

7-16-2014 – JOINT SPECIAL/EMERGENCY MEETING WITH TOWN PLANNING BOARD

Present:

Councilman Cheryl L. Earl
Councilman Lenard R. Hochadel
Councilman David L. Montgomery
Councilman Douglas J. Morrell
Supervisor Beverly A. Gambino

Also Present:

Planning Board Members Darren Farthing, Robert Church, Roxana Waters, Roxana Perry, Daniel Szustakowski, Keith Reynolds, Secretary Michelle Jones, Town Clerk Betsy Marsh, Attorney for the Town David DiMatteo, and 3 guests.

The Sardinia Town Board held a Special Emergency Meeting with the Sardinia Planning Board on July 16, 2014 at the Sardinia Town Hall, during the Planning Board's regularly scheduled meeting. Acting Planning Board Chairman Darren Farthing called the meeting to order at 7:26 PM.

The purpose of the Special meeting was to ascertain what approvals or denials the Planning Board has given for the Tri-County Business Park sewer corporation and water corporation projects, and the Hutchinson Rd. Townhouses project.

Mr. Farthing stated that the application for re-Zoning for this property is asking for a change from Agricultural/ Residential (AR) to Business/Light Industrial (BL) due to the multiple (13) units proposed, and the sewer and water systems need approval from the State and County Health Depts. He stated that the Environmental Impact Study has been completed and sent out, and everyone had a chance to comment on it. Mr. Farthing stated that it is just up to the County for approval of the sewer system. Attorney for the Town, David DiMatteo, stated that the sewer and the water corporations must be approved by the Town Board. He stated that the reasoning is, if they build them and the sewer system fails, there would likely be a petition for the Town to take it over and form a Sewer District. He stated this is dictated through the NY State Transportation Law. He stated that, with regards to the water, the reasoning is that if there was a water authority in Sardinia, the water authority would have to approve that it is a like water system, so if the corporation failed, the water authority could take it over. Since there is no water authority in Sardinia, he stated that there is not that requirement, but there is a requirement from the NYSDEC to take the water from the ground, which the applicant has satisfied, and the State and County Health Depts. requirements of how the water is to be treated, both of whom have approved the applicant's plan. Mr. DiMatteo explained that the approval of the Sewer Corporation and the Water Corporation are on the table Board tonight. The Attorney stated that the Sewer system has received its permits from the DEC with regards authorize the discharge, but the Town needs to make sure the system is built in a manner which, in the event the Town gets stuck with it at some point, they are satisfied with its credentials. He stated that the Transportation Law also provides that the Town can pass along the expense of reviewing the plans to the applicant, and to this point the Town does not have an engineer and has not had the plans reviewed, and stated he feels it is appropriate for the Town to get an engineer, get an estimate of the cost to review the plans, and make sure that Mr. Koch, the applicant, is willing to put the money in a escrow account so that the Town would have sufficient funds to pay an engineer. He stated that he doesn't think the Town Board is opposed to the idea of forming a sewer district, but needs to make sure that the system itself is constructed in a manner that would last 25 years, and if the people that are maintaining it can no longer do so, and the Town has to take it over, they are not getting something that is riddled with errors and problems.

