

TOWN OF MIDDLESEX
PLANNING BOARD

PUBLIC HEARING

Minutes - Monday, September 21, 2015, 7 pm

Board Members present: Marty DeVinney, Chair; Board Members: John Gilbert, Lynn Lersch, Robert Mincer, Dawn Kane – Code Enforcement Officer

Others Present: Wendy Marsh, Attorney; Stantec Consultant - Michael Flannigan;

Public Present: Stephen Lewandowski, Bob Gunderman, Richard Bolton, Jerry Hiller, Richard DeMallie, Robert Place, Viven Thiagarajan, Tom Fromberger, Win Harper, Gordon Stringer, Gina and Sam Imburgia, Brenda and Andy Komarek

Agenda: Public review and comment on SEQRA: Draft Environmental Impact Statement (DEIS) for the Komarek 4 lot Major Subdivision; construction of a private access road; major subdivision preliminary plat; site plan and special use permit.

Chairman DeVinney brought the meeting to order at 7:02pm.

Stantec Consultant Michael Flannigan gave a summary of the SEQRA Process to provide a history of past and present actions taken by the Town Planning Board and submitted DEIS report (dated 7/09/15) by MRB Group, Engineers and agent for Mr. Andrew Komarek, owner of property under review which is located on the west side of East Lake Road, Tax Map ID # 2.03-1-22 in the Lake Residential Zoning District. Mr. Flannigan stated that written comments will continue to be accepted another (10) ten calendar days after the public hearing is closed, which will end at 5pm on October 1, 2015. All written comments should be addressed to Martin DeVinney, Chairman of the Town of Middlesex Planning Board at the town office. Anyone wishing to review any of the submitted documents, may do so either on the town website (www.middlesexny.org) or in person at Town Hall.

After tonight's hearing, all written and verbal comments will be reviewed and answered in the Town's response document, the Final Environmental Impact Statement (FEIS) which will be completed within 45 days after the close of the Public Comment period.

Mr. Fromberger, agent from the MRB Group introduced Attorney Mr. Robert Place who summarized the past history of the application, as presented in the DEIS document, prepared at the request of the Town of Middlesex Planning Board and based on SEQRA's Positive Declaration of Environmental Significance issued April 3, 2013 by the Planning Board. Comments from Mr. Place are paraphrased and summarized as follows: 'The parcel under review is approximately 8.5 acres and includes (4) four lots that range in size from 1.9 acres to 2.6 acres in the Lake Residential Zoning District with a combined shoreline of 870 feet. All lots are larger than what is required and will be developed to include much more green space than that required by town code. All utilities can be safely built on soils tested and reviewed by a Geo-technical Engineer who reported the soil analysis to be similar to other developments in the area, with no potential harm to the environment. The subdivision is proposed to be serviced by a private road shared by the proposed (4) new lots. One shared access to these lots has been reviewed by the county and is preferred to a total of four access driveways. A Special Use Permit has been applied for to allow this shared access, since private roads are not allowed in the LR District due to a density concern. The grade for the private

road is designed to follow the lay of the land and is in close proximity to the % of grade to other developments in the area. Mr. Komarek acquired the property in 2007.’

Chairman DeVinney opened the floor up to public comment at 7:15pm.

Attorney W. Marsh stated that all public comments heard should be prefaced by clear identification by name, address and if verbal with written versions, these should be stated as such to be submitted into the record in order to assure all public questions would be answered in the future FEIS document.

