

MEMBERS	Mitch Martin	Chairman
PRESENT:	Paul Ziarnowski	Vice Chairman
	Elizabeth Schutt	Secretary
	Dave Bowen	
	Jim Liegl	
	Mary Ann Rood	
	David Stringfellow	
ABSENT:	Jay Boardway	Town Board Liaison
ALSO	Sarah desJardins	Planning consultant
PRESENT:	Michael Kobiolka	Town Attorney
	Glenn Christner	Deputy Code Enforcement Officer
	Thelma Faulring	Secretary to the Boards and Committees
	Diana Weiss	5571 Meadow Drive
	Joe Gauthier, Jr.	Co-Applicant Deanna Drive Subdivision Extension
	Ron Yormick	6405 Deanna Drive
	Bill Solak	Representing – N. Boston Mixed Use Project
	Joe Palumbo	Engineer – Deanna Drive Subdivision Extension
	Mike Metzger	Engineer – N. Boston Mixed Use Project
	Jen Lucachik	9494 Zimmerman Road
	Susan Lakso	5543 Meadow Drive
	Bill Sodja	5546 Meadow Drive
	Judy Sodja	5546 Meadow Drive
	Marian Schiralli	6410 Deanna Drive
	Brian Schiralli	6410 Deanna Drive
	Sean Hopkins	Attorney – Deanna Drive Subdivision Extension and N. Boston Mixed Use Project

**MEETING TO ORDER**

Chairman Martin called the meeting to order at 7:31 PM. The first item on the agenda is the proposed mixed use project.

**PROPOSED MIXED USE PROJECT**

Michael Metzger from Metzger Civil Engineering 8245 Sheridan Dr. Williamsville, also here tonight is our client Bill Solak and Sean Hopkins will be joining us shortly.

- Made significant changes to the project, the layout and the request
- Rezoning request is a portion of the 28 acres from C-1 to R-3 and another portion from C-1 to C-2
- Within C-2 proposing to put in as a mixed use – high bay commercial space, with a future hotel site; the R-3 there is a component that would have an apartment complex in it and lastly the portion that backs up to Meadow Drive and that would be single-family homes
- We’ve been involved with SEQR process and comments are in
- And we’re looking for a recommendation from the Board

Mr. Martin: What has changed since the last time you were here?

Mr. Metzger: Nothing, it’s the same plan.

Mr. Martin: Did you think that the SEQR showed anything that should be changed?

Mr. Hopkins: When we last left the Environmental review pursuant to SEQR had not commenced; we went to the Town Board; the Town Board adopted a resolution to seek Lead Agency Status. We got comments back from D.O.T., the D.E.C. and Erie County Department of Environment and Planning, it had some technical issues that they would like us to address if we ever get to a site plan approval but none of those agencies expressed any concerns about this project having any potential significant adverse environmental impacts, so ultimately in terms of SEQR nothing was particularly wrong with it. We did confirm that where we are we’re outside the break in access.

Following more discussion most of which had been previously discussed on at least one or more occasions the following motion was made:

Dr. Ziarnowski:

Both the Master Plan and Comprehensive Plan could give merit to this project in another location, rezoning of available commercial property, which at the last two analyses was somewhere be 0.8 and 0.6 of land in the Town, is far short of a recommended 10%, and should not be allowed, particularly at this location. Buying the property as commercial and now wanting changes for development has no basis for rezoning and is considered a self-imposed hardship.

Please see the attached memo for 4/10/17 from the county planner which highlights many of the valid concerns voiced by the Planning Board members.

Please see the attached assessment of the DOT in an e-mail and its concerns which again highlight the planning board’s concerns, among them exit and entrance close to the 219 right of way, need for multiple lane access, volume etc.

The cost of community services from this high density proposal have not been evaluated for this particular project, but past national studies from strictly a tax revenue basis conclude that it is a tax revenue liability when compared to both commercial and agricultural properties and the website is [www.farmlandinfo.org](http://www.farmlandinfo.org)

I would like to make a motion that the Planning Board makes a recommendation to both the Zoning Board of Appeals not to grant any variances on any portion of this commercial parcel and the Town Board not allow this project to move forward at said North Boston location.

