

At a meeting of the Planning Board of the Town of Middlesex, held at the Town Hall in said Town, County of Yates, State of New York on the 1st day of July, 2015, at 7:00 p.m., there were

PRESENT: Martin DeVinney, Chairperson
Bruce St. Lawrence
Lynn Lersch
John Gilbert
Robert Mincer

ABSENT:

John Gilbert presented the following "Resolution" which was seconded by
Robert Mincer

**RESOLUTION OF THE TOWN OF MIDDLESEX PLANNING BOARD REGARDING
THE DETERMINATION OF ADEQUACY OF THE REVISED DRAFT
ENVIRONMENTAL IMPACT STATEMENT PREPARED FOR THE KOMAREK
MAJOR SUBDIVISION PROJECT PURSUANT TO THE STATE ENVIRONMENTAL
QUALITY REVIEW ACT**

WHEREAS, the Town of Middlesex Planning Board ("Planning Board") has received an application from Andrew Komarek ("Applicant") for a 4-lot major subdivision of Tax I.D. No. 2.03-1-2.1, a property with steep slopes located within the Lake Residential ("LR") District ("Project"). The Project involves the creation of four (4) lots for single family residences, along with the construction of a private road to access each of the residences. The Project requires major subdivision approval, as well as site plan review, and a special use permit from the Zoning Board of Appeals ("ZBA") for the construction of the private road in the LR District;

WHEREAS, pursuant to the State Environmental Quality Review Act ("SEQRA"), the Applicant submitted to the Planning Board Part 1 of a Short Environmental Assessment Form dated August 10, 2009. Subsequently, the Applicant submitted Part 1 of a Full Environmental Assessment Form ("FEAF") dated August 1, 2012, which was deemed incomplete. The Applicant then submitted Part 1 of a FEAF dated October 17, 2012, which relates to the Project details in the drawings dated August 1, 2012;

WHEREAS, the Part 1 of the October 17, 2012 FEAF, having been reviewed by the Planning Board, was deemed adequate and accurate relative to the Project, although the Planning Board questions the accuracy of the answer to question A.3., with regard to soil types;

WHEREAS, the Planning Board established itself as the Lead Agency and caused Part 2 and 3 of the FEAF to be completed;

WHEREAS, the Planning Board issued a Positive Declaration for the Project on April 3, 2013, and declared its intent to conduct scoping pursuant to SEQRA;

WHEREAS, the Planning Board has coordinated its SEQRA review with the Zoning Board of Appeals, the New York State Department of Environmental Conservation, New York State Department of Health, the Yates County Soil and Water, Canandaigua Watershed Association, Canandaigua Watershed Council, and the Yates County Planning Board as involved and interested agencies;

WHEREAS, the Applicant submitted a draft Scope for the Project on March 12, 2014;

WHEREAS, the Planning Board distributed a copy of the draft Scope to the Involved and Interested Agencies, as well as individuals requesting a copy of same;

WHEREAS, the Planning Board held a public hearing on the draft Scope for persons wishing to be heard on April 23, 2014;

WHEREAS, the Planning Board issued the Final Scope on May 7, 2014;

WHEREAS, the Applicant submitted a Draft Environmental Impact Statement (“DEIS”) on December 13, 2014;

WHEREAS, the Planning Board received and reviewed the DEIS, and identified the deficiencies in a letter dated January 22, 2015 (“Deficiency Letter”), in accordance with 6 NYCRR 617.9;

WHEREAS, on June 4, 2015, the Applicant submitted a revised DEIS dated May 7, 2015 (“Revised DEIS”), along with a cover letter dated May 7, 2015;

WHEREAS, the Planning Board reviewed the Revised DEIS in comparison to the Deficiency Letter to determine if the Revised DEIS is now adequate with respect to its scope and content for purpose of commencing public review pursuant to 6 NYCRR 617.9; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE PLANNING BOARD:

