berm in there, you will actually be putting a dam in there. Mr. Bevilacqua said it is very heavily wooded back there in the northeast corner. He also said he may take the 11,000 square foot building up front, and change it to two 5,000 square foot buildings, allowing more green space. Joe Floss said in the past he has recused himself because his Father owned the parcel. However, the land has closed, and he feels comfortable participating. In the past there were agreements with the neighbors that there would be a berm

but if the neighbors are okay with evergreens, we can talk about it. Jeff Grenzebach asked if the detention ponds would be wet or dry. They will be dry ponds. Jim Hartz said the proposed zoning code if passed, would require major arterial to have a buffer of 20 feet in the front, and 45 feet in the rear.

Wendy said she would like to see better traffic circulation. Mr. Bevilacqua said there will be a mail distribution center, for the facilities to come and pick up their mail and turn around in the cul-de-sac, and then go to their building. This will allow them to have green space with picnic tables for the employees of the medical offices. This is what Mr. Bevilacqua envisions. Roy McCready said there may be some concerns about fire safety. Joe Floss said he will take the plan to the fire advisory meeting, and get their input. Chairman Powers asked if there was anyone in the audience who wanted to ask a question or make a comment. Mr. Harold Gates of Centre Lane said he likes the parking in front, if it is in back there will be traffic, and the dumpsters as well. Mr. Gates said there is a storm sewer that is seven feet off his property. Bill Schutt said there is an existing storm sewer that runs from the end of Clarherst and along the entire north line out to Transit Road. That is an existing line. It is our intention to just leave it as it is. Mr. Gates said they are building a new house at the end of Clarherst. Mr. Gates said they agree with this project, but he would not like a restaurant or a bar. No one else commented.

**ACTION:**

Motion by Roy McCready seconded by Wendy Salvati to send this project to Municipal Review Committee, Fire Advisory, and Traffic Safety.

ALL VOTING AYE. MOTION CARRIED.

ITEM II  
Cingular Wireless  
Major Arterial/Agricultural

REQUESTS SPECIAL EXCEPTION USE PERMIT AND  
SITE PLAN APPROVAL FOR TELECOMMUNICATION  
TOWER LOCATED AT 7377 TRANSIT ROAD.

**DISCUSSION:**

Jim Callahan described the project on the east side of Transit Road between Lapp Road and Wolcott Road. It consists of approximately 2 acres in the Major Arterial and Agricultural zones. It is currently home to Kitchen Advantage, and the applicant is seeking site plan approval from the Planning Board,

as well as a Special Exception Use permit for construction of a 95 foot telecommunications tower. The Town Board has referred this project, and this is the initial presentation to the full Planning Board. Gary Ferrara of SBA represented Cingular Wireless. They would like to improve coverage along Transit Road. We understand it is in a flood zone, and there are other approvals that will be necessary. Pat Powers asked Mr. Ferrara the total height with the antennas. The antennas are 4 feet above the 95 foot tower. Pat said "If the tower is that high you will need a one hundred foot free fall zone, do you have enough room to do that on that piece of property?" Mr. Ferrara said "The lot is only 150 feet wide. The tower is in the center of the lot, with a break point of 50 feet. So, if it was to fail, it would collapse upon itself." Pat told Mr. Ferrara that the Planning Board has insisted that all the other towers in town meet this free fall zone requirement. Roy McCready suggested getting an easement from the adjacent property owners to meet the requirement. Mr. Ferrara asked if he could take this to the Zoning Board of Appeals for a variance. After much discussion it was decided that the project would be denied due to the height reasons only.

**ACTION:**

Motion by Tim Pazda, seconded by Jeff Grenzebach to deny this project due to the height reasons only.

**On the Question?**

Wendy Salvati asked about the merger with AT&T. Mr. Ferrara said AT&T co-exists on several of their towers. Jeff Grenzebach asked how many carriers they could have on this tower? Mr. Ferrara said about four depending on the height they would need. Some can actually be as low as 45 feet, it depends on the system, the terrain etc.

George Van Nest	AYE
Tim Pazda	AYE
Roy McCready	AYE
Patricia Powers	AYE
Jeff Grenzebach	AYE
Joe Floss	ABSTAINED Kitchen Advantage is a client
Wendy Salvati	AYE.

**MOTION CARRIED.**

ITEM III  
Lou Visone  
Agricultural

REQUESTS CONCEPT PLAN APPROVAL FOR THE  
DEVELOPMENT OF A 4 LOT OPEN DEVELOPMENT  
AREA LOCATED AT 4640 GOODRICH ROAD.