1. Mr. Stephen Lewandowski - 7 Bassett Street, Rushville, NY:

Mr. Lewandowski submitted to the Town of Middlesex Planning Board a letter representing the Canandaigua Lake Watershed Association of which he currently is a member. Prior to this, his past working credentials encompassed 25 years’ experience as a technician and an environmental educator for Ontario County Soil & Water. His life work has been involved with serving erosion control and soil analysis for the area. He complimented MRB Group for a good subdivision design for an extremely difficult site very similar to a development on the other side of the lake. Mr. Lewandowski drew a parallel between the general zoning requirements for the Town, based on the Town’s Comprehensive Master Plan, which reflects the citizen’s wishes for town, for all properties in a generic way; stating Mr. Komarek’s approximate 9 acre parcel was unique from most properties in the town, as it was greatly restricted by many natural conditions such as (3) water courses, setbacks from the road would entail multiple variances. The town is recommending that all disruption be on the flattest areas, however even those are very steep with high cliffs at the shoreline. He emphasized strongly that phasing the development on this site was crucial and that each lot should be stabilized and vegetated immediately and continuously until well established before developing another lot. Unless immediately seeded, vegetation would have an extremely hard time taking hold in the soils in this area. Mr. Lewandowski concluded with the following statement that was not included in the submitted letter: he stressed that extreme oversight would be necessary when installing the proposed septic system design as it was very tight with no room for future expansion or replacement. Based on his experience, most systems have a life span of 20-30 years if properly maintained.

2. Mr. Robert D. Gunderman, P.C resident at 200 East Lake Road:

Mr. Gunderman referred to a letter (dated 9/21/15) submitted to the Town of Middlesex Planning Board. He stated he is a licensed professional engineer and patent lawyer. He gave the following summary of more detailed discussion of concerns he had for the Komarek Major Subdivision. He has lived contiguously to the north of the Komarek property since 1988 and has had 27 years’ experience dealing with a multitude of property maintenance difficulties that occur when living on steep slope cliff side property.

He provided historical background from 2009, documenting a cliff that collapsed during the installation of a tram at the neighboring parcel to the north of his property by Mr. Komarek’s FL Tram business team. During this event, an excavator was tied off by a cable to his trees and shale material that sloughed off from the cliff, created yards of debris that was then dumped into the lake from the shoreline, creating a muddy silt plume that still exists when the lake is rough, promoting the growth of weeds that were never there before. This engineering failure documented by the NYSDEC and Mr. Gunderman of the cliff failure should be included in the Komarek DEIS as it gives valuable information to learn from and represents significant impacts to land, water, public healthy and aesthetic resources. Mr. Gunderman states this is particularly important because the proposed plan indicates the opportunity for property owners to install a tram on each of the 4 lots to provide shoreline access.

Mr. Gunderman also stated he was also able to document property improvements to this property by the previous owner since 2006, to include an unpermitted installation of a culvert approximately 100 feet from his property line and other possible unpermitted site work to extend the driveway.

He stated that also missing from the DEIS was the proposed plan for shoreline access for the future lot owners. Trams, stairway systems, docks, boathouses and lakeside storage buildings all should be included in the DEIS to avoid segmentation of the waterfront development of this project. Another concern was the implication on page 4 that future lot owners will be given an opportunity to install a tram if desired. He stated this directly indicates granting property rights where none yet exist. The town must approve such an installation prior to property rights being offered. He stated that it is not clear in the DEIS how the easement owners will be accessing the right to access the shoreline. The existing stair case is not operable to the shoreline currently, and the easement owners would not be able, under compliance with existing laws, the use of the trams that may be installed to the future lot owners if desired.

Mr. Gunderman questioned how the three easement parcels on the other side of East Lake Rd. were deeded “perpetual easement” through the proposed Major Subdivision to include Mr. Komarek’s single family residence, and how this was to be handled, as this was not included in the DEIS and stated he considered it to be segmentation if it not included.

He stated that a lack of referencing resource data referencing soil mapping and photographs used in the DEIS should have been consistently provided by MRB Group.

He inquired if Lot #4 could legally be a buildable lot with an easement to 3 parcels across East Lake Road going through it.

He made reference to the submitted septic design in the DEIS which included manufacturer data and spread sheets rather than detail on the implementation of the design with appropriate engineer stamps to authenticate what was there.

He felt a bond or surety guarantee, rather than a maintenance agreement, should be in place to protect the town, community and the lake for future subdivision owners for funds available when needed for erosion management for the road and property maintenance in the event of a storm event wash-out.

