



TOWN OF BOSTON

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Town Justice

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Town Attorney

KYLE CALABRESE
Prosecutor

Thelma Hornberger
Assessor

Thomas Murphy
Code Enforcement Officer

TO: Planning Board
Town Clerk
Code Enforcement Officers

Town Supervisor
Highway Superintendent
Town Assessor

Town Board Members
Town Attorney
Planning Consultant

AGENDA

PLANNING BOARD MEETING

September 12, 2023 at 730pm

Town Hall – Court Room

- 1) Call Meeting to Order.
- 2) Approval of Minutes
July 2023 minutes – Tabled from August 2023 meeting
August 2023 minutes
September 5, 2023 special meeting minutes
- 3) Old Business
 - a. Public Hearing – 730pm: Larry Stolzenburg – Requesting Preliminary Plat approval of a 3-lot subdivision to be located on the south side of Eddy Rd near Cole Rd.
 - b. 7072 Boston State Rd LLC – Requesting Site Plan Approval and a Special Use Permit for a project involving the construction of a 5,183 sq.ft. building consisting of a convenience store with fuel and a Tim Horton's with drive-thru, as well as a 6,000 sq.ft. office building at 7072 Boston State Rd.
- 4) New Business
None
- 5) Reports
 - a. Planning Consultant
 - b. Town Attorney
 - c. Town Board Liaison
 - d. Board Clerk
- 6) Motion to adjourn.

TOWN HALL
(716) 941-6113
Fax (716) 941-6116

TOWN SUPERVISOR
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Fax (716) 941-9264

TOWN COURT
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NUTRITION PROGRAM
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Planning Board 2023-08-08
Meeting minutes_draft

Attendees: Paul Ziarnowski, Jim Liegl, Jay Jackson, David Stringfellow, David Bowen, Gary Stisser, Attorney Sean Costello, Town Liaison Jennifer Lucachik

Absent: Planning Consultant Sarah DesJardins, Elizabeth Schutt

1. CALL MEETING TO ORDER

Meeting called to order by Dr Ziarnowski at 7:31pm

2. APPROVAL OF MINUTES

July 2023 motion made by TABLED for next meeting.

3. OLD BUSINESS:

Attorney Costello – There is a special meeting on Sept 5th for the approval for the gas station/convenient store/office building development at 7072 Boston State Rd has been challenged in court. The neighboring parcel owner has alleged infirmities with respect to the SEQR process and a couple of other technical details including the Planning Board's motion to recommend the approval of the project did not specifically recommend the approval of the special permit for the filling station. So, although it is believed this board clearly understood this motion was for the entire project, including the special permit for the filling station, this is not how the record read and this pointed out as one of the defects. In addition, there are some issues/questions raised with respect to the how the DOT traffic study was represented in the record. So rather than litigate the matter, the developer intends to re-submit for conceptual plot approval. They plan to have this submitted to the Town Hall this week. The Town Board has a special meeting on August 26th at which time this will be refer this application back to this board (Planning Board) for review of the conceptual site plan and the special use permit application for review to make a recommendation. The Town Board will initiate SEQR so we will re-do coordinated SEQR review. If the timetable holds, there will be a special meeting from this board on September 5th at which time the board can review and approve the conceptual site plan, which is going to be the same, has already been reviewed. With the expectation that this is approved, not a given, to re-examine the project and give it a hard look, the applicant then would file the next day an application for the final site plan approval that would go before this board at its regular meeting on September 12th. On September 12th, this board will be asked to recommend approval of the site plan and to recommend approval of the special use permit as two separate motions that will be made clear in the record. The Town Board is going to schedule a public hearing. This is all the developer's plan. There is a lot that can happen along the way to derail this. In no way, this board or the Town Board, obligated to do anything. But assuming this works as the developer hopes, the Town Board will have a public hearing on a special use permit or the filling station at the September 20th meeting. It will keep the hearing open; it will have the traffic engineer present for that meeting for the SEQR review so the Town Board can hear directly from the traffic engineer rather than have information filtered through the project engineer. The Town Board will keep the hearing open until the October 4th meeting, at which time assuming everything is lined up and looking good and appropriate, the Town Board will pass the three resolutions, that were passed a month ago, again. This would moot the developer's lawsuit; it would save both the town and the developer time and money verses litigating to defend the approvals that were made. This is a do over and will look very familiar. Everything is being re-submitted in a more formal way.

Mr. Jackson – What time is the Town Board meeting on August 26th? RESPONSE from Attorney Costello: 6pm

Mr. Ziarnowski – Want to know the reason why we are having a special meeting?

