

PLANNING BOARD JULY MEETING MINUTES

MEMBERS: Harold Fabinsky, Chairman
Nicholas Baich
Gregory Bennett
David Kaczor,
Alex Long
Philip Murray
David Mellerski, Jr., Alternate

EXCUSED: Henry Heppner

OTHERS PRESENT: Remy C. Orffeo, Acting Planning Coordinator
Thomas Ostrander, Assistant Town Municipal Engineer
Steven Bremer, Supervising Code Enforcement Officer
John Bailey, Deputy Town Attorney
Rose Messina, Recording Secretary

The Chairman announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:02 P.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.

The Chair stated that, upon a motion duly made and seconded, the reading of the June 2022 Planning Board Meeting minutes is unanimously waived as each Board Member had previously received a copy.

Mr. Bennett made a motion, seconded by Mr. Kaczor, to accept the June 9, 2022 meeting minutes.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

1. **7:00 P.M. PUBLIC HEARING, P.B. File #15-18, "Old Transit Road", Nexgen Development II LLC, proposed 26-Lot Subdivision, upon +/- 25-acres, V/L located on the west side of Old Transit Road (former Nike Base), north of Michael Road, Zoned R-2. Applicant is seeking Preliminary Plat Plan Approval, per §121-10 of the Town Code. Pre-Application Findings were made, and approved by the Planning Board, on 8/8/2019.**

The Chairman explained the Public Hearing procedure to those present and noted that each person is allowed (4) four-minutes to speak, "for" or "against" the project. The Affidavit of Publication and Posting, published July 2022 was presented and filed with the Board by the Planning Board Secretary.

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich, to **OPEN** the public hearing.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

APPEARANCE: Mr. Peter Sorgi, Hopkins Sorgi & McCarthy, Attorneys PLLC
Mr. Patrick Sheedy, Carmina • Designs

Mr. Sorgi stated that this project appeared before the Planning Board in August, 2019. At that time the members requested that a proposed "cul-de-sac" be revised to a "T" shape, and that soil testing be performed on each of the 26-lots of the subdivision. Pre-Applications Findings were also made at this meeting. He noted that they are here today seeking "Preliminary, Plat Plan" approval.

Chairman Fabinsky established with Mr. Sorgi that the owner of the property is Mr. Jim Wilson, who owns a local construction company. Mr. Fabinsky told Mr. Sorgi that the Board must follow the previous procedures carried out for the two adjacent properties, (Gernold Subdivision and Knoche Farms).

Mr. Ostrander summarized the necessary procedures that were followed, noting that each Building Lot must have soil testing.

The Chairman stated that the Board will require an independent consulting firm to review the testing.

Mr. Baich established that Mr. Wilson, the developer, has several completed projects at nearby locations, in the Towns of East Aurora and West Seneca, New York.

The Chairman asked if there is anyone who would like to speak *in favor* of this project. (Asking 3-times)

IN FAVOR: No one spoke.

The Chairman asked if there is anyone who would like to speak *against* this project.

AGAINST:

*Mr. Mitchell Wheeler
7900 Milestrip Road
Orchard Park, New York 14127*

Mr. Wheeler spoke against the proposed project. He lives adjacent to this property, on the South side, and does not want it developed because of the concerns he has for an existing water tower located here. If the water tower needs to be taken down, he does not want trespassers on his property.

*Mr. George Weimer
580 Willardshire Road
Orchard Park, New York 14127*

Mr. Weimer discussed a past denial he received for the construction of a single-family home, based on the traffic concerns here. He feels he was unfairly denied, and that an approval for the current proposed

project for 26-Single Family homes is “bad judgment”. He also spoke of potential sewer and water issues that may be created for his neighbors, and the Town of Elma, New York.

*Ms. Denise Scutt
3444 Transit Road
Orchard Park, New York 14127*

Ms. Scutt does not support the request as she feels there will be traffic and flooding issues created, along with the displacement of wildlife.

Attorney John Bailey suggests that Ms. Scutt discuss these issues with the Town Engineering Department.

*Mr. Joseph Salvatore Bella
279 N. Park Avenue
Buffalo, New York 14216*

Mr. Salvatore Bella stated that he recently purchased the property adjacent to this site and plans to construct a home here. He is concerned about the increase in traffic, drainage issues and having another intersection onto Transit Road. He does not support this project.

*Mr. Daniel Vaillancourt
3444 Transit Road
Orchard Park, New York 14127*

Mr. Vaillancourt does not support this project. He noted his concerns for water issues; including water pressure. He further stated there will be an increase in traffic, and the displacement of wildlife living here. He also stated he has additional concerns regarding green space and the need for buffer areas.