DISCUSSION:

Jim Callahan said the project is located on west side of Goodrich Road north of Main Street. It consists of approximately eight acres split from a larger parcel. The applicant has received a negative declaration under SEQR for the four lots, identifying that future uses of the remaining land is subject to SEQR. The applicant is seeking concept plan approval for the 4 lot open development area as presented. Mike Metzger is the Engineer for Mr. Visone. Mr. Metzger said the land is zoned Agricultural and they will not need to re-zone the property. The open development will meet or exceed all the requirements. The right of way is 70 feet wide, and is compliant with the Master Plan. They obtained the negative declaration on September 22, 2004, and are here tonight seeking the first step of concept plan approval. Mike showed some photos of various areas on the site from different directions. Roy McCready asked how the rest of the property is going to be utilized. Mike Metzger said this is one of three parcels consisting of approximately 50 acres. Mike said "Well, considering there is a moratorium right now, I am not really sure, there are a few different things that have been contemplated in the past, but I don't think there is any definite plan right now." Jim Callahan said "As identified in the Municipal Review Committee minutes, it is speculative at this point, and so they isolated this particular four lot open development, and issued a negative declaration identifying that it is segmentation. The remainder of that property has to go through a full environmental review, at some point in the future when there is a more definitive land use proposed." Roy asked about the proposed pond, will they be getting into bedrock? Mike Metzger said they will be getting into bedrock for the pond. Wendy Salvati asked "What is the purpose of the pond?" Mike Metzger said "It serves a couple of different purposes. Number one - aesthetics. Number two - storm water quality. The new SPEDES storm water regulations restrict anything over an acre in size. We are not only mandated to treat water for volume control, but we also have quality control. There are a few different methods that can be

used, but the most viable is a wet detention pond. Wendy said this really is a five lot open development isn't it? Mike said "The remaining parcel is well over five acres, and meets the parameters of the New York State Realty laws. Joe Floss was concerned that the number 4640 Goodrich Road is confusing because the open development is north of that number - much farther to the north. Mike Metzger said there will be new addresses assigned. The main parcel has the 4640 address. Wendy Salvati asked "How large does the pond have to be to accommodate the storm water for the four lots? That pond looks like it is almost two acres on its own." Mike Metzger said "It is almost a two part answer. There is the size it has to be for the volume and water quality, and then the size it has to be to make it a viable pond. You go through the storm water calculations and determine the size it has to be for the water quality, and many times you end up with a pond that is so small it won't be a viable pond. It will be too small and eventually fill up with vegetation and silt. You have to have a certain amount of depth to make it a viable pond. It would be less than the size we are proposing to use, but we are making it larger for aesthetic purposes." Wendy said "I guess that is my problem. I understand you need a pond, but putting a pond in the area of the site that has existing vegetation on it, when you have other areas on the site that are clear and might be a better location for a pond where you wouldn't have to disturb as much vegetation." Mike said "Actually that is not the case, where we are proposing the pond is one of the clearest portions of the property. There are some scrubby trees, but nothing of any substance." Joe Floss asked if they would need to blast for the pond. They will try to dig out some of the rock, but they may have to blast. Pat Powers said at the last meeting one of the concerns by the Fitzsimmon's of 4740 Goodrich road was the blasting. They would want to be notified each time there is to be any blasting activity. They have horses, and want their horses protected. Mr. Visone said it would take up to a week and a half for the blasting to be completed. Mr. Visone mentioned that the neighbor at 4710 Goodrich Road has a permanent easement for his driveway off Mr. Visone's roadway. Roy McCready said the driveways that are shown go right through the existing trees. We would expect you to curve them to save the trees that are in the way. The road will be built according to Town road standards for an open



