**MEMBERS PRESENT:** Harold Fabinsky, Chairman

Nicholas Baich

Paul Bodden

Henry Heppner

Philip Murray

Julia Mombrea, Alternate

**EXCUSED:** David Kaczor

Joseph Liberti

**OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator

Steven Bremer, Supervising Code Enforcement Officer

John Wittmann, Code Enforcement Officer

Thomas Ostrander, Assistant Town Municipal Engineer

Timothy Gallagher, Deputy Town Attorney

Rose Messina, Planning Board Secretary

The Chair announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:03P.M. in the Orchard Park Community Activity Center. He stated that if anyone appearing before the Board has a family, financial or business relationship with any member of the Board, it is incumbent upon that person to make it known under State law and the Town Code of Ethics.

The Chair stated that alternate, Ms. Mombrea, will be voting this evening in the absence of Mreppmer. Kaczor and Mr. Liberti.

Upon a motion duly made and seconded, the reading of the June Planning Board Meeting minutes was unanimously waived as each Board Member had previously received a copy.

Mr. Heppner made a motion, seconded by Mr. Bodden to accept the June 11, 2020 meeting minutes as presented.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

Chairman Fabinsky stated that the room is structured to conform to the current Covid-19 Pandemic guidelines. He explained that under the Covid rules, you may be asked to wait outside in the hall as we cannot exceed the allowable occupancy for the room. The agenda items will be reviewed out of sequence to help the room’s occupancy level dissipate.

**OLD BUSINESS:**

PUBLIC HEARINGS**:**

1. 7:00 P.M. Public Hearing, P.B. File #30-19, “Neaverth”, One-Lot Subdivision, 6115 Scherff Road, located on the east side of Scherff Road, Zone A-1. (SBL#198.01-2-4.111) Pre-Application Findings made on 11/14/19. Requesting Planning Board Preliminary Plan Approval.

APPEARANCE: Mr. & Mrs. Daniel Neaverth, Jr.

Mrs. Patricia Bittar, Wm. Schutt & Associates

The Chairman called the Public Hearing to order. The Affidavit of Publication and Posting, published 7/23/2020, was presented and filed with the Board by the Planning Board Secretary.

The Chairman asked for those in favor of the project to speak.

IN FAVOR:

*Mr. Daniel Neaverth, Jr.*

*6115 Scherff Road*

*Orchard Park, New York 14127*

Mr. Neaverth spoke in favor of the project.

IN OPPOSITION:

*Mr. & Mrs. Valentine*

*6161 Scherff Road*

*Orchard Park, New York 14127*

The Valentine’s are worried about the water run-off from the project.

*Mr. & Mrs. Richard San Giacomo*

*6135 Scherff Road*

*Orchard park, New York 14127*

The San Giacomo’s expressed their concerns regarding water run-off from this project onto their property.

*Mr. & Mrs. Richard Shelley*

*6173 Scherff Road*

*Orchard Park, New York 14127*

The Shelley’s expressed concerns for increased run-off water onto their property.

Mr. Bodden made a **MOTION**, seconded by Mr. Heppner to **CLOSE** the Public Hearing.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION TO CLOSE THE PUBLIC HEARING** IS **PASSED**.

Mr. Neaverth stated that engineers created a drainage plan that addresses the water problem.

Mrs. Bittar spoke and explained to the Board that the water run-off issues and concerns voiced by the

neighbors have been resolved.

Mr. Ostrander, Assistant Town Municipal Engineer, explained that the water issue is taken care of with the construction of swales.

The Chair asked the members if they had any questions or concerns regarding the project.

Mr. Baich stated his concerns were addressed by Mr. Ostrander.

Mr. Bodden has no issues and feels there will be ample draining.

Ms. Mombrea stated that her issues were addressed.

Mr. Heppner asked for clarification on the drainage at the site and the swales.

