**MEMBERS PRESENT:** Harold Fabinsky, Chairman

Nicholas Baich

Henry Heppner

David Kaczor

Joseph Liberti

**EXCUSED:** Philip Murray

Paul Bodden

Julia Mombrea, Alternate

Timothy Gallagher, Deputy Town Attorney

**OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator

Steven Bremer, Supervising Code Enforcement Officer

Thomas Ostrander, Assistant Town Municipal Engineer

Rose Messina, Planning Board Secretary

The Chair announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:05P.M. in the Orchard Park Community Activity Center. He stated 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.

Upon a motion duly made and seconded, the reading of the February and March Planning Board Meeting minutes was unanimously waived as each Board Member had previously received a copy.

Mr. Liberti made a motion, seconded by Mr. Baich to accept the February 13, 2020 meeting minutes as presented.

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

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

KACZOR AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

Mr. Heppner made a motion, seconded by Mr. Baich to accept the March 12, 2020 meeting minutes as presented.

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

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

KACZOR AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

Chairman Fabinsky stated that the room is structured to conform to the guidelines, mandated by County Executive Polancartz, pertaining to Phase 2 of the COVID-19 Pandemic.

**OLD BUSINESS:**

1. P.B. File #35-19, Chiavetta’s Chicken/Jack Kuebler, 3892 Southwestern Boulevard, Zoned B-2. Peter & Kathleen Chiavetta, on behalf of Property Owner Jack Kuebler, are requesting Planning Board approval of a Drive-through/take-out Chicken Barbeque at this site. This item was tabled by the Board at their March 12, 2020 meeting pending additional information.

APPEARANCE: Mr. William Trask, Attorney

Mr. Jack Kuebler, Applicant

Chairman Fabinsky asked that the Petitioner present and summarize their request, noting that the Board members may have questions afterwards.

Both Mr. Kuebler and Mr. Trask explained that they feel Chiavetta’s runs a smooth and safe operation, and believe the site will work well. They told the members that the submitted traffic and stacking plan was developed to address the concerns expressed by the Board at the March meeting. They acknowledged that the chicken barbeque does not have set operating dates, and that the barbeques occur when there is an opening in the Chiavetta’s schedule. Each event usually operates for four hours.

Questions and comments from the members included:

⦁ Chairman Fabinsky stated that the Board is concerned for traffic spilling onto Southwestern Boulevard (NYS Route 20) and wants assurance this will not happen.

⦁ Mr. Kaczor suggests that Mr. Kuebler find a different site for the scholarship fund raiser, as he feels the 55-mile per hour traffic is a situation for disaster.

⦁ Mr. Heppner stated that the Public Safety Committee review is not negative, and he feels that with stipulations, he would be comfortable approving the request. One stipulation would be to have the Petitioner notify the Orchard Park Police when the event is happening, as early as possible, so they can monitor the site.

⦁ Mr. Liberti reviewed and discussed the presented plan with the Applicants. He affirmed with Mr. Kuebler that the stacking room for 21-vehicles will never exceed that capacity.

⦁ Mr. Baich stated that safety of the public is a great concern for him. He agrees with Mr. Kaczor regarding the speed of traffic that travels on NYS Route 20. He established with Mr. Kuebler that cones will not be placed in the roadway, and that the Chicken Barbeque events will be year-round, whereas, the Outdoor Shed Display is 4/1/2020 through 11/30/2020. It is not known how many Chicken Barbeques will take place in a year.

Chairman Fabinsky discussed stipulations to add to the motion and he also canvassed the Board finding that;

Mr. Kaczor is not worried about stipulations; his issue is public safety. He feels the Petitioner is trying to put 10-pounds of sausage in a 5-pound bag at this location. He also feels that NYS Route 20 is a 55-

mile per hour speedway and he further discussed his concerns regarding the vehicle traffic in line at the site. He does not support the request.

Mr. Baich agrees with Mr. Kaczor, with respect to public safety, and he questions the shed permit that was approved. He concluded that he does not support the request with the way it is presented.

Mr. Liberti has the same concerns for public safety, especially with the speed limit being 55-miles per hour. If he could be assured of the public safety he would be more inclined to support this.

Mr. Heppner explained that he is in favor of the request, based on the recommendation from our Public Safety Committee and a motion made with stipulations.

Chairman Fabinsky affirmed with Acting Planning Coordinator Remy Orffeo that there is no need to reconfirm the approval of the Outdoor Display Permit for the sheds if the approval for the take-out Chicken Barbeque does not pass.

Mr. Heppner made a **MOTION**, seconded by Mr. Liberti, to **GRANT** an Outside Display Permit for a take-out Chicken Barbeque, per the plan submitted on 5/18/2020, and the sale of sheds with the following stipulations:

1. The take-out barbeque is to operate, from 6/11/2020 through 12/31/2020, weather permitting.

2. The Applicant has submitted a Short EAF.

3. A report from the Public Safety Committee was received indicting no issue with the project, but they will monitor the activity of the Chicken Barbeque, and the Applicant will submit notification to the Committee 24-hours prior to an event occurring.

4. There will be no additional outside lighting for the display or temporary structure.

5. There will be no banners or additional signage for this facility; however, the Applicant may place a temporary code compliant “For Sale” sign upon receiving approval from the Building Inspector. This signage will be displayed concurrently with the sheds and the barbeque.

6. The sheds will be on display from April 1, 2020 to November 30, 2020. One shed will remain on the site as a sales office year-round.

7. If the Chicken Barbeque traffic spills out onto Route 20, it will be terminated.

ON THE QUESTION:

Mr. Liberti asks that a modification be made to the motion with stipulation #7 added.