Councilman Earl asked about requiring bonding. The Attorney stated that the law provides for requiring a performance bond, and stated he feels that the Town really needs to hire an engineer to ascertain the amount needed in such a bond. He stated that the bonding would be a Town requirement, not the State or County Health Departments' requirement, and explained that the bonding would be good for the construction, for approximately one year, and it would be up to the engineer how much to bond for. He stated that the cost should be incurred by the applicant, not by the Town. The sewer project was discussed and it was mentioned that the applicant, Manfred Koch, has a SPEDES permit to discharge, through a sanitation plant, into the Cattaraugus Creek, approved by the NYSDEC. Again, Attorney DiMatteo stated that, because of the Tri-County Business Park, not just the 36 Townhouses, and not knowing what type of industry may eventually be put in place, there should be a review by an engineer to make sure all possibilities are taken into consideration when a sewer system is built. The Attorney pointed out that the Planning Board has declared a Negative Declaration of Environmental Impact, and approved the SEQR application. Planning Board member Robert Church stated that Mr. Koch was supposed to put together an emergency plan in the event that the sewer system somehow overflows into the neighboring spring wells, and asked if the Attorney had seen any such plan, and Mr. DiMatteo stated he has not. Attorney DiMatteo recommended that the Town Board get more information before approving the water and sewer corporations so that if the Town eventually ends up with them, they know it has been built properly. He suggested that they put out Requests for Proposals and get three engineering quotes, and have the applicant set up an escrow account or a fee agreement to pay for the engineer. Engineering firms were discussed, and there were a few that have had prior working relationships with the applicant, therefore, possibly having conflicts. Several other firms were discussed that could be contacted with the RFP's. Mr. DiMatteo suggested that any approvals on either the sewer or water be deferred until such time as the Town can have a review done by an engineer, and the applicant pays up front to do so. Councilman Earl asked if these corporation approvals effect the decision on the re-Zoning, and was told it does not. He also stated that the preliminary plans have been approved by the State and County and DEC. Attorney DiMatteo asked if it was the Town Board's position that both the water and sewer should be grouped together for either approval or denial, and if they would want all monies for engineering put in place before hiring. The Board and Planning Board agreed that this was the best course of action. **Therefore, on a motion by Montgomery, seconded by Gambino, the Town Board voted to defer approval of the Water Corporation and the Sewer Corporation until such time as an engineer can be engaged on behalf of the Town, with the money for such engineering being put in escrow by the applicant, as provided for in the NYS Transportation Law. Carried, 5 ayes, 0 noes.** RFP's for engineering were discussed, as well as possible firms to send them to, and Attorney DiMatteo stated that he can also run the RFP in the Dodge report, as well. He also suggested that the RFP ask for not only review of the plans, but also noting that they will need to estimate an amount for the escrow account, and note that they are to be engaged during the construction phase and will be asked to do daily inspections during that time. **On a motion by Hochadel, seconded by Morrell, the Board voted to put out RFP's for engineers, and for costs, as recommended by the Attorney for the Town. Carried, 5 ayes, 0 noes.** Attorney DiMatteo will draft such RFP for the Town Board's approval.

Supervisor Gambino asked if there is a timeframe involved. Attorney DiMatteo stated that may be up to the applicant and the costs. He also suggested that when the Town gets the RFP's back, that the Board interview them and do due diligence by contacting former clients of the firm. Robert Church asked that both Boards be kept informed by the Attorney of the progress.

Attorney DiMatteo stated that the next issue for Town Board consideration is the requested re-Zoning of the parcel from AR to BL. The Board reviewed the plans for the 13 townhouses making up the Hutchinson Rd. Townhouses project. The Attorney gave a brief history of the project, stating that in January 2013, the SEQR review was started, in July 2013, it was completed, the Planning Board did an EIS, and in September of 2013 issued a the Findings Statement. The Planning Board approved the final plan in October of 2013. Shortly after that, the applicant postponed, not withdrew, the re-Zoning request, and then asked that the request be approved shortly after the beginning of 2014.