Mr. Bodden made a **MOTION**,seconded by Mr. Heppner,to **GRANT** Preliminary Plat Plan Approval to this 5.1 +/- acres V/L, 1-lot Subdivision based on the submitted Preliminary Plat Plan and survey received 7/18/2020, with the following conditions:

1. All public notices have been filed.

2. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 8/13/2020.

3. Pre-Application Findings were made by the Planning Board on 11/14/19.

4. Public Hearing and Subdivision Development fees shall be paid prior to Final Plat Plan Approval.

5. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Plat Plan Approval.

6. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on the lot per Section 120-3F of the Town Code.

7. Town Engineering Preliminary Plat Plan Approval has been granted on 8/13/2020.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX (6) IN FAVOR** THE **MOTION** IS **PASSED**.

Mr. Bodden made a **MOTION**, seconded by Mr. Murray to move to **WAIVE** the Final Plat Plan public hearing.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX (6) IN FAVOR**, THE **MOTION** IS **PASSED**.

The Chairman asked if the Board had further questions regarding this project, and there were none.

Mr. Baich made a **MOTION**, seconded by Mr. Bodden, to **GRANT** Final Plat Plan Approval to this 5.1 +/- V/L, 1-lot Subdivision based on the submitted Final Plat Plan received 7/18/2020 with the following conditions:

1. All public notices have been filed.

2. This is an Unlisted SEQR action based on the submitted Short EAF Parts 1 and2, and a Negative Declaration was made on 8/13/2020.

3. Pre-Application Findings were made by the Planning Board on 11/14/19.

4. Preliminary Plat Plan Approval was granted on 8/13/2020.

5. Public Hearing ($100) and Subdivision Development fees ($235) have been paid.

6. Recreation fees ($3,250) in accordance with Section 144-70E of the Town Code have been paid.

7. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on the lot per Section 120-3F of the Town Code.

8. Town Engineering Final Plat Plan Approval has been granted on 8/13/2020.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX IN FAVOR (6)**,THE **MOTION** IS **PASSED**.

2. 2. 7:00 P.M. Public Hearing, P.B. File #11-18, “Smokes Creek Farms”, proposed twenty-two lot subdivision, Vacant Land located on the south side of Jewett-Holmwood Road, east of Deer Run, Zoned R-1. Informational Presentation followed by Public Hearing for Final Plan Approval.

**APPEARANCE**: Mr. Chris Wood, Carmina ⦁ Wood ⦁ Morris

Mr. James Jerge, Developer/Owner

Mr. Thomas Johnson, Developer

Chairman Fabinsky asked the Petitioners’ engineering firm to present the final proposal, and explain the impact the project will have on the Smokes Creek tributary that passes through the Village. He noted that a Village Trustee is present, and has also been in attendance for the other public hearings held. He also noted there is some confusion with two other Town separate projects involving Smokes Creek;

“Birdsong Part III”, and another project known as “The Reserve”. He explained that there have been a number of possibilities discussed for “The Reserve” project site, however, there has been no formal submission, and nothing for this Board to process. The “thing” these three projects have in common, is the notion that they are all a part of the headwaters of the East branch of the South tributary to Smokes Creek.

The Chair explained further that the Town and State have specific requirements in terms of water flow. As water leaves a project site, it must not exceed the rate that it did before development. As each project is reviewed, the Planning Board asks the Engineering Department to review the waterway as it is now, and as it will be if the particular project is approved for construction. If necessary, the Planning Board may hire consultants for their review and opinion. One of the priorities of the Planning Board is to assure that the project will have no adverse impacts on the waterway and stream corridor. If constructed as now planned, Town Engineering believes Smokes Creek Farms would be a betterment to the existing water issues. Chairman Fabinsky stated that there have been two-public hearings held for preliminary approval; multiple plans were submitted with various revisions; and tonight we are holding a public hearing for granting, or denying final approval for this project.