Mrs. Schutt: I will second.

Mr. Kobiolka: Just for a clarification point you’re asking the Town Board not to grant the rezoning, is that what you’re saying for this particular property?

Dr. Ziarnowski: Yes.

Mrs. Schutt: I would second.

Mr. Martin: Please take a roll vote call on the motion.

Secretary Faulring: In a nutshell the motion is to decline any recommendation for rezoning. If you’re in favor of that motion please say yes when I call your name:

Mrs. desJardins: You’re not declining to make a motion...

Mr. Kobiolka: Paul would you restate it.

Dr. Ziarnowski: I’d like to make a motion that the Planning Board makes a recommendation to both the ZBA not to grant any variances on this commercial parcel , if requested, and the Town Board not allow this project to move forward on a rezone basis.

Mr. Kobiolka: So you are making a recommendation, and it’s a negative recommendation.

Dr. Ziarnowski: Right.

Secretary Faulring: I stand corrected. On that motion if you’re in favor please say yes:

Mr. Bowen	yes	Mr. Liegl	yes	Mrs. Rood	yes
Mrs. Schutt	yes	Mr. Stringfellow	yes	Mr. Ziarnowski	yes
Mr. Martin	yes				

DEANNA DRIVE SUBDIVISION EXTENSION PRELIMINARY PLAT REVIEW

Mr. Martin: Is there anyone here to represent them?

Mr. Palumbo distributed photometric plans and the lighting detail to the members while Mr. Hopkins stated that they did make one revision to the preliminary plat based on the Quaker Cemetery.

Mr. Hopkins introduced Project Engineer Joe Palumbo and Co-Applicant Joe Gauthier. We’ll focus on what we think is new information since we were here previously, there were several topics that were discussed that were discussed at the previous meeting we will walk through them, if I miss one please let me know:

- Deed for declaration of restrictions for permanent open space, I have provided you with a draft for that
  - Mr. Kobiolka’s approval would be needed before recorded with E.C. Clerk’s office
- Potential site of a former Quaker cemetery
  - That area was flagged as potentially containing archeological resources; the SHPPO also indicates that their preference is for us to submit an ‘avoidance plan’

- April 27, 2017 meeting where many technical issues were discussed, Mr. Palumbo continued – discussion included
  - Drainage was the high point with rain water coming off of Boston State Road
  - Stormwater from off site to other sites which really is not part of our project
  - All the stormwater on our site is being met by DEC requirements
  - Town Engineer Jim Hannon is well aware of this project and none of his comments involved anything that needs to be redesigned other than some clarifications on things
  - Roadside swales have been removed and in process of redesigning that
  - The new plans have curbed gutters, catch basins and pipe underground to control the road way stormwater

Mr. Kobiolka: Will this go all the way up to Boston State Road?

Mr. Palumbo: No because we don't control property all the way up to Boston State Road, it will end at the property that we're tying into.

Mr. Hopkins: I guess what we're asking to do is approve preliminary plat subject to those conditions I think we've discussed:

1. Finalize the Declaration of Restrictions for the permanent open space
2. Provide an avoidance plan that's acceptable to the New York State office of Parks, Recreation and Historic Preservation
3. Mr. Palumbo will have to continue to work with Jim Hannon and address any technical issues raised by the engineering department
4. We will have to come back in front of you for final plat as well as all other agency approvals

Mr. Martin: We did have a Public Hearing and most of the residents that attended are here tonight and I do want to acknowledge that. Most of the concerns was flooding that a lot of residents are suffering with now and we do not want new residents to have to suffer with that; other comments recreational space but unfortunately for those folks they would have to purchase the property from the current owner if they wanted to keep it recreational so I definitely wouldn't use that as a consideration for your project; I did ask Dave Bowne to take the lead on this project and he spent many hours on this project not only with you but many hours of research on his own.

