

PLANNING BOARD JULY MEETING MINUTES

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

EXCUSED: Mr. Heppner
 Thomas Ostrander, Assistant Town Municipal Engineer
 Thomas Minor, Supervising Code Enforcement Officer

OTHERS PRESENT: Remy C. Orffeo, Acting Planning Coordinator
 Wayne Bieler, Town Engineer
 John Bailey, Deputy Town Attorney
 Rosemary Messina, Secretary

The Chairman announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:00 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 Chairman stated that alternate, Mr. Mellerski, will be voting this evening in the absence of Mr. Heppner.

Upon a motion duly made and seconded, the reading of the May and June 2023 Planning Board Meeting minutes was unanimously waived as each Board Member had previously received a copy.

Mr. Kaczor made a **MOTION**, seconded by Dr. Bennett to accept the May 11, 2023 meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

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

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

Dr. Bennett made a **MOTION**, seconded by Mr. Kaczor to accept the June 8, 2023 meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

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

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.**CONCEPT REVIEW - no action will be taken:**

1. 6:00 CONCEPT REVIEW – P.B. File #27-22, Birdsong Part 2 – Presentation by GPI on behalf of Forbes-Capretto update and review.

APPEARANCE: Mr. David Capretto, Owner/Developer
Mr. Jason Burford, GPI, Inc.

Mr. Capretto distributed file material and explained the changes that had been made based on Planning Board recommendations, including the removal of a cul-de-sac and changes to the access points.

Town Engineer, Wayne Bieler noted that for a CMO, the number of lots cannot exceed what was allowed in the original proposal (51). Also with Part 8 currently proposed as a CMO, there may be an effect on the number of lots which would be allowed in this part. The Town is currently researching this.

Mr. Kaczor inquired about the average square footage, lot size and price. The Applicant stated that the average square footage would be around 3000 square foot. The average lot is planned to be around 90 feet by 130 feet. The average price would be between \$750,000 and \$800,000 if sold today. Mr. Kaczor noted some wetlands on planned lots and the Applicant explained they will need mitigation. Mr. Kaczor expressed concerns about snow removal. He established two stub roads would connect to future developments.

The Chair would like to see what the Applicant is planning for the overall development of the entire area of Birdsong. The Applicant explained that it would be very difficult due to the large size of the property and that their plan is to develop as the market allows.

Mr. Murray expressed concerns about drainage. He established the setback would be around 40 feet. Mr. Murray feels that presents a problem for snow removal in the Southtowns. The Applicant stated they are willing to work with the Board on this matter.

Dr. Bennett expressed concerns that future developments may affect the calculations for this part of the development. The Applicant stated that in that case, those developments will have to account for that.

The Board discussed planning for future phasing with the Applicant. The Board would like more information going forward.

Mr. Orffeo asked the Board to provide direction to the Applicant on if they are comfortable with the proposal as a CMO. The Chair canvassed the Board for their opinion on this matter:

- Mr. Kaczor has concerns with the CMO and would prefer larger lots.
- Mr. Baich was not opposed to the CMO.
- The Chair expressed reservations.
- Dr. Bennett expressed concern with the CMO.
- Mr. Murray would like more clarification on the issues raised here before he can support the CMO.
- Mr. Long is not opposed to the CMO as long as the number of lots is reduced to 51, as originally proposed.
- Mr. Mellerski expressed concern with the CMO.

The Chair noted that there was very mixed support for this project.

REGULAR BUSINESS:

- 1. P.B. File #09-18, Natalie Development, 5245 Murphy Road (former convent), located on the east side of Murphy Road, Zoned SR. Applicant is seeking Planning Board approval of Pre-application findings. Planning Board is to seek Lead Agency Status and provide any Part 3 SEQR issues to the Applicant. (SBL#184.07-1-1.112)

APPEARANCE: Mr. Angelo Natalie, Applicant/Owner/Natalie Builders
 Mr. Bobby Corrao, Applicant, Natalie Builders

The Chairman requested that a motion be made verifying the findings statement for this project.

Mr. Baich made a **MOTION**, seconded by Mr. Kaczor, to recommend that the Planning Board seek Lead Agency Status for this Unlisted SEQR Action, based on the submitted Long EAF, to construct a 195-Unit “Senior Residential Apartment” complex, upon +/- 20-Acres in this SR Zone.

THE VOTE ON THE MOTION BEING:

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

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED TO SEEK LEAD AGENCY STATUS.

Acting Planning Coordinator Orffeo noted this property has had several owners over the years with projects that had “starts and stops”. He further noted that lengthy discussions were involved with this project regarding “connectivity”. He stated that the Planning Board desires to be the “Lead Agency” for this project, and notification must be sent to the “involved agencies” regarding this action.

Mr. Natalie and Mr. Corrao expressed their opinions and frustrations regarding the Planning Board vote to “Seek Lead Agency Status”. They do not feel this is necessary, or required, by SEQR Law.

Acting Planning Coordinator Orffeo stated that he had spoken to the Applicants’ Attorney, Jeff Palumbo, who found no problem with this action. After further discussion the Applicants asked to be tabled. They expressed a desire to understand what is legal, and not legal, in this process.