Mr. Wood, the Petitioners’ engineer-of-record, gave a presentation, explaining the improvements made to the storm water management treatment plan for the project site. He noted that there will be 60% less run-off water, as the volume of water in the bio-retention pond has been substantially increased. It was explained that the three building lots along Jewett-Holmwood Road will also be configured to play an important part in water retention for this project.

Assistant Town Municipal Engineer, Mr. Tom Ostrander, verified the information presented, noting that the projects’ Stormwater Design System has exceeded the requirements mandated by the Town, which also exceed the State and surrounding townships requirements. Mr. Ostrander explained that all details and design calculations reports have been reviewed and double-checked thoroughly. Engineering is more than satisfied with the proposed subdivisions’ drainage control.

The Chairman asked Mr. Ostrander to characterize this project as either making things worse, keeping them the same, or making them better for down-stream residents. Mr. Ostrander stated that in some instances it is better, in others, the same. The Town Engineering Department required the Petitioner to take the previous hydraulic model of this South tributary to East branch Smokes Creek dated December 2017 and amend it to extend the hydraulic model up to, and include this project site, when it was submitted in May 2020 and it notes no effect on the flood elevations modeled and the projects’ stormwater design system should result in no increase in the peak flow rates of this branch of Smokes Creek. Their proposal of this subdivision will not aggravate the situation in any instance. All documents are available for public review.

The Chairman called the Public Hearing to order. The Affidavit of Publication and Posting, published 7/23/2020, was presented and filed with the Board by the Planning Board Secretary.

The Chairman asked for those in favor of the project to speak.

IN FAVOR:

*Mr. Chris Wood, Carmina/Wood/Morris PC*

*487 Main Street – Suite 600*

*Buffalo, New York 14203*

Mr. Wood spoke in favor of the project.

*Mr. Thomas Johnson*

*250 Highland Court*

*Orchard Park, New York 14127*

Mr. Johnson spoke in favor of the project. He feels there is no negative impact.

*Mr. Sean Hopkins, Esquire*

*Hopkins, Sorgi & McCarthy*

*5500 Main Street – Suite 343*

*Williamsville, NY 14221*

Mr. Hopkins spoke in favor of the project.

*Mr. James Jerge, Developer*

*7645 Quaker Road*

*Orchard Park, New York 14127*

Mr. Jerge spoke in favor of the project.

IN OPPOSITION:

*Mr. Edward Flowers*

*66Woodview Court*

*Orchard Park, New York 14127*

Mr. Flowers spoke against the project. Some of his concerns were an increase in traffic, money for roadway upkeep and “what if the water control does not work”.

*Mr. Scott Hartung*

*169 Highland Avenue*

*Orchard Park, New York 14127*

Mr. Hartung is against this project. His concerns involve the cost of flood insurance.

*Ms. Theresa Hahn*

*7250 Jewett-Holmwood Road*

*Orchard Park, New York 14127*

Ms. Hahn does not support this project. She had questions for the Petitioner and the Board members.

She also noted her concerns for dust control during construction of the homes, and the wildlife that is here.

*Unknown Resident*

*Orchard Park, New York 14127*

This woman does not support the project. She expressed concerns over road traffic and driveway issues.

*Village Resident*

*Orchard Park, New York 14217*

This resident does not support the project and is concerned for the maintenance of the ponds.

Mr. Ostrander explained that the Town Engineering Department will maintain the ponds, along with the Highway Department.

Mr. Baich made a **MOTION**, seconded by Mr. Heppner to **CLOSE** the Public Hearing.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX IN FAVOR (6)**,THE **MOTION TO CLOSE THE PUBLIC HEARING** IS **PASSED**.

The Chair explained that due to the COVID-19 closings, the Erie County Health Department (ECDOH) is behind in their review process, and has not issued an approval letter for this project. The Town Engineering Department cannot grant final their approval until they receive the approval document from the ECDOH and Planning will require these approvals before any decision can be made. The members discussed what action to take and Timothy Gallagher, Deputy Town Attorney, stated that the Board must table this item pending receipt of the final approvals. The public will be notified if we have a special meeting.

