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**MEMBERS PRESENT:** Harold Fabinsky, Chairman

Nicholas Baich

Paul Bodden

Henry Heppner

David Kaczor

Joseph Liberti

Philip Murray

Julia Mombrea, Alternate

**EXCUSED:** Remy C. Orffeo, Acting Planning Coordinator

**OTHERS PRESENT:** Timothy Gallagher, Deputy Town Attorney

Steven Bremer, Supervising Code Enforcement Officer

Thomas Ostrander, Assistant Town Municipal Engineer

Rose Messina, Planning Board Secretary

The Chair The Chair announced fire alarm exit procedures and called the Planning Board meeting to order at 7:00 P.M. by stating that if anyone appearing before the Board has a family, financial or business relationship with any member of the Board, it is incumbent upon that person to make it known under State law and the Town Code of Ethics.

The Chairman noted that the Board welcomes its newest regular member Mr. Nicholas Baich. Mr. Baich formerly served as the alternate member of this Board. The Chair then welcomed Mrs. Julia Mombrea, our new alternate member and our Council, Deputy Town Attorney Timothy Gallagher.

The Chairman stated that the December 12, 2019 meeting minutes are not available now and they will be voted on at a future meeting.

**PUBLIC HEARING**:

1. 7:00 P.M. Public Hearing, P.B. File #18-19, V /L, “Highcrofte Lane”, Three-Lot Subdivision, +/- 16.4-acres located at the west end of the Highcrofte Lane dead end, Zoned R-1. (SBL#162.07-2-12.1) Requesting Planning Board Preliminary and Final Approval.

The Chairman called the public hearing open for discussion of the “Highcrofte Lane”, a proposed Three-Lot Subdivision. The Affidavit of Publication and Posting, was published in the “Orchard Park Bee”, and filed by the Planning Board Secretary.

**IN FAVOR:**

*Mr. Chris Wood,* Carmina ⦁ Wood ⦁ Morris

*487 Main Street Suite 600*

*Buffalo, New York 14203*

Mr. Wood spoke in favor of the project.

*Mr. Sean Hopkins, Attorney*

*26 Mississippi Street, Suite 400*

*Buffalo, New York 14203*

Mr. Hopkins spoke in favor of the project.

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*Mr. Andrew Romanowski, Alliance Homes*

*4727 Camp Road*

*Hamburg, New York 14075*

Mr. Romanowski spoke in favor of the project.

**IN OPPOSITION:** No one spoke.

Mr. Heppner made a **MOTION**, seconded by Mr. Baich, to **CLOSE** the **PUBLIC HEARING**.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

THE **MOTION** **to CLOSE the PUBLIC HEARING** IS **UNANIMOUSLY PASSED**.

APPEARANCE: Mr. Chris Wood, Carmina ⦁ Wood ⦁ Morris

Mr. Sean Hopkins, Attorney

The Chair verified that the Board members had no further questions.

Mr. Bodden made a **MOTION**, seconded by Mr. Kaczor to **GRANT** Preliminary Plan Approval to this 16.3 +/- acres, 3-lot Subdivision based on the submitted Preliminary Plan and survey received on 1/03/20 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 1/09/20.

2. Pre-Application Findings were made by the Planning Board on 8/08/19.

3. Public Hearing and Subdivision Development fees shall be paid prior to Final Approval.

4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Approval.

5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on the lot per Section 120-3F of the Town Code.

6. Town Engineering Preliminary Plan Approval has been granted on 01/06/2020.

ON THE QUESTION:

Thomas Ostrander, Assistant Town Municipal Engineer advised a correction to Stipulation #6. Change Engineering Preliminary Plan Approval date to *1/06/2020*.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

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BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

THE **MOTION** IS **UNANIMOUSLY PASSED.**

Mr. Bodden made a **MOTION**, seconded by Mr. Baich, to **WAIVE THE FINAL PLAN PUBLIC HEARING**.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

THE **MOTION** IS **UNANIMOUSLY PASSED.**

Mr. Liberti made a **MOTION**, seconded by Mr. Bodden, to move to **GRANT** Final Plan Approval to this 16.3 +/-acres, 3-lot subdivision based on the submitted Final Plan received 01/03/20 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Parts 1 and2, and a Negative Declaration was made on 1/09/20.