Mr. Palumbo: We had a lighting plan performed with photometrics, it's included with your packet that I handed out. The light fixtures that we are proposing are a LED type light with a country style fixture very similar to what is in Orchard Park subdivision type lamp, they use more of a bulb that shine all over. The height of the standard is 12' the fixture on top is another 2 ½' so we're under 15' mounting height; the light we're using is an LED so it's up in the top bucket and shines downward versus upward which keeps it out of the front windows of the houses, not evenly spaced out to avoid standards in driveways and not to shine directly into windows. We're looking for your input and approval.

Dr. Ziarnowski: I love the plan and applaud you for the environmental design but I have one problem. When we approved the Brookfield plan you came in and gave me this with fully shielded lighting and not a runaway effect going down the road. I drove by the other day and thought how did we ever approve that plan? So now we're sitting here you gave us a beautiful lumen layout it was gorgeous and the other day when I saw it so the other day I went to Thelma and she pulled out (the lighting plan); so now we can sit here and we can approve this and can say this is great but then can anybody do anything they want after we approve it? So this is my dilemma, it's a separate issue but somewhere there has to be some accountability and transparency in what we're doing here; and if we're going to sit here and spend our time to get it thrown in our faces and not have it done the way it was approved I think we have a problem, and I think it is a Code Enforcement problem but he is not privy to every single detail that we are when we go through the project.

Discussion.

Mr. Hopkins: What was proposed was over 1,100 but was reduced to 800 lumens but there is no doubt the bulb has more exposure, I think that Joe and Dana thought that was an improvement, but there is no way we can stand here tonight and say that shouldn't have come back in front of you.

Mr. Gauthier: I apologize for that. It was mine and Dana's...

Dr. Ziarnowski: How do we make that right, do we make that right, how do we make that right?

Mr. Hopkins: I guess what we ask you to consider to take a closer look at the lighting that's there and we can talk about about that further .

Mr. Martin: Let's just focus on this project.

Dr. Ziarnowski: All the work that you do on this luminous lighting you might as well not do...

Mr. Hopkins: I do think what we can say and I'm fine with minutes reflecting this and Joe you will have to agree the lighting that we're showing for this residential subdivision on this plan will be the lighting that is installed.

Mr. Kobiolka: I can look into a performance bond for certain areas of the project and if it's not met within a certain period of time the Town has the right to come back to the bonding company for those improvements.

Discussion continued on past lighting situation and proposed lighting.

Mr. Martin: Do the Planning Board members have any other questions?

Mr. Bowen: I'd like to make a motion Mr. Chairman.

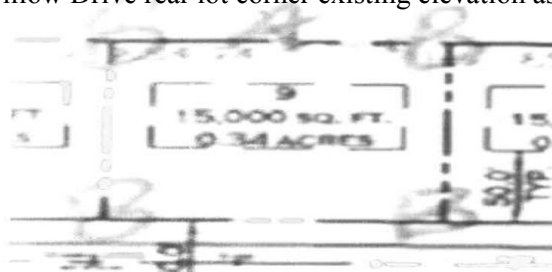
Mr. Martin: Sure.

Mr. Bowen: I motion acceptance of the preliminary plat conditional on the written acceptance, without any substance changes, by the developer to:

(Mr. Bowen's written motion is included in the minutes as he had written, he did not always read what was written)

1. Require lots

6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38 and 39 specify at all monument points (lot corners) referred in Preliminary Plat "General Notes" the planned finish grade elevation to 1/2'; example 871' or 871.5' or 872'. An example with corners notated as "B" is and Willow Drive rear lot corner existing elevation as "A":



2. Require lots

6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38 and 39 to specify the finish grade contours with 1/2 foot intervals. To assume a 30' by 50' building within the preliminary plat designation (above example lot 9 15,000 square feet, 0.34 acres).

