

TOWN OF MIDDLESEX
PLANNING BOARD

Minutes – Wednesday, March 5, 2014 - 7pm

Board Members present: Marty DeVinney, Chair; John Gilbert, Lynn Lersch, Bob Mincer, Bruce St. Lawrence; Dawn Kane, CEO ; Ms. Wendy A. Marsh, Partner with Hancock Estabrook LLP

Public Present: Mr. Andrew Komarek, Mr. Tom Fromberger, MRB Group; Mr., James Jounulis, Mr. Vivch Thiagarajan, Mr. Tom Hansen

Agenda: Site Plan Reviews:

App. # 012914-SPR/Mr. Andrew Komarek, represented by Mr. Tom Fromberger, P.E. from the MRB Group, requests Site Plan Review for new construction of a Single Family Residence on East Lake Road, Tax Map ID # 2.03-1-2.1 (LR); App.#100113-SPR/Mr. Robert Bailey represented by Mr. Mark Laese and Marathon Engineering Inc. requests Site Plan Review for improvements to a parcel located at 478 East Lake Road, on County Rte. #39, Tax Map ID # 11.27-1-1(LR); App. #11414-SPR/Mr. Dan & Mrs. Kiki Mahar, represented by Mr. R. Jon Schick, AIA requests Site Plan Review for new construction of a three story garage on east side of 968 South Lake Road, Tax Map ID # 21.33-1-2, (LR)

Chairman DeVinney opened the floor for the night's meeting at 7:02pm

Ms. Kane, CEO summarized the first application #012914-SPR/Mr. Andrew Komarek represented by Mr. Tom Fromberger, P.E from the MRB Group and introduced Mr. Fromberger as presenter.

Mr. Fromberger provided a short history of the application from it's submission in January, stating that the application was submitted for Lu Engineer's review in February and had authorization by the applicant to proceed. The project site was 8.5 acres and Mr. Komarek was requesting to construct a 2,900 square foot single family residence. He state the site had approved septic plans since 2011.

Attorney Wendy Marsh introduced herself to those present. She stated that she had been retained to represent the Town of Middlesex Planning Board in this matter and stated there was confusion about which of Mr. Komarek's two submitted applications for the same parcel of land was to be processed for review and what the owner's intent was in developing this parcel. She reminded Mr. Fromberger that a Positive Declaration of SEQR had been declared on April 3, 2013 for this 8.5 acre parcel for an application stating it was a 4 lot Major Subdivision. The logical next step in the SEQR process was either to withdraw that application or to continue by starting the scoping process by submitting a draft scoping document to prove concerns established by the SEQR, Part II could be mitigated. If they could not, it was her advisement to withdraw the application. Since this application had not been withdrawn, it was not clear what Mr. Komarek's long range intent was for this parcel. The Town of Middlesex could not legally review another application for the same parcel for a single family residence. To do so would segment the SEQR process currently still in place, this under NY State Law was not possible.

A discussion centered around the SEQR process including Chairman DeVinney, Attorney Marsh and agent Mr. Fromberger, of the MRB Group, who was representing Mr. Komarek.

Mr. Fromberger answered that Mr. Komarek's intent in submitting the recent application, App. # 012914-SPR was to obtain approval to construct a single family residence on the entire parcel of 8.5 acres and would possibly subdivide it in the future. Mr. Fromberger stated that due to pending litigation he could not answer in any greater detail, however they had a draft document to distribute and an application which had been submitted in January for the construction of a Single Family Residence on Lot #2 for the Planning Board to review tonight.

Ms. Marsh asked Mr. Fromberger to clarify whether this document being distributed to Board Members was a draft scoping document in response to the Positive Declaration, for the (4) lot major subdivision, submitted last April. Mr. Fromberger stated that it was not.

Ms. Marsh stated that if the intent was to subdivide sometime in the future, they legally must first complete the SEQR process by starting the scoping process. Mr. Fromberger then stated that the document in front of the Board was their draft scope.

Ms. Marsh referred to Mr. DeVinney, Chairman of the Planning Board, whether a review tonight was appropriate since it was not on the agenda. Chairman DeVinney stated that any review of the new document submitted by the MRB Group tonight would take time for Board review.

Mr. Fromberger requested more information about the Board's rationale when completing Part II of the SEQR. Ms. Marsh explained that Part II of the SEQR determined and stated possible environmental concerns with the project. These concerns were what the Draft Scope would need to address with proof that they could be mitigated. Ms. Marsh stated that the process was way beyond a review as the Board had declared a Positive Declaration on April 3, 2013 and submission of a Draft Scope for the 4 lot Subdivision was the next step in that process.