Chairman Fabinsky stated that tabling is an option and a choice he will respect; however, he believes this would add unnecessary delay to the next review step which would be considering Pre-application Findings for this project.

Planning Coordinator Orffeo explained that Pre-application Findings is not an *action*; the Board Members verify the information submitted from the Applicant through a Pre-Application motion/statement.

Deputy Town Attorney John Bailey recommends that the Board table this matter so that everyone can understand the procedure that must be followed.

Mr. Kaczor made a **MOTION**, seconded by Mr. Fabinsky, to **TABLE** this matter.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
LONG	AYE

KACZOR	AYE
MELLERSKI	AYE
MURRAY	AYE

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

2. P.B. File #11-2023, Two-Lot Subdivision, V/L, 8.97 +/- Acres Scherff Road, Zoned A-1. Alliance Homes (AAR Holdings) 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 4/13/23. The Preliminary Public Hearing for this item was adjourned on 6/08/2023.

Mr. Long recused himself from this case due to a business relationship.

Town Engineer Wayne Bieler, also recused himself due to his ownership of a neighboring property on Gartman Road. Mr. Bieler is not a voting member, however, Acting Planning Coordinator Remy Orffeo stated that based on Mr. Bieler's recusal an outside engineering firm will review the submittals for this projects' review and Engineering approval. He also stated that the project has everything they need to make a Preliminary Plat Plan Approval motion. It was suggested that a stipulation be added to this motion if it clears the outside engineering review.

Chairman Fabinsky noted that the Preliminary Plat Plan public hearing for this project was adjourned at the Planning Board meeting of 6/8/23.

Dr. Bennett discussed the memo the Board members received from the Town Engineering Department recommending *against* Planning Board approval at that time, affirming that all the outstanding issues were addressed.

Deputy Town Attorney John Bailey told the members that they can, (1) deny the project Preliminary Plat Plan approval, (2) approve the project based on an *outside engineering* firms' Preliminary Plat Plan review and approval, or (3) adjourn their review.

APPEARANCE: Mr. Sean Hopkins, Attorney
Mr. Andrew Romanowski, Property Owner/Developer
Mr. Chris Woods, Carmina – Wood Designs

The Chairman reconvened the Preliminary Plat Plan public hearing explaining the procedure to follow during the public hearing.

IN FAVOR: – No one spoke

AGAINST:

Ms. Mary Ellen Deibel
6768 Scherff Road
Orchard Park, New York 14127

Ms. Deibel does not support the project as she feels it will change the character of the neighborhood. She noted that a petition signed by forty neighbors was submitted to the Town against this project.

Ms. Brigit Pacholec
7263 Gartman Road
Orchard Park, New York 14127

Ms. Pacholec stated that she does not support the project as she feels it will change the character of the neighborhood and take away her privacy.

Ms. Patricia Rosiek

6757 Scherff Road

Orchard Park, New York 14127

Ms. Rosiek stated that she feels the project will change the unique character of the neighborhood and add to drainage issues.

Ms. Rosanne McCarthy

6978 Scherff Road

Orchard Park, New York 141237

Ms. McCarthy stated that she feels the project will change the character of the neighborhood.

Mark Pacholec

7263 Gartman Road

Orchard Park, New York 14127

Mr. Pacholec stated that he feels this project will change the character of his neighborhood.

Chairman Fabinsky made a **MOTION**, seconded by Dr. Bennett to **CLOSE** the Public Hearing.

THE VOTE ON THE MOTION BEING:

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

THE VOTE ON THE MOTION BEING SEVEN (7) AYES, THE MOTION IS UNANIMOUSLY PASSED.

Chairman Fabinsky stated that a number of issues were raised regarding the Applicant's request to develop a two-lot Subdivision here. The Planning Board can make adjustments but they have to follow State Law and the Town Code.

Mr. Hopkins stated that he kept track of the issues that were brought up during the public hearing portion of the meeting.

Deputy Attorney John Baily restated that Town Engineer Wayne Bieler has recused himself and an outside engineering firm will review the submittals for this projects' review and engineering approval.

Mr. Hopkins expressed his displeasure at learning an "independent engineering firm" must be hired to review the submitted plans, due to the conflict of interest involving Town Engineer Wayne Bieler. He feels this should have been thought of earlier on, in the process.

Both the Zoning and Engineering issues were discussed further. Deputy Town Attorney Bailey feels that the Planning Board can have a special meeting after the "independent review" takes place for the members to vote in the matter. He further commented on the Zoning here. Mr. Hopkins stated that the project is Code Compliant, the Zoning is A-1 and as there is no one operating a farm he does not feel the character of the neighborhood will be changed by the development of the proposed 2-lot subdivision.

Mr. Orffeo stated that this is an "Unlisted Action" due to neighborhood concerns. He further stated that anytime you have an opportunity to provide residents with more information, rather than less, you should attempt it.

Mr. Hopkins stated that the project is Code Compliant, and that a Flag Lot is permitted. He feels the character of the neighborhood will not change, and he presented 25-photos of Flag Lots in the area. He also noted that there is no agricultural farming practiced here.