development. Pat Powers asked if anyone in the audience cared to comment on this project. Karen Moore of Greiner Road said she was concerned about the blasting. It does have an effect on the homes that are located along the escarpment. Would there be an alternative for blasting a pond that size? Mr. Visone said the basements would more than likely be broken with hydraulic equipment, so there wouldn't necessarily be blasting every time. There are always pre-blast surveys that are required, within a certain footage of the blasting area. Mike Fitzsimmons and his wife Gladys Fitzsimmons live to the north of this property and have 14 acres there. When they built their house they had to blast for their home, the septic system, the gas lines, and the water lines. It is solid rock, hard rock, and there will be a lot of blasting and stone removal involved in this project. He owns the stone wall, which is 3 feet off his property line, and is very protective of the stone wall. At the last meeting he requested measurements as to where the road would be constructed in that 70 feet and he doesn't see that being shown. He wants a drawing showing inches and feet showing the road and the utilities. Mr. Visone said the rock can change within a very short period of time, and if we don't have to blast, we will use the hydraulic equipment, because we own hydraulic equipment, I don't own a blasting company. Mike Metzger said as far as the driveway goes, it will be more centered and undulating. Mr. Visone said it will be landscaped on each side as well, so it will not just be a black topped driveway, it is going to be very lovely. Gladys Fitzsimmons said last year she asked Mr. Fitzsimmons to move his equipment off her property in that area, and it is still there. She is questioning whether the agreements made will be met. Who will be responsible if they are not met? She wants the blasting monitored and wants to be notified of any blasting. Mrs Fitzsimmons said she wants to know who will be responsible if she was not notified and she was hurt? Pat Powers said the Town Attorney would best be able to answer that, but notification of blasting will be a condition of approval. Tim Pazda said he was confused on how the MRC came up with their decision, and are we to just accept their decision? I am referring to segmentation. Jim Callahan said the Town Board issued a negative declaration on this eight acre phase. The remaining property doesn't have any formal plan, it is all speculation at this point. The only thing he has ever proposed

formally to come forward is the four lot open development. So anything on the remaining lands is speculation, mainly because it is going to be related to what sewers may or may not ever be there in the future, and if it is septic systems then it is going to change what the design ultimately could or couldn't be. There is an extension of commercial to the rear along Main Street that may impact what the future uses are, and then there is Thompson Road frontage. At this point it is so speculative he can't give us a definitive plan to identify what the impacts would be. So what the Municipal Review Committee said is alright fine we are going to hold you to that. In the future when you come up with a definitive plan for development of the remaining property, you will be subject to a full environmental review, and we will have to identify the impacts. In addition, what you are proceeding with now may impact your future reviews, in identifying the character issue that is always discussed through environmental issues. Having gone through that whole process, they ultimately ended up with the recommendation to proceed with this eight acre parcel, to allow the four lot open development to move forward in the review process. That is the history of how we got to this point. Councilman Bylewski said as part of the Town Board motion to issue the negative declaration, if future development does occur on the rest of the various parcels, not only would that be subject to the full blown environmental review, but would also re-open this environmental review, to bring it all under one environmental review. Tim Pazda said "I don't understand how re-opening the environmental review on a project that is completely finished would really have any... Councilman Bylewski said "It takes into consideration the impact that you have already put on there, as part of the overall review that has to take place."

**ACTION:**

Motion by Joseph Floss, seconded by Jeff Grenzebach to recommend concept plan approval for a four lot open development with the following conditions:

- 1) All homes should be constructed to connect to sewers if they ever become available there.
- 2) All equipment that presently rests on the Fitzsimmons property is to be removed immediately.
- 3) Any further development will require a full environmental review.
- 4) Neighboring homes such as Fitzsimmons are to be

monitored for blasting effects. Must notify neighboring Fitzsimmons horse farm each time there will be blasting.

5) The stone wall on the Fitzsimmons property is to be protected.

6) The pond is to have a clay liner, if it is required.

7) A permanent right of access to the property owner adjoining the south property line.

8) Driveway to be designed to preserve the trees, and placed as far away from the Fitzsimmons property.

9) A deed restriction for the maintenance of the pond.

On the question?

Wendy Salvati said she would like to see the pond designed to be only as large as it has to be to accommodate the storm water. If the pond becomes part of a Homeowners Association, or common land farther down the line for a larger development, what would the legalities be? I am uncomfortable with that. I don't know if the way to address that would be to keep the pond within the four lot area.

Mr. Visone said "I am sure this is not the first pond in Clarence that borders on separate properties. If the property is sold off, whoever the property goes to, the responsibility becomes theirs. As far as sizing the pond, I am going to own the remaining property, plus I am more than likely going to be building one or two homes for one of my siblings and myself.

Part of the idea of having purchased 50 acres, was to be able to put in a nice sized pond, not to be told I can put in a pond the size of a lily pad.

Joseph Floss said I am willing to let this go up or down the way it sits with the pond as depicted. However, I think you should address the drainage issue, in particular, before the board of health. I think it is a good point.

Pat Powers said we mentioned there should be a deed restriction for the maintenance of the pond. That would be a condition.

ALL VOTING AYE. MOTION CARRIED.

ITEM IV

ZONING LAW REVIEW

ITEM V

SUBDIVISION REVIEW

The board reviewed and made changes to fine tune the fifth draft They also identified the key issues that need to be identified in the subdivision review draft.

Motion to adjourn the meeting at 10:15 p.m.  
Patricia Powers, Chairman