Chairman Fabinsky made a **MOTION**, seconded by Mr. Heppner, to **TABLE** this item.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX (6) IN FAVOR**, THE **MOTION TO TABLE** IS **PASSED**.

REGULAR MEETING:

1. P.B. File #03-2020, “Sixt”, One-Lot Subdivision, 5633 Cole Road, 2.58 +/- Acres located on the west side of Cole Road, Zoned A-1. (SBL#198.00-2-43.2) Requesting Planning BoardPre-Application Findings.

APPEARANCE: Mr. & Mrs. Sixt, Petitioners and Property Owners

Mrs. Sixt explained that they are requesting to create a legal building lot. The building lot may be used by them if they sell their home someday. They would like construct a smaller home, and remain in Orchard Park.

The Chairman verified that the Building Inspector had no comments.

Mr. Baich confirmed that the Sixt’s have lived in their current home since 1973.

Mr. Heppner stated he is glad the Sixt’s chose to stay in Orchard Park.

Mr. Bodden re-verified the Petitioners’ request and their reasons for splitting the lot. The lot frontage will be 175-ft.

Acting Planning Coordinator Remy Orffeo stated that they were taking the opportunity to split the lot for the future.

Mr. Heppner made the following Pre-Application Findings, seconded by Mr. Fabinsky, based on the submitted Sketch Plan received 6/29/2020 and the Applicant has detailed:

* The total acreage is 2.58 +/- acres.
* The desired zoning classification is A-1.
* The number of possible stages of completion is One (1).
* The applicant's position with respect to title is Property Owner.

1. All public notices have been filed.

2. The zoning will remain as is.

3. Access to surrounding properties is through Cole Road.

4. Recreation fees will be provided in accordance with Section 144-70E of the Town Code and shall be paid, or provided, prior to the Final Plat Plan Public Hearing.

5. Subdivision Development fees, per Section 144-70D of the Town Code, shall be paid prior to the Preliminary Plat Plan Public Hearing.

6. Public Hearing fees shall be paid prior to the Preliminary Plat Plan Public Hearing.

7. One (1) Street Tree per the Conservation Board's Street Tree Plan shall be provided for each lotper Section 120-3F of the Town Code.

8. The applicant shall complete and submit the Short EAF, Part 1 for this Unlisted SEQR Action.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX (6) IN FAVOR**, THE **MOTION** IS **PASSED**.

2. P.B. File #15-2020, 3438 Orchard Park Road, Southtowns Financial Group, located on the west side of Orchard Park Road, Zoned B-4. (SBL#’s 152.20-2-25 & 26) Natalie King is requesting an Outside Display Permit to operate a community event for “WNY Gold Star Mother”, to be held on 9/12/2020.

APPEARANCE: Mr. Daniel Blake, Petitioner/Property Owner

Mr. Blake stated that the plans have been revised and scaled down to having only the “Shred-It” truck.

Chairman Fabinsky affirmed that the Building Inspector has no comments regarding this request.

Mr. Heppner established that the plans are scaled down from what was originally submitted, to having only the “Shred-It” truck.

Mr. Baich established that this is their sixth annual event, and that it will take place for one-day, on September 12th, in their green space area of the property.

Ms. Mombrea established that the event is from 11:00 A.M. through 3:00 P.M.

Mr. Fabinsky made a **MOTION**,seconded by Mr. Heppner, to **GRANT** an Outside Display Permit, for “Southtowns Financial Group” to operate a Community fund raising event for “WNY Gold Star Mothers”, a non-profit organization, benefitting the families of Veterans, based on the following:

1. 1. All public notices have been filed.

2. 2. This is a Type II SEQR action and therefore no SEQR determination is required.

3. This is a one-day event, and it will take place on Saturday, September 12, 2020, from 11:00 A.M. until 3:00 P.M.

4. The submitted letter of intent and location plan indicate there will be; planned parking, food, and a shredding truck.