To accommodate the applicant, Ms. Marsh stated that the attorney for Mr. Komarek had been sent a copy of the Positive Declaration back in mid- April, but she did have a copy with her and would read the part that contained supporting reasons which had led the Planning Board to declare a Positive Declaration on the SEQR. She also stated she would send them another copy to review.

After listening to Part II of the SEQR read in its entirety, Mr. Fromberger again requested how the Board had reached their decisions on the SEQR that resulted in a Positive Declaration. Ms. Marsh stated that the process was completed, it had been challenged in court and had been upheld, so they needed to move on.

Chairman DeVinney took the time to explain about the Soils Analysis of the specific parcel in question which gave them definitive reasons to declare there was significant possibility the project would create a moderate to large impact to the environment. He stated that all of this information had been available for inspection and had been offered for review many times, yet never requested by the MRB Group. Mr. DeVinney then stated the Board had a responsibility to protect the future land owners of these parcels, and it was the developer's responsibility to prove that any concerns could be mitigated.

Mr. Fromberger acknowledged that MRB Group had the Soils Analysis referred to by Chairman DeVinney. Mr. Fromberger collected the draft document offered for review to the Board, and acknowledged that the Draft Scoping document requested would be submitted by the MRB Group prior to the next month's meeting.

Ms. Kane advised Mr. Fromberger that deadline for submittal for April 2nd meeting agenda would be 21 days prior to that date.

Resident Mr. Tom Hansen inquired if this Scoping Document was something the applicant/developer prepared and how the Town Engineering firm was involved in the review process.

Ms. Marsh summarized that the environmental process as mandated by NYS requires all necessary research and mitigation claims to scope out all the alternatives appropriate that could determine what could work and what can't. An applicant cannot develop his intended project in stages without including all stages of development in this SEQR process. To do so defeats the SEQR process and in turn does not give the Planning Board an accurate picture to determine potential problems or the developer the ability to provide reasonable alternatives to mitigate these concerns.

Chairman DeVinney explained further that Lu Engineer as the Town's engineering firm is part of the SEQR Review process by providing recommendations to the Town in researching potential environmental impact. It is the developer's responsibility to prove that environmental impacts can be mitigated with reasonable documentation.

Board Member Gilbert reminded the Board assembled that the applications' process had left off with the submission of two submitted plans by the applicant for Planning Board review in order to assess which of the two plans would have the least environmental impact on the site for the purpose of receiving a permit for Special Use of a Private Shared Driveway in the Lake Residential Zoning District. This recommendation by the Planning Board would provide the Zoning Board of Appeals help in the review process to determine and possibly grant the Special Use Permit. In determining a recommendation, the Planning Board had requested of the applicant to address the slope of the access road and comply with the 10% slope as required for subdivisions, as well as softening the switchback radius to allow better accommodation for emergency vehicle access to these (4) lots.

Mr. Gilbert inquired of the Board and Attorney Marsh if this review of the application would be included in the SEQR process at some point to show which of the two plans submitted would be less intrusive to the environment.

Ms. Marsh stated that if it wasn't mention in the Draft Scope which the Developer would be submitting, than a discussion on this would be appropriate to include in the Final Environmental Review and the Final Scoping Review, part of the project's application. The slope and safety issues of the proposed access road to the subdivision could be part of the discussion at the April meeting.

Ms. Kane advised the Board that the other two applications on the agenda would possibly be rescheduled for next month as neither of the applicants were in attendance.

Board Member Lersch referred to a Zoning Law Text Amendment to current zoning that would provide the Code Office with additional enforcement capabilities - Stop Work Orders and Cease & Desist Orders and asked the Board for a motion to vote on a resolution to send to the Town Board for review, prior to County Planning Board review on March 27th. Board Member Lersch presented the motion and Board Member St. Lawrence seconded the motion which carried with all Board Members present voting in favor.

Draft Planning Board Minutes for January 8th and February 12th were approved by all Board Members voting in favor of a motion offered by Board Member Gilbert and seconded by Board Member St. Lawrence.

Planning Board Work Session was scheduled for March 19th

A motion to adjourn was entertained by Chairman DeVinney. Board Member Lersch made the motion and Board Member St. Lawrence seconded the motion which carried with all Board Members voting in favor. The meeting adjourned at 8:45pm.

Draft Minutes were submitted by L. Lersch/Revisions to: LSammy5@frontiernet.net
Minutes approved on 4/23/14