Mr. Gunderman objected to multiple references in the DEIS that should be deleted from the DEIS as immaterial to include the following:

- a. Photo reference on pg. 78 show an aerial view of his property in photo 1.2, labeling it “visual pollution.” He also inquired of source documentation which was missing for this photo on pg. 78.
- b. Photo reference to a staircase at 198 East Lake Road was noted as “abandoned”, and stated if truly abandoned, than this should be looked into as a code issue and not a DEIS focus.
- c. Mr. Gunderman objected to the lack of depth in reporting in Appendix K by Foundation Design, P.C. (report dated 7-2015) of how “significant bedrock” would be removed and what those methods might be other than by excavator. He felt that the DEIS should address how methods used to remove bedrock would impact the surrounding environment, particularly buildings and foundations on neighboring parcels.

3. Mr. Richard H. Bolton, resident at 258 East Lake Road:

Mr. Bolton referenced a letter (dated 9/21/15) submitted to the Town of Middlesex Planning Board and summarized it as follows:

Part 1/Comments for the DEIS:

- a. A summary of DEIS comment submitted by the MRB Group which he deemed inappropriate, stating examples, stating sections and page references and his concluding reasons for his comment.
- b. His concern of how noise would significantly impact the character of the neighborhood stating the number of vehicular traffic and lake boat traffic flow generated by this 4 lot subdivision and the addition of the easement granting perpetual access from 3 lots across East Lake Road to the subdivision's shoreline increased the potential of disturbance of the now tranquil neighborhood. He stated his objection to the proposed plan for shared access as the switchback on the driveway is located 200 ft. south from his property line and he can clearly hear any traffic traversing this property.
- c. A request for a "Supplemental DEIS" as a necessary requirement, based on the scoping directive in the Final Scope for the DEIS as "to be included" information in sect. 2.2.8 Visual Resources requesting a more comprehensive visual appearance of the site after development from Canandaigua Lake and from East Lake Road through various graphic techniques. He stated only "existing views" were submitted. Docks, Trams and stair systems should also be included in detail as well.
- d. Historical background referencing a former vineyard existed on this parcel is stated by Mr. Bolton to be untrue and he referenced his submitted photo (Appendix 1) and its narrative as reference to believe this is untrue.
- e. Botanical identification and inventory he stated was deficient as it was reviewed in October with references to substantiate his reasons.
- f. Docks and other permitted docking structures at shoreline need to have a Uniform Docking and Moorings Law Permit, were not included in the DEIS. Such inclusion was requested in the Scoping Document: 2.1.4 as anticipated "required permits from Federal, State, and local authorities to construct and operate the project." He referred to shoreline structures allowed due to steep slope hardship that would be allowed, but referenced that the placement of such was yet to be offered in the proposed Subdivision Preliminary Plat.
- g. He concluded his summary for a request for a Supplemental DEIS and subsequent Public Hearing per SEQRA Part 617 (7) to be required by the Town of Middlesex for the following reasons:
 - Aesthetic renderings as requested in Scoping
 - Deficient plant study reported due to seasonal time of the year it was reviewed.
 - Tree Inventory deficient and inaccurate.
 - Court cases have held that poorly DEIS items that do not allow a "hard look" to be made must have a supplemental DEIS to address the deficiencies.

Part 2/Comments on the Preliminary Plat:

- a. He states the DEIS claim for "vested rights" do not exist, stating his reasons.