2. Pre-Application Findings were made by the Planning Board on 8/08/19.

3. Preliminary Plat Plan Approval was granted on 1/9/20.

4. Pending Filing of the Map, Plan and Report to establish the Orchard Park Drainage District 2 – 6.

5. Public Hearing ($100) and Subdivision Development fees ($625) have been paid.

6. Recreation fees ($6,750) in accordance with Section 144-70E of the Town Code have been paid.

7. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on the lot per Section 120-3F of the Town Code.

8. Town Engineering Final Plat Plan Approval has been granted on 01/08/2020.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

THE **MOTION** IS **UNANIMOUSLY PASSED.**

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2. 7:00 P.M. Public Hearing, P.B. File #11-18, Smokes Creek Farms, Vacant Land located on the south side of Jewett-Holmwood Road, east of Deer Run Road, Zoned R-1. Requesting Planning Board Preliminary Findings for a twenty-two (22) Lot Subdivision. (SBL#’s 173.19-3-2.1 & 173.19-3-1.211)

The Chairman called the public hearing open for discussion of the “Smokes Creek Farms”, proposed Twenty-two Lot Subdivision. The Affidavit of Publication and Posting, was published in the “Orchard Park Bee”, and filed by the Planning Board Secretary.

**IN FAVOR:**

*Mr. Chris Wood,* Carmina ⦁ Wood ⦁ Morris

*487 Main Street Suite 600*

*Buffalo, New York 14203*

Mr. Wood spoke in favor of the project.

*Mr. Sean Hopkins, Attorney*

*26 Mississippi Street, Suite 400*

*Buffalo, New York 14203*

Mr. Hopkins spoke in favor of the project.

*Mr. James Jerge*

*7645 Quaker Road*

*Orchard Park, New York 14127*

Mr. Jerge spoke in favor of the project.

*Mr. Anthony*

Mr. Anthony spoke in favor of the project.

**IN OPPOSITION:** No one spoke.

Mr. Heppner made a **MOTION**, seconded by Mr. Bodden, to **CLOSE** the **PUBLIC HEARING**.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

THE **MOTION** IS **UNANIMOUSLYPASSED.**

APPEARANCE: Mr. Chris Wood, Carmina ⦁ Wood ⦁ Morris

Mr. Sean Hopkins, Attorney

The Chairman stated that the Zoning Board of Appeals granted several setback variances on January 15, 2019 to a number of lots in this project. He also confirmed with Mr. Ostrander, that Engineering

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has granted Preliminary Plan Engineering Approval for this project. He asked if the Board members had questions, and the following was discussed:

⦁ Mr. Heppner stated that he is interested in water retention and discharge, and the type of controls in place for drainage. He further stated he respects and trusts our Town Engineering Department, but that he personally wants to understand the “nuts and bolts” of the project. He would, also, like to know the lot sizes of the variances granted by the ZBA.

Mr. Wood explained that they received ZBA approval for several 110-ft. lot widths rather than the 120-ft. required. Also, two-lots were approved for 22,306-sq.ft. lot area, rather than the 25,000-sq.ft. required.

Mr. Wood also explained details of the stormwater management area, noting that an improvement should be seen along the Smokes Creek corridor.

⦁ Mr. Murray stated he is interested in the SEQR for this project and that he feels a Positive Declaration should be made by this Board to proceed as thoroughly as we can, given the likelihood of impact on the environment exists with the water.

Mr. Hopkins feels that a Positive Declaration is not necessary and explained to the Board why.

⦁ Mr. Bodden feels a Positive Declaration is excessive and that it is not necessary. He trusts the Town Engineering Department. If the project contains its own water, he has no problem with it.

⦁ Mr. Kaczor verified the action that the ZBA did not increase the number of Building Lots in the project. He also established that the retention pond is approximately two-acres in size. He noted that the Town is concerned for this area because of a past flooding history. He asks that they keep control of the water, in addition to following and adhering to NYS Stormwater Management rules.

Mr. Ostrander told the Board that there are three ponds at the site for Storm Water Control.

Mr. Wood explained to the Board another improvement plan they implemented, not shown on the presented plan. He noted that the Town Engineering Department has a copy of the plan wherein, they excavated a portion of the property in an area not in the flood plain to allow additional water volume. This area will remain a dry basin, until possibly a 100-year flood occurs.

⦁ Mr. Liberti stated that he, too, trusts our Town Engineering Department and Mr. Wood. However, due to the community-at-large he feels declaring a Positive Declaration is necessary to perform due diligence.