RESPONSE from Attorney Costello: This keeps a timeline. The developer, of course, is interested in moving quickly. The Town's interest is to be user friendly and not worried about the developer. The petition return

date is October 15th and don't want to prepare papers on behalf of the town if we can avoid it. This way the Town Board will have acted on October 4th. This whole process will be complete before the petition return date in Supreme Court.

Mr. Jackson – If we act quickly, it saves a lot of time all around. RESPONSE from Attorney Costello: If all of these steps work as smoothly as they do on paper, yes.

Councilwoman Lucachik – Corrected the info regarding the special Town Board meeting as August 23rd at 6pm.

4. NEW BUSINESS

- a. Larry Stolzenburg – Requesting Preliminary plat approval of a 3-lot sub-division to be located on the south side of Eddy Rd near Cole Rd.

Applicant Larry Stolzenburg owns 38 parcels of land. The proposal is to split off 2 lots to sell. Survey and wetlands in packet for the board. Two 5 acre lots proposing to sell.

Mr. Jackson – Question about the 2nd lot, since not being familiar with the rules, if they want to make any use of the land, they will have to cross wetlands. (Mr. Jackson pointed to image on document) Are there regulations? RESPONSE: When speaking with the consultant for with the wetlands, a couple of things have happened since this was started. One was hired (by the applicant) with Earth Dimensions, Scott Livingstone. Didn't know and found out that the Supreme Court of the United States ruled on a case called Sacket vs EPA in June that basically said the EPA had no jurisdiction of wetlands anymore. This threw out what was known as wetlands, unless it is connected to a navigable waterway. It's up in the air of what is going to happen but still have to apply to the Army Core to see if these are regulated wetlands but pretty sure it won't be, based on this recent Supreme Court ruling. There is no water on the property except a stream with just vegetation and soil.

Mr. Jackson comment: Cat tales growing there? RESPONSE: Not even. There is enough room in front of the 2nd lot (one on the edge of the property) that there is enough room to build a home. The other lot has plenty of room. Once the Army Core rules that this is not regulated wetlands, the new builder can build wherever they want.

Mr. Jackson – Is there a timeline to get an answer? RESPONSE: No. Everything is up in the air, Army Core is backed up, it could take months.

Mr. Jackson – Have buyers for the property already? RESPONSE: No. Wanted to make sure no issues from the Planning Board.

Mr. Stringfellow - There is enough room in front of the wetland to put a home. Don't see anything wrong.

Mr. Ziarnowski – Let's say the Army Core says they are going with the old regulations until there is a ruling, what happens to lot #2 and wetlands? RESPONSE: Scott Livingstone/Earth Dimensions says they would have to apply for a permit. Mr. Ziarnowski commented that there is usually then a tradeoff. RESPONSE: Scott has done other property on Cole Road which is wetter than this property and that the permits are usually approved for the driveway through the wetlands.

Mr. Ziarnowski – Is there a septic and a well? Is there water? RESPONSE: Don't know. There is a septic and no sewers, don't know about the water.

Mr. Ziarnowski – If the standard wetlands are held for now, is it ok with septic for now. RESPONSE: Is the question whether there is enough room for the septic? Yes. Was told there was enough room to develop.

Councilwoman Lucachik – Referenced the SEQR document stated that the lots will require septic and wells.

Attorney Costello – The applicant could have a report that would have in writing the information that the Planning Board has questioned about the wetlands. RESPONSE: Not sure if the report is available but was told verbally.

Mr. Ziarnowski – Ask to have this in writing the findings for the board.

Mr. Ziarnowski – Explained the next step which is to have a public hearing which will occur at the next meeting.

Mr. Stolzenburg – Need to send to Ms. DesJardins/Planning Consultant a letter from Earth Dimensions that there is enough land to build a home and a septic system.

Mr. Ziarnowski – Will disregard the Supreme Court at this time. RESPONSE: Thought the state was going to go away with wetlands but still must go to the Army Core and most are not going to be controlled anymore.

Mr. Ziarnowski – Talked about other court rulings but we have to go with the old basis for now.

RESPONSE: Would agree, but this is the Supreme Court.

Mr. Liegl: For clarification, Attorney Costello, asked for a full copy of the report? RESPONSE FROM ATTORNEY

COSTELLO: No, it does not need to be a full report, but a letter is needed from the consultant, architect or engineer that the buildable area is sufficient to build and septic with the wetlands in existence.

Mr. Liegl – Can we get the letter before the meeting? RESPONSE: Yes. Will get Planning Consultant Ms. DesJardins to get with the board.

Councilwoman Lucachik: Next meeting date is September 12th.