Attorney DiMatteo stated that the Town had made the 239-m notice to the Erie County Planner; all proper notices were sent to the neighboring properties, as well as to the required governmental entities 5 days prior to the Public Hearing held on June 12, 2014, and no comments were received from any of the governmental entities. The Attorney stated that at the June 12, 2014 Public Hearing, concerns were raised that: The re-Zoning was inconsistent with the Town's Comprehensive Plan; The re-Zoning would alter the character of Hutchinson Rd., a quiet, dead-end lane; The current residential character creates a buffer zone for the Cattaraugus Creek. The added traffic was discussed, and Planning Board members Darren Farthing and Robert Church confirmed that a traffic study had been done by the NYSDOT. Mr. Church was concerned with the SPEDES permit, and Attorney DiMatteo stated one was given, and the DEC had every opportunity to complain about the project, and did not. Mr. Farthing also made note that none of the traffic for any of the 36 townhouses will be going into the Business Park, and all 36 units will be using Hutchinson Rd., which will have to be brought up to Town Highway specs, paid for by the applicant. James Witter asked if the Planning Board had taken the Comprehensive Plan into consideration, and he was told it did, and that the Tri-County Business Park was included in Zoning included in the Comprehensive Plan. Mr. Farthing also noted that the Hutchinson Rd. Townhouses site plan was approved by the Planning Board in October 2013.

Councilman Hochadel asked why the applicant was not at the Public Hearing, stating it is his project, and if he was so concerned about getting the re-Zoning, he should have been there to answer any questions or concerns. Supervisor Gambino raised concerns that there will be 13 townhouses on a 2.5 acre parcel, and all in the corner of the property. **After further discussion, a motion was made by Morrell to adopt a resolution, to be known as Resolution #36 of 2014, to deny the re-Zoning application; seconded by Hochadel.**

**RESOLUTION #36 – 2014
DENIAL OF APPLICATION FOR RE-ZONING OF PARCEL ON HUTCHINSON RD.**

WHEREAS, the Town Board of the Town of Sardinia met at a special board meeting at the Town Offices located at 12320 Savage Road, Sardinia, New York on the 16th day of July 2014, commencing at 7:30 p.m., at which time and place all members were present, therefore, a quorum was present, and

WHEREAS, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

WHEREAS, the Town of Sardinia is considering a proposed Application for Rezoning Classification for SBL No. 327.00-1-11, situated on Hutchinson Road, from an AR- Agricultural Residential District to a BL- Business Light Industrial District by Manfred Koch of Mark I LLC ; and

WHEREAS, the Application for Rezoning Classification for SBL No. 327.00-1-11 was received by the Town Planning board on November 28, 2012. Said application was prepared by E & M Engineers and Surveyors P.C., on behalf of the applicant, the application is attached hereto as *EXHIBIT A*; and

WHEREAS, the Application and Planning Board Approval were sent to the Town Board where the Supervisor stated at the October 10, 2013, meeting that the Town Planning Board had approved the same and meeting minutes reflecting the same are attached hereto as *Exhibit B*; and

WHEREAS, pursuant to and in accordance with 6 NYCRR Part 617 of the State Environmental Quality Review Act, the Town Planning Board of the Town of Sardinia declared the Planning Board Lead Agency on January 2, 2013, Lead Agency Designation is attached hereto as *Exhibit C*

WHEREAS, in accordance with 6 NYCRR Part 617 of the State Environmental Quality Review Act, the applicant, MARK I LLC, has completed a Long Form SEQRA Form as of July 2013; and

WHEREAS, in accordance with 6 NYCRR Part 617 of the State Environmental Quality Review Act, the Town Planning Board of the Town of Sardinia has taken a "Hard Look" at any environmental impacts that this project could potentially cause during the construction therefore, the applicant, MARK I LLC prepared a Final Supplemental Generic Environmental Impact Statement in review of the same on July 20, 2013 attached hereto as *EXHIBIT D*; and

WHEREAS, the Town Planning Board for the Town of Sardinia reviewed the Final Supplemental Generic Environmental Impact Statement and prepared a Findings Statement in summary of the same, dated September 18, 2013 attached hereto as *EXHIBIT E*; and

WHEREAS, pursuant to § 239-m of the General Municipal Law, said Application for Rezoning Classification and all supporting documents were submitted to the Erie County Division of Planning for its review and recommendations on March 11, 2014 said correspondence and 239-m form is attached hereto as *Exhibit F*; and