⦁ Mr. Heppner questioned if mitigation efforts will take place here.

Mr. Wood noted that they are impacting .09-acres of wetlands. This is under one-tenth of an acre, and does not require a permit.

Mr. Wood made reference to a parcel on the site map and discussed the fact that it may be owned in the future by the Town of Orchard as Parkland and that the creek water is located here. He further noted that the Town owns the adjacent property and this could be one contiguous property.

⦁ Chairman Fabinsky stated that we all have some concerns regarding the water issue. He feels the Board will want to look more carefully at this project and perform a thorough examination of water related issues. He feels the bank issue that Mr. Wood spoke of was not known to the Board until this moment, and they want to study this.

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Mr. Liberti made a **MOTION**, seconded by Mr. Kaczor, to **GRANT PRELIMINARY PLAN APPROVAL** to this 24.47+/- acres V/L, 22-lot Subdivision based on the submitted Preliminary Plan and Survey received 11/25/19 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Long EAF Part 1, and a Positive Declaration is hereby made on 1/09/20.

2. Pre-Application Findings were made by the Planning Board on 3/14/19.

3. Public Hearing and Subdivision Development fees shall be paid prior to Final Approval.

4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Approval.

5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on the lot per Section 120-3F of the Town Code.

6. Town Engineering Preliminary Plan Approval has been granted on 1/6/2020.

ON THE QUESTION:

Mr. Heppner spoke noting that he feels the request for the Positive Declaration will ensure the Board does the right things possible for those down-stream Residents in the Town of Orchard Park.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN NAY

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

THE **MOTION BEING (6) SIX IN FAVOR AND ONE (1) AGAINST, THE MOTION IS PASSED.**

The Secretary performed a Roll Call Vote to verify the voting result.

Mr. Hopkins asked that the Board reconsider this motion and not declare a Positive Declaration. He stated that they would supplement what has been provided to avoid a one-year delay in this project.

The Chair was not agreeable to this request, noting that sometimes a Positive Declaration can be a long process, but it need not be. He noted that the Acting Planning Coordinator will set up the format for a more thorough study. The members are looking for:

1. The assurance, that the water situation is under control, and that the review

2. Provide a clear reassurance to the Residents in the area who are concerned and have experienced flooding that every bit of detail has been reviewed, that the Town is doing its due diligence, and is basing its decision on credible data and sources

The Chair noted that the Board may opt to reassess this, due to additional information; but as of now, this is the motion that has passed. The Planning Coordinator will contact you to inform how we plan to move ahead.

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Mr. Murray noted that public participation is part of the Positive Declaration and is important to the

Town. It is one of the essential ways to proceed.

Mr. Wood stated that no public attended the ZBA meeting to speak against the Variance requests for this project. In addition, there are no residents present this evening to speak against the project.

**CONCEPT REVIEW:**

1. Benderson Development, 3340 – 3350 Southwestern Boulevard (“The Commons/Creek side Plaza”) Zoned B-1. Request to construct a stand-alone 1,910 sq. ft. “Mighty Taco” Restaurant with a Drive-thru, with associated site, utility and drainage improvements. (SBL#152.16-6-1.2)

APPEARANCE: Mr. James Rumsey, Benderson Development

Mr. David Zuppelli, Project Site Engineer, Benderson Development

Mr. Douglas Hutter, Zaxis Architectural

Mr. Hutter explained that Benderson Development would like to construct a 1,910-sq.ft. Mighty Taco with a drive-through. They are proposing 12-parking spaces, an outdoor patio at the rear of the building, and stacking for 7-vehicles. They feel having a drive-through is critical to their business. Mr. Hutter explained the “new” look for the building. There will be a total of 153-parking spaces at the site and six spaces will be for handicapped parking.

The members feel the proposed stacking number is unsafe.

Mr. Ostrander will speak to the Applicants regarding a better way to have the stacking footprint laid out.

This project received Conservation Board approval pending receipt of a stamped, sealed, and signed plan by a NYS Licensed LAS.

There being no further business, the Chairman adjourned the meeting at 8:03P.M.

DATED: 02/10/2020

REVIEWED: 03/04/2020

Respectfully submitted,

Rosemary M. Messina Planning Board Secretary

Harold T. Fabinsky, Planning Board Chairman