1. The Planning Board has reviewed and accepted the conclusions regarding adequacy set forth in the Adequacy Chart attached hereto as Exhibit 1. Of particular note and as confirmed on the attached Adequacy Chart, the Planning Board continues to disagree with many of the legal assertions set forth in the DEIS, as well as the recitation of the history of the Town’s review of the Project. The DEIS is a prepared by the Applicant, and the Planning Board does not need to agree with all statements in order to determine that the DEIS can be made available for the public to review and comment.
2. As documented in the attached Adequacy Chart, the Planning Board has determined that two items are not adequate with respect to the Final Scope and the purpose of commencing public review.
 - a. The Final Scope stated:

- i. “Slope stability analysis shall be conducted for structures, retaining walls, roadway cuts and absorption fields. The stability analysis shall take into account the soils and bedrock conditions, as well as groundwater levels.” See item 10 on page 7 of the Final Scope.
 - ii. “Structural and global slope stability analysis for the downhill retaining wall” See item 11 on page 7 of the Final Scope.
 - b. The Deficiency letter dated January 22, 2015, stated:
 - i. Comment 21: “Slope stability analysis should be conducted for structures, retaining walls, roadway cuts and absorption fields. The stability analysis shall take into account the soil and bedrock conditions, as well as groundwater levels.”
 - ii. Comment 22: A “structural and global slope stability analysis for the downhill retaining wall” is required.
 - c. The Revised DEIS does not contain the required slope stability analysis required in the Final Scope and identified in the Deficiency Letter for the construction areas. Stantec has prepared a letter to the Applicant dated June 30, 2015, documenting this deficiency, a copy of which is attached hereto as Exhibit 2.
3. Once the Applicant provides the information requested in the June 30, 2015 letter to Stantec’s satisfaction, the updated DEIS shall be deemed adequate with respect to its scope and content for the purpose of commencing public review. If Stantec is not satisfied with the adequacy of the information provided in response to the June 30, 2015 letter, the Planning Board reserves the right to address any further deficiencies in accordance with 6 NYCRR 617.9.
4. Once deemed adequate, the Planning Board shall file and publish a Notice of Completion of the DEIS in accordance with 6 NYCRR 617.12, which shall establish a comment period for sixty (60) days.
5. The Planning Board has determined that a public hearing will, among other things, aid its decision-making process, and consequently, shall publish a Notice of Public Hearing along with the Notice of Completion.
6. Assuming the updated DEIS with the additional information is submitted in a timely fashion to publish the necessary fourteen (14) day notice, the Public Hearing will be held on September 2, 2015. If it is not submitted in a timely fashion needed to maintain this date, the Planning Board reserves the right to schedule a Public Hearing for a later date.
7. The Planning Board Clerk is hereby directed to mail the letter dated June 30, 2015 attached hereto as Exhibit 2 to the Applicant.
8. This Resolution shall take effect immediately.

THE FOREGOING RESOLUTION, was put to vote as follows:

<u>Name</u>	<u>Vote</u>
Martin DeVinney, Chairperson	<u><i>aye</i></u>
Bruce St. Lawrence	<u><i>aye</i></u>
Lynn Lersch	<u><i>aye</i></u>
John Gilbert	<u><i>aye</i></u>
Robert Mincer	<u><i>aye</i></u>

I, the undersigned Clerk of the Town of Middlesex Planning Board **DOES HEREBY CERTIFY:**

That I have compared the foregoing copy of minutes of the meeting of the members of the Town of Middlesex Planning Board (the "Planning Board"), including the "Resolution" contained therein, held on July 1, 2015 with the original hereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (i) all members of the Planning Board had due notice of said meeting, (ii) said meeting was in all respects duly held, (iii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and public notice of the time and place of said meeting was given in accordance with said Section 104 and (iv) there was a quorum of the members of the Planning Board present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof the attached "Resolution" is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand as Planning Board Clerk of the Town of Middlesex Planning Board this 8th day of July, 2015.

**TOWN OF MIDDLESEX
PLANNING BOARD**

Lynn Lersch
Lynn Lersch, Planning Board Clerk