Chairman Fabinsky discussed whether the Board should “close” or “adjourn” the public meeting. In view of the written correspondence, telephone communications, and questions received relating to the environmental history of this project, he would like to make a motion to “adjourn” the public hearing.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Murray, to **ADJOURN** the public hearing.

ON THE QUESTION:

Acting Planning Coordinator Orffeo verified with Deputy Town Attorney John Bailey that the meeting is “adjourned” and not “closed”.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION TO ADJOURN IS PASSED.

The Chairman, stated that they must have an independent third party review the submitted soil samples for each proposed lot. He invited Mr. Sorgi to speak on the proposed project.

Mr. Sorgi stated that the Planning Board members discussed items they required for this project at the 2019 August meeting. This included "Part 3" of the EAF to contain soil testing; one bore per Building Lot performed by a Planning Board identified source for an objective independent report, with the cost to be paid by the Petitioner. A Town selected consultant will also provide a summary third party review of the Environmental testing and status of the site. He confirmed that the Applicant will pay for the third party review.

Mr. Orffeo discussed having the 2% fee remitted to the Town, based on the estimate of the projects' total cost, as mandated under SEQR Law, to cover the predicted cost of the third party consultant. He and Mr. Ostrander will provide several consultant names and numbers to Mr. Sorgi, as expeditiously as possible.

Mr. Kaczor made a **MOTION**, seconded by Mr. Murray, to **ADJOURN** action on this item specifically for the reason that the Planning Board requires a review of the completed soil test boring involved by an objective, independent entity with the cost to be paid by the Petitioner. The Town selected consultant will also provide a summary third party review of the Environmental testing and the status of the site.

ON THE QUESTION:

Attorney John Bailey discussed using the word "adjourn" and not "tabled" in the motion. Mr. Sorgi noted the meeting is still open, and not closed. The 62-day clock does not start.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	NAY
MELLERSKI	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION to ADJOURN IS PASSED.

REGULAR BUSINESS:

1. **P.B. File #16-22, 3864 Abbott Road, O'Neil's parking lot, located on the west side of Abbott, south of Southwestern Blvd. Road, Zoned B-2.** (SBL#161.00-5-11) Applicant is requesting Planning Board approval for an Outside Display to allow a Flea Market to operate at this site. Board tabled this item at their June 9, 2022 meeting.

APPEARANCE: No one was present.

The Chairman stated that, generally, the Board requires that the Petitioner, or their representative, be present to promote their project answer the Boards' questions.

Acting Planning Coordinator Orffeo stated that he would contact the Petitioner to see if they are serious about this project request. If they are not he will close the case file.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Murray, to **TABLE** this case, pending verification by the Acting Planning Coordinators' response from the Petitioner.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
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BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

- 2. **P.B. File #05-2022 Woodridge Park Association, 10 Hastings Drive, Zoned R-3.** Applicant is requesting Planning Board approval of proposed Subdivision signage, per §144-37 B (1) of the Town Code. The Zoning Board of Appeals granted an Area Variance on 6/21/22 for size of signage.

APPEARANCE: Ms. Bernadette Smith, Woodridge Park Home Owners’ Association
Board of Director’s President

Chairman Fabinsky stated that on 6/21/22, the Zoning Board of Appeals granted an Area Variance for a “Dwelling Group Complex Sign”. They are before the Planning Board for review of the proposed signage and its base.

Ms. Smith stated that the proposed sign has been revised, and she submitted the revised plans to the Board.

Several members discussed their feelings regarding the project’s last minute revised plan.

Mr. Kaczor is a former Chair of the ZBA and was a member of that Board for many years. He feels this sign received a 50% increase in what is allowed in size. Although it looks aesthetically beautiful on the submitted drawing, he does not feel it will look that way when the columns are added. He feels it may be an eyesore and create sight vision issues at the entrance/exit area. He would like to see a smaller sign.

Attorney John Bailey suggests that the case be tabled.

Mr. Kaczor agreed, as he feels the Board needs additional information/drawings with a smaller designed sign.

Mr. Murray made a **MOTION**, seconded by Mr. Kaczor to **TABLE** their review of the proposed signage pending the receipt of additional information for a revised, smaller sign.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION TO TABLE IS PASSED.

- 3. **P.B. File #06-2022, 260 Redtail Road, Located on the west side of Redtail Road, south of Windward Road, Zoned I-1.** (SBL# 152.18-2-4) Excelsior Orthopedics is seeking a Planning Board recommendation to Town Board for a Building Permit and Site Plan Approval to construct a 10,000-sq.ft. addition to their existing building, and proposed expansion of their parking lot. Town Board recommended to Planning

and Conservation Boards on 2/16/2022. Conservation Board approved Landscape Plan on 5/03/2022.