3. Require as related to adjacent lot owners the existing finish grade elevations, to 1/10 of a foot at lot corners referred to as "A" as follows:

(configuration for point 3 is on next page)

OPEN SPACE - for illustration

- 4 Restrict deeds for each lots  
6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38 and  
39 to:
  - a. Build only **“on grade”** residence and any other structure unless an engineer seals and certifies by testing the elevation of ground water table at all points 5; outside each proposed structure corner that ground disturbance (a basement foundation/footing elevation) will be a minimum of 3 feet above the ground water table, to 1/10’.
  - b. Finish grade contours and lot corner elevations.
  - c. All first floor structure finished elevations a minimum of 3 feet above the crown of the road at a highest road elevation point determined by a line perpendicular to the structure the road crown highest elevation point.

At this point Mr. Hopkins asked for a copy for them to follow a long as it was being read.

- d. No sump pump drainage to surface – all sump pump drainage requires direct piping to storm water pipe that drains into retention pond.
  - e. All ditches or swales will require rip rap when the slope exceeds a 1’ rise to 3’ run, 1:3.
  - f. Prior to issuance of certificate of occupancy all ditches and swales shall be protected from soil erosion with surface vegetation or rip rap.
- 5 Certificate of occupancy may only be issued upon receipt of total, 100% engineer sealed and certified compliance with deed restrictions.
- 6 Water release piping at base of retention pond(s) and the retention pond’s water incoming piping can manage a water flow of approximately 55,000 gallons per minute experienced at a property 1,5000 lineal feet to the north of the retention pond on an August 11, 2015 and 3 earlier precipitation events since 2005 or as to be determined by an Erie County engineer study or relevant natural surface water drainage from the east to the natural watershed 18 Mile Creek.

- 7 Engineer specifically certify that all water release piping at base of retention pond(s) will never negatively impact 6385 WILLOW DR Section-Block-Lot: 226.02-3-37.1.
- 8 All structure gutters drain to finish surface
- 9 All surface water draining originating on the subdivision lots and naturally impacting the subdivision shall be engineered to drain into the retention pond.
- 10 The following potential future Right of Way (D below) be relocated to match and intersect to (E below), run parallel to the east side yard of Willow Drive lot owned by Mark Jablonski. Please note € presently fronts Willow Drive with no apparent obstructions.

OPEN SPACE - for illustration

- 11 There shall be an easement to maintain any rip rap ditch granted to Town of Boston.
- 12 Prior to any subdivision road construction existing Deanna Drive shall be reconstructed to conform with all subdivision road standards, including but not limited to lighting.
- 13 Developer to negotiate written contract with owner to cost share the installation of sewer service to respective SBLs; namely KERN GLEN Section-Block-Lot: 226.02-4-16.1, IOVENITTI ROBERT & NANCY Section-Block-Lot: 226.02-4-19.1, SCHIRALLI MARK & MARIAN Section-Block-Lot 226..2-4-42, TELAACK ROBERT J Section-Block-Lot: 226.02-4-13.1, YORMICK RONALD & KAREN Section-Block-Lot:226.02-4-12 and MULLEN SHAWN R Section-Block-Lot: 226.02-4-11. Owners shall be totally responsible for the cost to connect residence to road available service.
- 14 A ground penetration radar test of the approximately 47,100 perimeter square feet to radar examine a 50' foot band around the 240.3 x 131 feet lot perimeter to diligently and reasonable address the uncertainty of graves. Should this ground penetration radar test of approximately 47, 100 square feet evidence no remains it is justly concluded all remains are within the designated avoidance plan area of 240.0 x 131 feet.
- 15 Provide a performance bond for value of 10% of the projected investment of 34 homeowners, for the effective period commencing approval of the final plat and concluding with the issuance of the certificate of occupancy for the last or 34<sup>th</sup> residence owner.