RESPONSE: Need to present? RESPONSE FROM Mr. Ziarnowski: Applicant or representative need to be present.

Motion for public meeting made by Mr. Jackson

2nd by Mr. Stisser

APPROVED

5. REPORTS

Planning Consultant/Ms. DesJardins – not present

Town Attorney/Sean Costello – nothing more

Town Board Liaison/Ms. Lucachik – Comprehensive town plan meetings have started. Going to be a public workshop coming up on August 28th. A couple of hours to learn what they are doing.

Will be forwarding to the Planning Board Members a Comprehensive Plan, the first survey, to be filled out.

Meet monthly on the 3rd Monday of every month.

Mr. Jay Jackson and Mr. Gary Stisser attend these meeting.

Board Clerk – nothing to share

6. Motion made to adjourn the meeting at by 7:49pm by Ms. Weiss

2nd by Mr. Stringfellow

APPROVED

Town of Boston
Planning Board Meeting
September 5, 2023 Minutes

The Town of Boston Planning Board met for a Special Meeting at 6:00 PM on Tuesday, September 5, 2023 in Boston Town Hall. Those attending included Chairman Paul Ziarnowski, Jay Jackson, Gary Stisser,, Elizabeth Schutt and Arlene Weiss.

Others in attendance included Town Attorney Sean Costello and Board Clerk Jennifer Cavarello.

7072 Boston State Rd LLC – Requesting Site Plan Approval and a Special Use Permit for a project involving the construction of a 5,183 sq.ft. building consisting of a convenience store with fuel and a Tim Horton’s with drive-thru, as well as a 6,000 sq.ft. office building at 7072 Boston State Road

Chairman Ziarnowski stated that Ms. Weiss would be a voting member at this meeting because there was a vacancy.

Attorney Sean Hopkins, representing Miranda Development LLC (applicant), stated that his office is located at 5500 Main Street, Suite 343, Williamsville, NY 14221. He stated that the parcel on which the project is proposed is approximately 2.65 acres in size and zoned C-1. He noted that all Planning Board members had received a copy of the detailed submission made on behalf of the applicant and dated August 10, 2023. He stated that the detailed submission contained the letter of intent with extensive documentation.

Attorney Hopkins stated that the project consists of the construction of a 6,000 sq.ft. office building and a 5,183 sq.ft. convenience store building that would include a 1,000 sq.ft. Tim Hortons with an accessory drive-thru, as well as an accessory fueling facility, 57 parking spaces, lighting, storm water management, etc.

Attorney Hopkins stated that the above components of the project are permitted pursuant to the Town of Boston's zoning code as follows:

- Section 123-71 (A) (2) (Principle Uses and Structures in the C-1 zoning) explicitly allows retail sales, as well as eating and drinking establishments subject to certain requirements.
- Section 123-71 (B) (1) (Uses Subject to a Special Use Permit) requires that filling stations receive a Special Use Permit.

Attorney Hopkins stated that the Planning Board will be making a recommendation to the Town Board at a future meeting in connection with the request for a Special Use Permit.

Attorney Hopkins noted for the record that a Special Use Permit application, as well as very extensive documentation, was submitted on behalf of the applicant.

Attorney Hopkins stated that the following documentation has been submitted in connection with this project as follows:

- Site Plan

- Landscaping Plan
- Lighting Plan
- Environmental Assessment Form (EAF)
- Wetland investigation letter
- No Impact letter from the New York State Office of Parks, Recreation and Historic Preservation
- Phase 1 Phase 1B Cultural Resource Report
- Geotechnical Report

Attorney Hopkins stated that lighting would be LED and dark-sky compliant and there would be no light spillover. He noted that lighting fixtures would be 15 feet high (12 total fixtures).

Attorney Hopkins stated that after the Town Board granted Site Plan Approval and a Special Use Permit for this project, the neighboring property owner, Boston Valley Capital, commenced an Article 78 proceeding against the Town of Boston, as well as the applicant,. He noted that there were certain allegations that were made that at least had some merit in terms of going back and making sure everything was handled properly procedurally and substantively, so ultimately the decision was made, in consultation with the Town's counsel, to go through the review and approval process again rather than spend a lot of time and money defending the litigation.

Attorney Hopkins stated that the neighboring property owner is a competitor and currently has a lease with the applicant for the existing Tim Hortons and the applicant plans to vacate that lease once this project is completed. He noted that the neighboring property owner's motivations are unclear.