APPEARANCE: Mr. Patrick Sheedy, Carmina – Wood Design

Mr. Sheedy explained the proposed project, noting that the parking expansion for 50-spaces will take place first. He stated that they received Conservation Board approval on 5/3/22, and is seeking Planning Board recommendation to the Town Board for a Building Permit and Site Plan Approval. The setbacks meet the Town Code and there is no encroachment towards Red Tail.

Mr. Kaczor established with Deputy Town Engineer, Thomas Ostrander that the site was previously approved when the former tenant, Buffalo G.I. was located here for runoff water. It was confirmed that the additional asphalt and water drainage is not an issue.

Mr. Bennett made a **MOTION**, seconded by Mr. Baich, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 10,000 square foot addition to their existing building and expansion of their parking lot, per the plan received on 6/3/2022, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is an Unlisted SEQR Action, based on the Short EAF submitted on 2/1/2022, and a Positive Declaration is made.
3. The site lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
4. No outside storage or display is permitted.
5. An updated Landscape Plan, received 6/3/2022, meets all Green Space regulations with 36% total green space. Interior Green space is 14%. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amounting to 50% of the \$24,940.00 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$12,470) Conservation Board approval was granted on 5/3/2022.
6. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
7. The applicant is to provide the Town of Orchard Park Assessor with an “independent” appraisal for the completed project by a Certified Commercial Appraiser
8. Engineering Approval was granted on 7/14/2022.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

4. **P.B. File #05-2021, 3330 Orchard Park Road, V/L located on the West side of Orchard Park Road, south of Rte. 20, across from the Hammocks, Zoned B-2.** (SBL#152.16-6-2.11). In-Site Real Estate Development Services, LLC is seeking Planning Board recommendation to Town Board for a Building

Permit and Site Plan Approval to construct an "Aldi's Grocery Store". Town Board referred to Planning and Conservation Boards on 2/5/20; Zoning Board of Appeals granted an Area Variance on 7/20/2021; Conservation Board approved Landscaping Plan on 2/01/2022.

APPEARANCE: Sean Graham, In-Site Real Estate LLC
Sean Barniak, In-Site Real Estate LLC

Mr. Graham stated that they have obtained all necessary approvals from the Architectural Overlay District, Conservation Board, and the Zoning Board of Appeals. In addition, they have received their permits/approvals from SHIPPO, DOT, Erie County Water Authority, Erie County Department of Sewer & Management, U.S. Army Corps, and were issued a FEMO COMO. At the last Planning Board meeting this project was presented and the Planning Board voiced concerns regarding traffic impacts. Acting Planning Coordinator Remy Orffeo, initiated a third party review of their TIS, by Greenman Pederson, Inc. (GPI), and GPI issued a comment letter. In-Site Real Estate LLC responded to the comments, ultimately resulting in a GPI approval letter for the TIS. The main "take-a-ways" from GPI's letter were: (1) they agree with In-Site Real Estate's traffic calculations, and in some cases they even found them to be conservative, (2) the proposed development will not have any significant impact to the existing traffic conditions, (3) capacity improvements cannot be reasonably made by the developer.

Mr. Graham assured the Board that only environmentally clean contaminate-free soil will be brought into the site by Zoladz Construction, a reputable contractor that is familiar with Orchard Park Town standards. He also stated that he prepared an "Imported Fill" quality statement, assuring the Town that the fill used will meet the NYS DEC standards. This statement was provided to the Planning Department staff and their general contractor.

Mr. Murray asked the Applicants to describe the kind of analysis that took place, besides the Traffic Impact Study (TIS), for the many kinds of downstream water; does it have any relationship to what you think you are doing there with Storm Water Management?

Mr. Ostrander and Mr. Barniak both explained the Storm Water Management/sewer run-off at this site. Mr. Ostrander concluded that the proposed Storm Water Management design is a betterment to the site. Mr. Barniak noted that the site is designed using both the Storm Water Management criteria from the NYS DEC, and the Town of Orchard Park.

Mr. Murray feels this is a busy traffic intersection, and it will be compounded with additional traffic. He would like to know, "what is the analysis with other projects that will introduce more traffic?" He would, also, like to know "how carefully the guidelines of SEQR were followed", and wants assurance that the project will improve the character of life in the Community.

Mr. Barniak stated that as part of "traffic implications" they were required to analyze the "unbuilt" and "built condition", and account for "future developments". Their Traffic Consultant planned for several; a multi-family development, a medical office building, a mixed use commercial strip, farm estates, and a mix-use development. This information is all accounted for, and was reviewed by the NYS DOT.