Mr. Kobiolka: Mr. Chairman if I could address Mr. Bowen's thinking for a second on preliminary plat approval, Mr. Bowen's motion is so far reached and so extensive I think if the Board....it encompasses a lot of areas that I think if the Board goes with the motion that Mr. Bowne is requesting in my way of thinking would require a resubmission of the plan, a denial and resubmission as opposed to an approval, a conditional approval in according to the Town Code the conditions have to be attached to the preliminary plat starts to move things along very quickly, I don't know if you want to go that fast with extensive conditions which he wants; the second part it the purpose of a public hearing is to have public comment on and you're asking for drainage and slopes, those residents want to have an opportunity to comment upon proposed compliance by the developer. I would suggest that the Board might want to consider, for discussion purposes, maybe a disapproval for the pre-application given these instructions the developer....

Mr. Hopkins: What would be the grounds for denying? Because if we're denied, going to court and I don't think anyone wants to do that, that's where we'd go, we'd have to challenge it.

Mr. Bowen: Mr. Kobiolka in researching this I talked with Planning Board officials of other Towns and this is standard law.

Mr. Hopkins: No it isn't. I work in every town, what town?

Mr. Martin: Wait, we have a motion on the floor we're in discussion and haven't gotten to that point, so let's see if someone is willing to second the motion and take it from there, Is there anyone willing to second the motion?

Mr. Liegl: I'll second it.

Mr. Martin: Is there any discussion? I have a couple of questions. And I'm asking you as the attorney are there things that he's asking in this motion that are outside of his authority to ask?

Mr. Kobiolka: I think he stuck pretty much to the Code on some portions of it, I didn't follow the whole thing but he seemed to reference a lot of design specifications or were they outside?

Mr. Bowen: Mr. Kobiolka it's all standard.

Mr. Kobiolka: It may have been framed differently but it seemed to be compliant, and even if it wasn't there are some concerns that the Planning Board may have.

Discussion followed including comments by PB (Planning Board) and BPWNY (Brookfield Properties)

PB Can we amend motion to remove anything that cannot be complied with

BPWNY My problem is if any of those conditions go beyond the Towns standards, then we have a problem because it's going beyond what the Town requires

BPWNY Points made in motion not even mentioned by Town Engineer

PB Motion made as a result of earlier meeting that Mr. Hopkins did not attend when we were going to discuss with him then

BPWNY All of these topic were not discussed at the meeting, don't say all because they weren't

BPWNY Way beyond Planning Board jurisdiction

- Beyond preliminary plat
- Building Inspector will look at plans compliance with the building code, plumbing code, energy code, the fire code
- Engineer reviews the plans to go through the elevations to make sure the elevations make sense and we meet the criteria of the Town engineering plans

This discussion continued at length sometimes heated and argumentative.

Mrs. Rood: Excuse me, can the Board table this for now and take the opportunity to review what David presented?

Mr. Martin: We cannot, we have to make a decision tonight because we have to go 45 days within the Public Hearing which end tomorrow.

Mr. Hopkins: I have a proposal to your comment. We're not here saying that tomorrow it will default and we're going to run to court, we're not going to do that. I think the best course of action would be let's table it, I agreed tonight in the minutes extending the period for preliminary plat, and I will supply a letter, let's us respond to this stuff in writing and come back at the next meeting and discuss it further. I think that's the best course of action if everyone agrees. With it being noted on the record that we are not seeking default of the rule of preliminary plat.

Mr. Martin: If anyone would like to amend the motion to table.

Mrs. Schutt: I will make a motion to table this for tonight for the next scheduled Board meeting with the condition that you state that you're waving the 45 day period.

Discussion – Next Planning Board meeting June 13, 2017.

Mr. Hopkins: I'm going to note this on the record so Thelma has it in the minutes: "The project sponsor is waiving the default approval pursuant to the 45 day window for the issuance of a decision until one following the Planning Board's next meeting on June 13<sup>th</sup>; and I would like that to be reflected in the minutes.

Mr. Martin: So we have a motion to amend David Bowen’s motion, do we have a second?

Dr. Ziarnowski: I second it.