Attorney Hopkins stated that the Town Board adopted a resolution on August 25, 2023 rescinding its previous approvals, classifying the project as an Unlisted Action pursuant to SEQR, referring the conceptual plot plan, Special Use Permit application and Site Plan Application to the Planning Board and scheduling the required public hearing on the request for a Special Use Permit for the filling station to be held on September 20, 2023.

Attorney Hopkins stated that a referral has been made to Erie County Department of Environment & Planning that is required pursuant to New York State General Municipal Law Section 239-M because Boston State Road is a New York State highway. He further noted that New York State Department of Transportation (DOT) was provided with a copy of the updated Traffic Impact Study (TIS) performed by Amy Dake, Senior Traffic Engineer at Passero Associates. He noted that Planning Board members were also provided with the updated TIS.

Attorney Hopkins stated that a Lead Agency Solicitation letter was issued on behalf of the Town Board for it seeking Lead Agency Status pursuant to SEQR that is consistent with the resolution that was adopted by the Town Board during its August 23, 2023 meeting.

Attorney Hopkins stated that if one looks at the criteria in the Boston Town Code for the submission of a conceptual plot plan application and the criteria for a recommendation, it is clear that the applicant has met those criteria and the applicant is simply asking the Planning Board to adopt a resolution that it is comfortable with the project layout (there have been no changes made to the project since it was initially approved). He stated that the applicant is also asking the Planning Board to issue a recommendation to the Town Board on Final Site Plan Approval and a recommendation to the Town Board on the requested Special Use Permit at a future meeting.

Attorney Hopkins noted that a copy of the extensive documentation submitted for this project has been provided to counsel for the adjoining property owner.

Attorney Costello noted for the record that he is not aware of any correspondence from counsel for the adjacent property owner or any comments submitted in connection with this project in advance of this meeting.

Attorney Hopkins stated that along with the detailed updated TIS based on input received from the DOT, an accompanying letter was submitted. He provided copies of that letter to Planning Board members.

In response to a question from Chairman Ziarnowski, Attorney Hopkins stated that the position was taken by the claimed aggrieved party that the traffic analysis had not been finalized. He noted that Amy Dake, author of the TIS, contacted the DOT, received some additional input and prepared an updated comprehensive TIS, as well as the accompanying letter dated August 15, 2023 that summarizes responses to comments she received during a conversation with the DOT on August 2, 2023. Attorney Hopkins stated that as part of the SEQR Coordinated Review, DOT comments are expected.

In response to a question from Mr. Jackson, Attorney Hopkins stated that he will clarify the answer to the question in the Environmental Assessment Form provided by the project engineer regarding solid waste.

Attorney Hopkins stated that this project is an Unlisted Action pursuant to SEQR. He further stated that the applicant could have submitted the Short EAF but instead took the extra step to submit the far more detailed Long EAF and the Town Board chose the more conservative approach and conducted a Coordinated Review instead of an Uncoordinated Review, thereby giving numerous Involved and Interested Agencies the opportunity to comment.

In response to a question from Chairman Ziarnowski, Attorney Hopkins stated that the Site Plan Review process in the Town of Boston is a two-step process. He noted that Step 1 is Conceptual Plot Plan Review where the Planning Board takes a look at the submitted documentation and provides any additional relevant input, which is taken into consideration before the applicant prepares fully engineered plans and file a Final Site Plan application. He noted that in this instance, the Planning Board has already been given the above-mentioned documentation, so Step 2 will be only to review the Final Site Plan application and make a recommendation to the Town Board.

Attorney Hopkins stated that there is also a request for a Special Use Permit for the fueling facility ("filling station") and a recommendation is required from the Planning Board to the Town Board on that request. He further noted that the Town Board is required to hold a public hearing on the Special Use Permit request.

In response to a question from Mr. Jackson, Attorney Hopkins stated that the existing building(s) located at 7072 Boston State Road would be demolished and then, depending on the time of year and weather conditions, the goal would be for the project to be complete in four (4) to six (6) months.

Attorney Hopkins stated that Boston Town Code requires that a Building Permit application be filed in connection with the Site Plan Review process. He noted that that application has already been filed and is pending before the Building Department.

Chairman Ziarnowski stated that Attorneys Hopkins and Costello, as well as Mrs. desJardins (planning consultant) and Town Supervisor Keding came up with a time frame whereby the

Town can get this project underway rather than dragging it out for months since time is of the essence in terms of the applicant's current lease.