- b. Tree Inventory of the entire proposed subdivision and adjacent property is missing from submitted preliminary plat as required by the Town's Subdivision Regulations-Sect. 5.1.
- c. Mr. Bolton quoted from the Town's Zoning Law, "one driveway to serve a residence" and referred to submitted alternatives plans, submitted in Appendix Q, show a shared driveway access. He stated what was shown in the DEIS is not alternative because of the deeded easement requirements for Lots A, B and C on the east side of E. Lake Rd., which existed prior to Komarek purchasing the property in 2007.
- d. Proposed shared access driveway is not in compliance with Town Laws referencing the following: Local Law #1 of 2011 - Sec. #703.1.1 Private Roads; Sec. #703.2 Private Roads permitted in Lake Residential District by Special Use Permit; Sec. #703.3 Additional criteria for private roads regulated by Local Law #3 of 2008 Private Driveways and Private Roads Law; Land Subdivision Regulations: Definition section definition for private roads and/or driveways; Article 4.1 General Requirements and Design Standards of all other existing documents to include Zoning Law of 1999, Master Plan of 1992, and Standards for New Roads. He stated reasons how this law has impacted his property, stating his request that the Town not grant a waiver based on hardship where there was none, for permitting any shared access for the proposed subdivision in this case quoting non-compliance concerns with the Town's Zoning and Subdivision Laws.
- e. Lot #4 of the proposed Major Subdivision is burdened by the shared access Easement (Sheet G-1) and is not to be considered a buildable lot per Sec. #4.6. Lots under the Town's Subdivision Regulations. If easement is redefined it would still significantly impair the land use for the existing easement holders – referencing Chapter 4 – Interpretation of Servitudes: Restatement (third) of Property (servitudes) American Law Institute 2010 - Sec. #4.8 Location, Relocation and Dimensions of Servitude.
- f. The Town's Subdivision Law, Article 6.1 Variances and Waivers grants the Planning Board power to grant waivers to Subdivision Regulations based on extraordinary or unnecessary hardship variances. Mr. Bolton gives his reasons for not allowing these.
- g. The proposed shared access to the Major Subdivision must be in compliance without exception the regulations set forth in the Regulations of Private Driveways and Private Roads Law Sec. 4 Standards for Approval which references the Town's Standards for New Roads Sec. 3.1 Cul-de-sacs giving regulations for dead ends. Mr. Komarek's proposed shared access to the Major Subdivision dead ends without any plan for the turn-around requirements referenced in these Town Laws. There is no provision in the laws for a ZBA variance or a Planning Board waiver other than through Article §78.
- h. The Steep Slope Law references Sect. 707.3.3.1(B) which states it will allow "one driveway to serve the residence." The "shared driveway," as referenced in the Komarek drawings, by definition does not apply, as there is not a driveway shown between houses. It is an easement, not a shared driveway and so does not apply, nor does it fit typical width, grade or maximum length or 'dead end' area requirements delineated in the Town's Subdivision Law which identify it as a "minor street."
- i. Trams, as shown on sheet P-2/JP-2 in the DEIS are not in compliance with the front yard setback required in the LR District as referenced in Sec. #403, Schedule H for Area and Coverage Requirements for Lots and Structures. As a listed "structure" trams are not allowed to meet the lakeshore within 40 feet of the High Mean Water Mark. The Steep Slope Law lists them as a permitted Use in Sect. #707.3.5.1 but states they need to be in "compliance with the regulations of the underlying district.

Mr. Bolton's concluding remarks are summarized as follows:

- The DEIS depicts a shared access on all plans and alternatives due to the existing deeded easement and cannot consider any other alternative. The property was purchased with the existing easement and without compliance with the Town's Zoning Regulations to propose a Private Road for this subdivision as shown in submitted plans without the Planning Board granting waiver under extreme hardship which doesn't exist and/or the Zoning Board of Appeals granting a Special Use Permit.
- The submitted DEIS is deficient and a Supplemental DEIS should be required.
- The submitted Preliminary Plat depicts in error that Trams are allowed to terminate at the lake as referenced in current Town Law. Variances to the law would be denied because of their commonality.

4. Mr. Gordon Stringer, resident at 731 East Lake Road

Mr. Stringer prefaced his statement by saying he had not written a letter, and lived a good distance from the project to be negatively impacted by the construction of it, however his concern was how such a big project site would be carefully monitored by the Town's Code Enforcement Office once construction got under way, referencing the long period of time it would take to bring the project to completion if approved as proposed in phases.