Mr. Heppner accepted the modification.

A roll call vote was taken by the Secretary.

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

BAICH NAY

FABINSKY NAY

HEPPNER AYE

KACZOR NAY

LIBERTI AYE

THE **VOTE BEING (3) NAYS**, AND **(2) AYES**, THE **MOTION** IS **DENIED.**

2. P.B. File #11-18, Smokes Creek Farms, Vacant Land located on the south side of Jewett-Holmwood Road, east of Deer Run, Zoned R-1. (SBL#’s 173.19-3-2.1 & 173.19-3-1.211) Requesting Preliminary Plat Plan Approval for a proposed twenty-two lot subdivision. Pre-Application Findings were made on 1/09/2020. Tabled at the March 12, 2020 meeting pending answers to questions voiced during the Public Hearing.

APPEARANCE: Mr. Chris Wood, Carmina & Wood

Mr. James Jerge, Developer/Owner

Chairman Fabinsky thanked those present for complying with the COVID-19 safety regulations. He then explained the process in place this evening is for the Board to grant, or deny, Preliminary Plan Approval for this project. A public hearing was held at the Planning Board March 12, 2020 meeting where residents voiced their concerns. At that meeting the Petitioner offered to meet with the residents afterwards to provide them with information, and answer their questions regarding this project. The Board has reviewed the recently updated “Stream Corridor Study”, however, they would like to revisit concerns that were voiced by the neighboring residents. These concerns include water issues, public safety, home values, and improvement to water control with this project’s retention pond system. The Chair asked Municipal Assistant Engineer Thomas Ostrander for his comments on this project.

Mr. Ostrander responded and explained that the chances of flooding are lessened with the recent modifications made to the project and its retention pond system. He also explained that Flood Insurance is no longer needed by many of the homes, as the improvements made to the Freeman Pond Spillway and the Forest Drive Bridge have substantially reduced flooding and eliminated the Flood Plain.

The Chair stated that there are three items that need to be addressed and voted on this evening by the Board; (1) Lead Agency Status, (2) SEQR Determination, and (3) revisiting the Preliminary Plan Approval that was rescinded by the Board at the March meeting.

Prior to voting on these items, the Chair asked if the Board had any remaining questions or comments. These are listed below:

⦁ Mr. Baich commented that the Town Engineering Department is confident that the water issues here are resolved; therefore, he has no questions.

⦁ Mr. Liberti stated that the biggest issue is the water downstream; however, he is also looking towards public safety, home values, and ensuring that everything is safe. He would like assurance from Mr. Wood that the data provided is reaching the public, and that there will be no water issues downstream. He feels it will not be perceived in a good way for the Board, and everyone else involved, if they “don’t do the right thing” with this project. He wants the residents to have peace-of-mind and assurance that everything is good.

⦁ Both Mr. Jerge, (the project’s Developer and Property Owner), and Mr. Wood, (Engineer for the project), spoke stating that the project is a betterment to the water issues in this area. They emphasize that they have been 100% transparent with this project.

⦁ Mr. Kaczor spoke of his experience with the cost of purchasing flood insurance, noting that it is not inexpensive; he is glad that issue is straightened out. He would like affirmation that the project will be an improvement to the area, as he has been led to believe that with the development of the project and its retention ponds, there will be less water running downstream.

Mr. Wood stated that this is correct. The Residents along this corridor will see an improvement.

Mr. Kaczor concluded his discussion complimenting both Mr. Jerge and Mr. Johnson, stating that they are reliable people. In the past, they have shown that their projects are done the right way. He is comfortable with this project.

⦁ Chairman Fabinsky stated that, although he shares the same concerns regarding the downstream water impact, based on the report of our Engineering personnel, studying and overseeing this project, along with the revisions made to the plan the Petitioner’s assurance is meaningful to him.

⦁ Mr. Heppner stated that he is now satisfied with the water flow from the site. He has confidence with the accuracy of everything that the Petitioner has explained and in our Engineering Department that reviewed the plans, finding them accurate. In terms of water control, this project should be a betterment to those downstream.

Mr. Wood addressed the issues that the residents discussed with him and also offered his personal cell phone number for anyone to contact him with their concerns or questions.

Chairman Fabinsky stated that there will be another public hearing for the residents to attend and speak “in favor”, or “against”, noting that the project is not approved until Final Approval is granted.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Kaczor, to make the following motion:

1. The Planning Board sought Lead Agency status at its 3/14/19 meeting. After a 30-day review there were no objections from involved agencies.

2. The Orchard Park Planning Board hereby declares itself Lead Agent for P.B. File 11-18, Smokes Creek Farms Subdivision.

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

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

KACZOR AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

Mr. Liberti made a **MOTION**, seconded by Mr. Baich, to make the following **SEQR MOTION**:

1. This is an Unlisted SEQR action determined by the Planning Board on 6/11/20, based on the submitted Long EAF Part 1.

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

3. Town Engineering Preliminary Plan Approval has been granted on 1/06/2020.

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

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

KACZOR AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

Mr. Heppner made a **MOTION**, seconded by Mr. Fabinsky, 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 Negative Declaration is hereby made on 6/11/2020.

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

3. The Hydraulic Summary Report was received on May 4, 2020.

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

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

6. 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.

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

8. The hearing for Final Approval will be set by the Planning Board Chairman.

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

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

KACZOR AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

There being no further business, the Chairman adjourned the meeting at 8:15 P.M.

DATED: 6/25/2020

REVIEWED: 7/05/2020

Respectfully submitted,

Rosemary M. Messina

Planning Board Secretary

Harold T. Fabinsky, Planning Board Chairman