5. All signage must be approved by the Building Inspector.

6. Social distancing guidelines will be followed.

7. If any issues or complaints arise, the Building Inspector is to submit a report to the Planning Board detailing the complaint.

8. The Public Safety Committee reviewed this request and issued a 7/22/2020 comment letter suggesting that parking be limited to one side of Hart Place to keep the street clear. They also would like NYS and CDC guidelines regarding social distancing and sanitation to be followed. They have no objections to the approval of the fundraiser.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX (6) IN FAVOR,** THE **MOTION** IS **PASSED**.

3. P.B. File #23-12 & File #08-2020, Orchard Heights, 5200 Chestnut Ridge Road, Zoned R-3, with SR designation. Review of approval Site Plan regarding dumpsters.

APPEARANCE: Mr. Chris Wood, Carmina ⦁ Wood ⦁ Morris

Mr. Sean Hopkins, Hopkins, Sorgi, & McCarthy

Mr. Josh Klotzbach, Hamister Group LLC

Mr. Hopkins began his presentation explaining the location of two existing dumpsters, and the dumpster location for Phase 2. He noted that the dumpsters put in during Phase 1 are not enclosed, which violates the Town Code.

Mr. Baich asked when Phase 2 will take place. Mr. Klotzbach stated that the submission is coming soon for review by the Town’s Engineering Department.

Mr. Hopkins also discussed the wall lighting pacs at the site, noting that they are too bright.

Mr. Klotzbach stated that these will be reduced.

Mr. Orffeo distributed photos of the lighting at the site.

Code Enforcement Officer, Mr. Whitman, gave the Board a report regarding his inspection at the site. He noted that the two-flood lights are obnoxious. He further reported that if they are changed, he feels the site will be fine.

Mr. Bodden established that there are a total of three dumpsters currently at the site. He feels there are normally only two. He asked if the dumpsters could be moved to where they are indicated on the approved plat plan.

It was established that the dumpsters shown on the plan are not located where they were originally approved to be placed.

Supervising Code Enforcement Officer Stephen Bremer told the Board that a garage was to be located

where the unscreened dumpsters are now located.

Mr. Whitman noted that he has spoken with both the Petitioner and the neighboring residents regarding their issues and concerns with this site. He suggested they come to the Planning Board, as the location of the dumpsters was not approved, per the Site Plan.

Chairman Fabinsky asked an impacted neighbor, Mrs. Salerno, to speak on the disturbance the dumpsters create. In addition, various other neighbors spoke, noting that the Petitioner ignored the approved plan.

The members discussed tabling this review. They would like the Petitioner and the neighbors to work together with Engineering and the Building Inspector’s office to develop a plan that will work. This is not the plan that was approved by the Board and they expect the Petitioner to return with a plan that deals with the neighbor’s concerns.

Mr. Klotzbach told the members that it would be difficult for their employees to travel to the dumpster if it is relocated.

Mr. Bodden stated that the issue is the noise of the dumpsters, and this needs to be resolved. Move the dumpsters away from the neighbors.

Ms. Mombrea stated that she is confident the Petitioners can work with the neighbors and develop a plan.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Heppner, to **TABLE** the review of this case. In doing so it is pointed out that the Town has strict guidelines for lighting and the Board suggests you review and adhere to them. This would solve the lighting issue. It was also noted that all dumpsters must be screened in accordance with the Town Code. The currently unauthorized placement of the dumpsters away from their approved location has created intrusive noise for neighboring residents. That problem will also have to be resolved.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

MURRAY AYE

MOMBREA AYE

THE **VOTE** BEING **SIX (6) IN FAVOR,** THE **MOTION** TO **TABLE IS PASSED**.

There being no further business, the Chairman adjourned the meeting at 9:00 P.M.

DATED: 9/03/2020

REVIEWED: 9/09/2020

Respectfully submitted,

Rosemary M. Messina

Planning Board Secretary

Harold T. Fabinsky, Planning Board Chairman