5. Mr. and Mrs. Jerry and Mary Ann Hiller, residents at 233 East Lake Road, submitted written comments to the Planning Board in support of Komarek's DEIS and proposed Major Subdivision.
6. Mr. Tom Fromberger of MRB Group, representing agent for Mr. Komerak, inquired if he could answer some of the public's questions/concerns. With approval, Mr. Fromberger listed his answers as follows:

a. *How will the project be phased?*

Each individual home lot shall be stabilized as required by the SPDDS Permit. 80% of the coverage of each lot is dedicated to green space. This green space shall be complete and stabilized as "green" prior to the construction of another home lot.

b. *When was the existing 'site access extension' created?*

Shown on the 2003 Hey Easement deeded survey, the driveway was shown as extended. This extension is also confirmed by the 2007 survey when Mr. Komarek purchased the property and is included in the DEIS "Appendix E" obtained and documented by the Ontario County Soil & Water.

c. *Why aren't the geological mistakes of tram installation included in the DEIS?* The DEIS has included all past, present and future plans for this project currently under review.

d. *Was a drone used in gathering aerial photographs of property at 200 E. Lake Road?* No drones were used to gather published DEIS data. The source used was "Pictometry" as referenced in all photos used in the DEIS.

e. *Is the septic system an approved design?* Each of the four proposed septic designs were fully reviewed and approved by the NYS Department of Health.

f. *Why aren't the Uniform Docking and Mooring Law (UDML) details and permit information listed in the DEIS?* The DEIS makes reference to docks and other shoreline berthing facilities as additional possible permits referencing these in detail on page 35.

- g. *Where is the subdivision's tree inventory list required by the scoping document?* The DEIS subdivision plans has trees listed where the construction will be occurring; however not outside the areas of disturbance. An inventory is included as well.
- h. *Could you point out where the 'site access' extension is documented in the DEIS?* The existing 'site access' is documented in the DEIS in a couple of places. First, in 2003 with the Hey parcel deed located in Appendix E and again in the survey completed in 2007 located in Appendix Q.

Chairman DeVinney explained that the DEIS submitted by the MRB Group in review for public comment, was the applicant's statement in response to the SEQRA process; hence agreement with presented facts was not a necessity. He also stated the Town only changes Town Laws when there is a specific need and it is never influenced by any one application or property owner such as Mr. Komarek.

Wendy M. Marsh offered the following explanation of the SEQRA process:

- The submitted Draft Environmental Statement (DEIS) on July 9th is the applicant's document.
- The Planning Board determined in July that it was adequate to start the public comment period on environmental impact.
- FEIS (Final Environmental Impact Statement) is completed 45 Days after the Public Comment period ends. The purpose of the FEIS is to state the Lead Agency's position on the Environmental Impact Study. The Planning Board as Lead Agency, prepares the FEIS to answer all public comments received referencing the Environmental Impact.
- The Planning Board will issue the FEIS and it will be circulated to all interested and involved agencies. The Planning Board will wait (10) days before the Planning Board's issuance of SEQR Findings on what the determination of environmental impact that the project has as proposed.
- Review of the preliminary plat will be the first action determined after the SEQR process is complete.

Resident, Mr. Bolton requested clarification on how the Final Plat correlates with the DEIS and the project?

Wendy M. Marsh, Attorney clarified that the purpose of SEQR is to look at the environmental impact relatively early in review of the project. The DEIS, and the FEIS are prepared with the SEQRA findings based on the Preliminary Plat. Once a preliminary plat is given approval, the detail for the houses and their locations, including lot lines were based on this information. If there are significant changes made to the preliminary plat as proposed, the environmental impact will again need to be reviewed.

Without further discussion, Chairman DeVinney made a motion to close the Public Hearing at 8:05pm.

A motion to close the Public Hearing and to adjourn the Planning Board meeting was made by Chairman DeVinney and seconded by Board Member Robert Mincer. All Board Members present voted in favor and the Public Hearing closed and Planning Board meeting adjourned at 8:15p.

Draft Minutes submitted by L. Lersch/revisions to lynn.lersch@gmail.com
Minutes approved on March 2, 2016