

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 4<sup>th</sup> day of November, 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 Bruce St. Lawrence:

**RESOLUTION OF THE TOWN OF MIDDLESEX  
PLANNING BOARD REGARDING ESTABLISHING THE SCHEDULE  
FOR ISSUING THE FINAL ENVIRONMENTAL IMPACT STATEMENT**

**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, among other approvals, 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, nearly one year later, 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**, on June 1, 2015, the Planning Board reviewed the Revised DEIS in comparison to the Deficiency Letter to determine if the Revised DEIS was adequate with respect to its scope and content for the purpose of commencing public review pursuant to 6 NYCRR 617.9 and identified two (2) items that needed further information;

**WHEREAS**, on July 1, 2015 the DEIS was deemed adequate for public comment;

**WHEREAS**, the DEIS was distributed to the Involved and Interested Agencies and a public comment period commenced, which ended on October 1, 2015;

**WHEREAS**, the Planning Board held a public hearing on September 21, 2015 to receive comments on DEIS;

**WHEREAS**, the Planning Board received numerous oral comments during the public hearing, as well as six (6) written comments during the public comment period;

**WHEREAS**, the Planning Board as Lead Agency, is obligated to prepare the Final Environmental Impact Statement (“FEIS”) pursuant to 6 NYCRR 617.9(a)(5) within forty five (45) calendar days after the close of the public hearing;

**WHEREAS**, the Planning Board’s consultant, Stantec, attempted to coordinate the initial preparation of the responses to the comments received to the DEIS with the applicant’s consultant, MRB, which is the customary practice;

**WHEREAS**, although it is the obligation of the Lead Agency to prepare the FEIS, it is the customary practice for the Applicant's proposed responses to comments to be the draft FEIS that is finalized for the Lead Agency;

**WHEREAS**, the Planning Board received no responses to the comments from the applicant's consultant until October 30, 2015, which was thirty (30) days after the close of the public comment period;

**WHEREAS**, pursuant to 6 NYCRR 617.9(a)(5)(ii) the Lead Agency is obligated to prepare the final FEIS within forty-five (45) calendar days unless additional time is necessary to prepare the statement adequately;

**WHEREAS**, prior to providing the draft FEIS on October 30, 2015, the Applicant discussed with the Lead Agency an extension of the deadlines in order to have adequate time for the Lead Agency to prepare the FEIS;

**WHEREAS**, before providing the draft FEIS, the Applicant refused to consent to an extension for the deadline to issue the FEIS until the Planning Board's December 2, 2015 meeting, to allow sufficient time to review the draft prepared by the Applicant and make any necessary changes before issuing said FEIS;

**WHEREAS**, since the draft FEIS was received five (5) days ago, which included three (3) business days, the Lead Agency's consultant has had an opportunity to preliminarily review the draft and has confirmed that additional time will be necessary to prepare the FEIS adequately;

**WHEREAS**, the Planning Board cannot issue SEQRA Findings until at least 10 days after the issuance of the FEIS;

**WHEREAS**, the Planning Board cannot make any decision on the application for preliminary plat until it issues its SEQRA Findings;

**WHEREAS**, the Town Law requires decision on a preliminary plat within specified deadlines or the application is deemed to have been granted approval;

**WHEREAS**, because the Applicant would not consent to an extension of the regulatory timeframes, the Planning Board seeks to clarify that to the extent a decision is due on the preliminary plat within said specified timeframes, the Planning Board wants to clarify that the preliminary plat be deemed denied until it has an opportunity to properly issue the FEIS and its SEQRA Findings;

**WHEREAS**, pursuant to 6 NYCRR 617.13(a), the Lead Agency may charge a fee to recover the actual costs of preparing the FEIS;

**WHEREAS**, the estimated fee for Stantec to prepare the FEIS based upon its review of the draft submitted by the Applicant five (5) days ago is \$12,000, as set forth in its proposal dated November 4, 2015; and

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

1. The Planning Board requires additional time to adequately prepare the FEIS.
2. The Planning Board requires agreement from the Applicant to reimburse it for Stantec's cost to prepare the FEIS;
3. Assuming the Applicant accepts Stantec's costs this week, the Planning Board anticipates issuing said FEIS at its January 2016 meeting.
4. To the extent necessary, the Planning Board deems the preliminary plat denied to ensure there is no argument of any default approval as contemplated under Town Law.
5. A decision on the preliminary plat will be made by the Planning Board within thirty (30) days after the issuance of the SEQRA Findings.
6. 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>X</u>
Bruce St. Lawrence	<u>X</u>
Lynn Lersch	<u>X</u>
John Gilbert	<u>X</u>
Robert Mincer	<u>X</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 November 4, 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 and affixed the seal of the Town of Middlesex Planning Board this   6   day of November, 2015.

**TOWN OF MIDDLESEX  
PLANNING BOARD**

          Lynn Lersch            
Lynn Lersch, Clerk