Mr. Murray feels that the ingress and egress at this site will be problem, as Orchard Park Road is already a difficult roadway with traffic. He wants assurance that the impact is not going to be overwhelming.

Mr. Graham stated that the maximum traffic here is expected to peak to 40 to 50 trips per hour. He feels this figure is conservative, and is an "over-estimate".

Mr. Ostrander reported that the NYS DOT plans on implementing three main lane improvements in the future, to improve traffic back-ups at Orchard Park, Milestrip, and North Buffalo Roads. The lanes will be made wider, with the addition of a left-hand turning lane, and the timing of the lights will be configured to control the traffic.

Chairman Fabinsky stated that he participated in a phone conference call with the NYS DOT. They informed him that an additional single lane will be put in to improve this site and handle back-ups. He asked Acting Planning Coordinator Orffeo, and Deputy Town Attorney John Bailey if the Town can require additional traffic control beyond the State requirement. This was discussed and Attorney John Bailey stated that “no”, this is not under our prevue, as this is not a Town Road.

Mr. Graham expressed a desire to clarify Mr. Ostrand's comments further. He stated that he had significant conversations with the NYS DOT to widen the road, to include a, “left-hand-turn only, a right-hand-turn only, and a straight lane”. He spoke of other improvements, including synchronized lights and a pedestrian walkway. He explained that the NYS DOT concluded that a “having a right-hand-turn only into the site will not help traffic.

Acting Planning Coordinator Remy Orffeo stated that the TIS was reviewed and he feels they have the best possible outcome for this project.

Mr. Kaczor complimented the Applicants and In-Site Real Estate LLC for their working with the Board.

Mr. Mellerski established that Greenman Pederson, Inc. (GPI) is the third party reviewer.

Chairman Fabinsky stated that Board member Heppner, who is excused this evening, conveyed to him that he is comfortable with the Water Management plan and feels the plan is acceptable.

Mr. Baich made a **MOTION**, seconded by Mr. Kaczor, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 20,700 sq.ft. Commercial grocery store, per the plan received on 4/14/2022, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is a Type 1 SEQR Action, based on the Full EAF and a Negative Declaration was made on 10/14/2021.
3. The site lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
4. No outside storage or display is permitted.
5. An updated Landscape Plan, received 4/14/2022, meets all Green Space regulations. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amounting to 50% of the \$ 30,780 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$15,390) Conservation Board approval was granted on 2/1/2022.
6. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
7. The applicant is to provide the Town of Orchard Park Assessor with an “independent” appraisal for the completed project by a Certified, Commercial Appraiser.
8. Architectural Overlay District Approval was granted on 4/22/21.
9. An Area Variance by the Zoning Board of Appeals on was granted on 7/20/21.
10. Engineering Approval was granted on 7/14/22.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	NAY
MELLERSKI	AYE

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

- 5. **P.B. File #20-18, Ellicott Development Company, Vacant Land, located west of North Buffalo Road, south of Webster Road, various Rezoning Requests & Patio Home Development.** Planning Board to declare themselves "Lead Agency Status" for this project.

APPEARANCE: Mr. Peter Sorgi, Hopkins, Sorgi & McCarthy, Attorneys at Law
Mr. Patrick Sheedy, Carmina Wood Designs

Acting Planning Coordinator Remy Orffeo stated that we are well past the 30-day period for any outside Agency to express their desire to be the Lead Agency. Therefore, he feels the Orchard Park Planning Board should be the Lead Agency.

Mr. Baich made a **MOTION**, seconded by Mr. Kaczor, that the Planning Board **DECLARE** itself the Lead Agency for this Type 1 Action, for a Mixed Use Project, based on the submitted Long EAF, Parts 1, 2 and 3.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

Mr. Baich made a **MOTION**, seconded by Mr. Kaczor to **AUTHORIZE** the Planning Board Chairperson to schedule any Public Hearings when the required documents are complete for the hearing.

ON THE QUESTION:

Acting Planning Coordinator Orffeo commented that the Planning Board does not have an option to hold a public hearing with regard to a change in zoning matters. The public hearing is held by the Town Board but the Planning Board can hold "informational public meetings". He feels they should be able to keep this open if the need arises, as an option to have the Chair call a public meeting.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
KACZOR	AYE

LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

There being no further business, the Chairman adjourned the meeting at 8:18 P.M.

DATED: 8/18/2022

REVIEWED: 8 / 24 /2022

Respectfully submitted,
Rose Messina
Recording Secretary

Harold Fabinsky
Planning Board Chairman