WHEREAS, in accordance with §239-m of the General Municipal Law, no comments were received from the Erie County Division of Planning with regard to this request for Rezoning Classification;

and

WHEREAS, Pursuant to § 115-46 of the Town's Zoning that notification was made by registered mail to all property owners within 300 feet of the area to be disturbed by at least five (5) days prior to the date of public hearing, said registered mailings were sent on May 28, 2014, with proof of appropriate mailings are attached hereto as *Exhibit G*; and

WHEREAS, in accordance with § 115-46 of the Town's Zoning Law and § 264 of New York State Town Ordinance, written notice was provided via mail at least ten (10) days prior to the date of the public hearing to the following on May 28, 2014:

1. Cheryl Ketchum, Clerk, Wyoming County Board of Supervisors
2. Sandra Dutton, Clerk, Town of Arcade
3. John R. Searles, Clerk, Cattaraugus County Legislature
4. Duane Dedrick, Clerk, Town of Yorkshire

Registered mailings are attached hereto as *Exhibit H*; and

WHEREAS, in accordance with the above written notices, no comments were received from any party notified by the same; and

WHEREAS, a Notice of Public Hearing was duly published in the Town's official newspaper, attached hereto as *Exhibit I* and said public hearing was held on June 12, 2014 at which time all parties in attendance were provided an opportunity to speak or provided written comment in favor of or in opposition to the proposed Application for Rezoning Classification; and

WHEREAS, residents in attendance listed the following concerns and objections:

1. Stresses on local traffic flow, with the addition of Thirty-six (36) new residences and the potential for multiple licensed drivers in each residence
2. Drainage issues in relation to preexisting residences in the area with potential for flooding at said residences
3. Stresses on water and sewer systems and the potential for sewer leaks into the local aquifer
4. Whether the Application for Rezoning Classification is in compliance with the Town's Comprehensive Plan
5. Whether the addition of new homes would hinder backyard shooting ranges or varmint control; and

WHEREAS, the Town Board of the Town of Sardinia has heard and will consider all comments and concerns from local residents regarding the proposed Application for Rezoning Classification for SBL No. 327.00-1-11, situated on Hutchinson Road, from an AR- Agricultural Residential District to a BL-Business Light Industrial District by Manfred Koch of Mark I LLC; and

WHEREAS, that the Town Board of the Town of Sardinia feels it is in the best interests of the Town of Sardinia to deny, said Application for Rezoning Classification due to the following conditions:

1. The proposed application for re-zoning classification is inconsistent with the Town's established Comprehensive Plan
2. The natural flow of the land permits Hutchinson Road to be *near* a Business-Light Industrial District without being involved in the flow of business, re-zoning this would alter the character of the land which is currently a quiet lane and turn it into a bustling business center with a high concentration of residences
3. The current residential area provides a buffer to Cattaraugus Creek; and

NOW ON MOTION OF Councilman Morrell, which has been duly seconded by Councilman Hochadel, therefore, be it

RESOLVED, that the Town Board of the Town of Sardinia feels it is in the best interests of the Town of Sardinia to deny said Application for Rezoning Classification and be it

FURTHER RESOLVED, that the Town Board of the Town of Sardinia has taken into consideration all public comments and concerns regarding the Application for Rezoning Classification for SBL No. 327.00-1-11, situated on Hutchinson Road, from an AR- Agricultural Residential District to a BL-Business Light Industrial District by Manfred Koch of Mark I LLC

FURTHER RESOLVED, that the Town Clerk be and she hereby is directed to enter the denial of said Application for Rezoning Classification in the minutes of this meeting and notify the applicant of the same.

Upon roll call vote, Earl, no, Hochadel, aye, Montgomery, no, Morrell, aye, Gambino, aye. Resolved to deny Re-Zoning, with the Town Board voting 3 ayes, 2 noes.

There being no further business to come before the Board, the Town Board portion of the joint meeting was adjourned at 8:27 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