Mr. Martin: Any questions on the motion to table it?

Mr. Bowen: Mr. Chairman, so in essence we have a motion of 15 points and we’re going to add 16 to amend...

Mr. Martin: No we’re changing your motion from the 15 points to a table.

Mr. Kobiolka: So we have time to consider the 15 points.

Mr. Martin: Yes, that’s correct so your motion will basically is being altered into a tabling.

Mr. Hopkins: Is there any way we could have Jim Hannon at the next meeting?

Mr. Martin: We can try. Are there any other questions on the amended motion? Being none, could we have a roll call vote please? Mr. Stringfellow do you have a question?

Mr. Stringfellow: Yes. What exactly is the amendment to the motion?

Secretary Faulring: Yes. What happened to the first motion?

Mr. Martin: We can’t vote on it; essentially she is amending the motion from his motion to tabling it, so it’s now a tabled motion.

Mr. Stringfellow: So we need to vote whether to table his motion.

Mr. Martin: So we need to vote on...

Mr. Kobiolka: Mr. Bowen should withdraw his motion and then just table discussion that would be easier.

Mr. Stringfellow: From that same section of Town Code ‘failure of the Planning Board to act in such 45 day period shall constitute a conditional approval of the preliminary plat.’

Mr. Hopkins: The case law states that with mutual agreement those timeframes can be extended, and that’s what we’re doing, we’ll agree to it in writing.

Mr. Martin: Dave would you please withdraw that motion so that we can consider it?

Mr. Bowen: Mr. Chairman I won’t withdraw my motion I will agree to tabling the motion with the acceptance of applicant of June 13<sup>th</sup>.

Mr. Martin: So you’re not willing to withdraw your motion?

Mr. Bowen: No Mr. Chairman.

Mr. Martin: Roll call vote on Dave Bowen’s motion.

Secretary Faulring: This is vote on Mr. Bowen’s motion if you’re in favor of the motion vote yes, if not vote no:

Mr. Bowen	yes
Mr. Liegl	yes
Mrs. Rood	no
Mrs. Schutt	no
Mr. Stringfellow	no
Mr. Ziarnowski	no
Mr. Martin	no

Mr. Martin: with that do we have a motion to table this discussion?

Mrs. Rood: I would like to make a motion to table this until our next Board meeting on June 13 with the client waiving the 45 days until the day after June 13.

Mrs. Schutt: I will second.

Mr. Martin: Any questions on the motion.

Mr. Liegl: What happens if we can’t meet on the 13<sup>th</sup>?

Mr. Hopkins: We’ll waive until the next meeting.

Mr. Martin: So the motion will be one day after the next meeting. Any other questions? Please do a roll call vote.

Secretary Faulring: Motion is to table until the next meeting plus one day. If you’re in favor the motion say yes.

Mr. Bowen	yes
Mr. Liegl	yes
Mrs. Rood	yes
Mrs. Schutt	yes
Mr. Stringfellow	yes
Mr. Ziarnowski	yes
Mr. Martin	yes



PLANNING CONSULTANT DESJARDINS

Mrs. desJardins had nothing for this evening

TOWN BOARD LIAISON – COUNCILMAN BOARDWAY

Not present

TOWN ATTORNEY KOBOLKA

Mr. Kobiolka reported from the May 3 Town Board meeting:

- Received responses from the SEQR requests
  - Did not take any action on the responses
  - 2 Board members were absent
  - Assume that they will take Lead Agency at the next meeting
- The Board may consider retaining an attorney that is a specialist in SEQR to help review with some of these projects
  - Some of these type of projects are new to us

Discussion followed regarding the procedure of the Public Hearing.

Discussion regarding cemetery at subdivision site.

Mr. Martin: Is there anything else for this evening? Is there a motion to adjourn?

Mrs. Rood: I will make that motion.

Dr. Ziarnowski: I second that.

Respectfully submitted,

Thelma Faulring  
Secretary to the Boards and Committees