Chairman Ziarnowski made the following motion:

"WHEREAS, the Town of Boston Planning Board previously reviewed applications for site plan approval and for a special use permit for a filling station from 7072 Boston State Road LLC (the "Applicant"), for the proposed mixed-use development of a 5,183 square foot convenience store with an accessory fueling facility and a Tim Horton's with drive-thru, a 5,000 square foot office building, and associated improvements at 7072 Boston State Road, Boston, New York (collectively the "Project"); and

WHEREAS, subsequent to the Town Board issuing a special use permit and granting site plan approval for the Project, the owner of an adjoining property filed litigation in State Supreme Court challenging certain aspects of the prior approvals for the Project including but not limited to the environmental review pursuant to the State Environmental Quality Review Act ("SEQR"); and

WHEREAS, with its August 9, 2023, Letter of Intent, the Applicant supplied a conceptual plot plan, elevation plans for the proposed buildings, a completed Part 1 of the Full Environmental Assessment Form with attachments prepared pursuant to SEQR, an updated Traffic Impact Study dated August 2023, a Phase I Cultural Resource Investigation report dated February 8, 2023, and a Geotechnical Report dated May 2, 2023; and

WHEREAS, rather than incur the delay, expense, and uncertainty associated with litigation, the Applicant has previously decided to re-submit its Project for approval, and the Applicant's August 9, 2023, letter of intent states that the re-submissions will provide the opportunity to address the concerns raised in the litigation commenced by the adjoining property owner; and

WHEREAS, on August 18, 2023, the Applicant filed a Special Use Permit Application that included a letter of intent dated August 18, 2023 along with supporting documentation for the purpose seeking a special use permit for a filling station pursuant to Section 123-119 of the Town of Boston Zoning Code ("Zoning Code"); and

WHEREAS, during its meeting on August 25, 2023, the Town Board adopted Resolution 2023-74 for the purpose of the following:

- (1) Rescinding the following Resolutions the Town Board passed on June 21, 2023:
 - a. Resolution 2023-47, SEQR Negative Declaration for Mixed Use Development at 7072 Boston State Road (Revised);
 - b. Resolution 2023-48, Special Use Permit for Filling Station at 7072 Boston State Road; and
 - c. Resolution 2023-49, Site Plan Approval for Mixed Use Development at 7072 Boston State Road; and
- (2) Classifying the Project as an Unlisted Action and seeking lead agency status for the purpose of the Town Board conducting a coordinated environmental review of the Project pursuant to SEQR
- (3) Referring the Applicant's conceptual plot plan and any site plan which is developed from that conceptual plot plan to the Planning Board for its review and recommendation;
- (4) Referring the application for a special use permit for a filling station to the Planning Board for its review and recommendation; and

- (5) Scheduling a public hearing on the application for a special use permit for a filling station for the Town Board's September 20, 2023 meeting; and

WHEREAS, pursuant to Section 97-6 of the Town of Boston Town Code ("Town Code"), the purpose of the conceptual plot plan review process is for the Planning Board to make recommendations regarding development of the site, zoning of the property and such other recommendations as may be appropriate.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board makes the following recommendations and findings based on its review of the conceptual plot plan submission:

1. The property at 7072 Boston State Road ("Project Site") is properly zoned C-1 Local Retail Business District ("C-1") for the proposed Project pursuant to the Town of Boston Zoning Map.
2. In connection with its completion of the conceptual plot plan review process, the Planning Board is not requesting that the Applicant make any modifications to the layout of the Project as depicted on the engineered plans for the Project prepared by Carmina Wood Design.
3. The Planning Board has received the special use permit application and supporting documentation and is not requesting any additional information regarding the Project in connection with its review of the requested special use permit and its issuance of a recommendation to the Town Board pursuant to Section 123-174 of the Zoning Code.
4. The Applicant is authorized to proceed with the submission of a Final Site Plan Application for the Project for the purpose of the Planning Board making a recommendation to the Town Board on the request for Final Site Plan approval pursuant to Section 97-10 of the Town Code."

On September 5, 2023, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Planning Board member Weiss: aye

Planning Board member Jackson: aye

Planning Board member Stisser: aye

Planning Board member Schutt: aye

Chairman Ziarnowski: aye

Attorney Hopkins noted that the above resolution was prepared by Attorney Costello. He further noted that the above findings are consistent with the criteria set forth in Section 97-6 of the Boston Town Code.

Attorney Hopkins stated that given that the engineered plans, reports and studies have already been submitted, he will prepare a letter addressing the criteria for Final Site Plan approval and will submit it so that Board members can review it before the September 12, 2023 Planning Board meeting.

Mr. Jackson made a motion, seconded by Chairman Ziarnowski, to adjourn the meeting. The meeting was adjourned at 7:20 PM.

Respectfully submitted,
Jennifer Cavarelo, Board Secretary

Date: September 6, 2023