Mr. Wood explained the Site Plan and the location of the two lots.

There was further discussion of the SEQR designation, noting that it is an Unlisted Action, which provides the residents more information.

Mr. Hopkins asked for the Final Plat Plan Approval to be waived.

Deputy Attorney John Bailey stated that a motion to waive the Final Plat Plan hearing could be made with the stipulation that it is waived "subject to the outside engineering review".

Mr. Hopkins stated that Mr. Romanowski has been a successful home builder for the last three decades. He complies with the code. He will comply with all applicable standards. Not to be argumentative, but, he will not be held to a higher standard than what the code requires.

Deputy Town Attorney Bailey stated that this is not an Engineering approval; this is a Planning Board approval.

Mr. Romanowski asks if the Board is wanting them to follow the Code, or asking them to do things over and above the code. The Chairman stated to follow the code.

Chairman Fabinsky stated he feels the public input and concerns need to be addressed.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Baich to **GRANT PRELIMINARY PLAT PLAN APPROVAL** based on 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 7/13/2023.
2. Pre-Application Findings were made on 4/13/2023.
3. Public Hearing and Subdivision Development fees have been paid prior to Final Plat Plan Approval.
4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Plat Plan Approval.
5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot per Section 120-3F of the Town Code.
6. The Engineering proposal be forwarded to an "outside engineering firm" and that firm address several concerns, specifically, some of which were approved, relative to public safety, infrastructure, water pressure to insure safety is complicit with the home, compliance with the code to allow emergency safety vehicles access to the home by NYS code.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE

LONG	RECUSED
KACZOR	AYE
MELLERSKI	AYE
MURRAY	NAY

THE VOTE ON THE MOTION BEING FIVE (5) AYES, ONE (1) RECUSAL, AND ONE (1) NAY, THE MOTION IS PASSED.

- 3. P.B. File # P.B. File #23-21, Orchard Meadows, proposed "12-Lot" Subdivision V/L located at end of Old Salem Court, Zoned R-2. Pre-Application Findings were made on October 10, 2019. Applicant is seeking Planning Board Preliminary Plat Plan Approval, per §121-10 of the Town Code. This item was tabled at the 1/13/2022 Planning Board Meeting and the Applicant was directed to provide various items to the Planning Board.

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs
David Cosco, Petitioner

Mr. Wood gave a brief history on the proposed 12-Lot Subdivision. He stated that the project was tabled at the January 13th, 2022 Planning Board meeting, pending the receipt and resolution of various items requested in a memo from the Town Engineering Department. He also noted that all the requested items have been complied with, and that additional lawn drains have been added to the site.

Mr. Bieler confirmed that he feels the grading, drainage, and swale for this project site will be a betterment to the area, and help with the issues noted in his comment letter.

Mr. Long made a **MOTION**, seconded by Mr. Mellerski to **GRANT PRELIMINARY PLAT PLAN APPROVAL** to this 14.56 +/- acres V/L, 12-lot Subdivision based on the submitted Preliminary Plat Plan and Survey received 5/15/23 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 7/13/23.
- 2. Pre-Application Findings were made on 10/10/19.
- 3. Public Hearing and Subdivision Development fees shall be paid prior to Final Plat Plan Approval.
- 4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Plat Plan Approval.
- 5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot per Section 120-3F of the Town Code.
- 6. Town Engineering Preliminary Plat Plan Approval has been granted.

THE VOTE ON THE MOTION BEING:

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

THE VOTE ON THE MOTION BEING SEVEN (7) AYES, THE MOTION IS UNANIMOUSLY PASSED.

Mr. Kaczor made a **MOTION**, seconded by Mr. Long, to move to **WAIVE THE FINAL PLAT PLAN PUBLIC HEARING.**

THE VOTE ON THE MOTION BEING:

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

THE VOTE ON THE MOTION BEING SEVEN (7) AYES, THE MOTION IS UNANIMOUSLY PASSED.

Mr. Long made a **MOTION**, seconded by Mr. Kaczor to **GRANT FINAL PLAT PLAN APPROVAL** to this 14.56 +/- acres V/L, 12-lot subdivision based on the submitted Final Plat Plan received 5/15/2023 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Parts 1 and a Negative Declaration was made on 1/13/22.
2. Pre-Application Findings were made by the Planning Board on 10/10/19.
3. Preliminary Plat Plan Approval was granted on 7/13/23.
4. Public Hearing and Subdivision Development fees have been paid.
5. Recreation fees in accordance with Section 144-70E of the Town Code have been paid.
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 Final Plat Plan Approval has been granted.

THE VOTE ON THE MOTION BEING:

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

THE VOTE ON THE MOTION BEING SEVEN (7) AYES, THE MOTION IS UNANIMOUSLY PASSED.

There being no further business, the Chairman adjourned the meeting at 8:21 P.M.

DATED: 7/28/2023
REVIEWED: 8/2/23

Respectfully submitted,
Rose Messina,
Recording Secretary

Harold Fabinsky, Planning Board Chairman