

PLANNING BOARD MAY MEETING MINUTES

- MEMBERS:** Harold Fabinsky, Chairman
Nicholas Baich
Henry Heppner
David Kaczor
Julia Mombrea,
Philip Murray
Karen Byrne, Alternate
- EXCUSED:** Joseph Liberti, is on a leave of absence.
Rose Messina, Planning Board Secretary
- OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator
Steven Bremer, Supervising Code Enforcement Officer
Thomas Ostrander, Assistant Town Municipal Engineer
John Bailey, Deputy Town Attorney
Natalie Nawrocki, Secretary

The Chair announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:00 P.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 noted that this evening we do not have a full Board. Therefore, our Alternate, Ms. Byrne will be a voting member.

The March & April 2021 Planning Board Meeting minutes will be voted on at the next Planning Board meeting.

1. **7:00 P.M. Public Hearing, P.B. File #15-19, "Van Buskirk", Six-Lot Subdivision, +/- 37.32-acres V/L, located on the east side of Cole Road, Zoned A-1.** (SBL#198.00-2-28.1) Pre-Application Findings were made on 8/8/19, and revised on 10/09/20. Requests Planning Board Preliminary Plat Plan Approval for a Six-Lot Subdivision. **NOTE:** Public Hearing on 10/9/20 was postponed.

APPEARANCE: Mr. Glen Van Buskirk, Executor of Estate

The Chairman called the Public Hearing to order.

IN FAVOR:

*Mr. Glen Van Buskirk
P.O. Box 116
Conesus, New York 14094*

Mr. Van Buskirk spoke in favor of the proposed 6-lot subdivision.

*Mr. Kevin Johnson, Realtor
6596 East Quaker Street
Orchard Park, New York 14127*

Mr. Johnson spoke in favor of the proposed subdivision.

AGAINST: No one spoke.

Mr. Baich made a **MOTION**, second by Mr. Heppner, to **CLOSE** the Public Hearing.
THE **VOTE ON THE MOTION** BEING:

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

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

APPEARANCE: Mr. Glen Van Buskirk, Executor of Estate

Mr. Van Buskirk was present for Board questions regarding the proposed subdivision.

It was established that the Board had no further questions.

Mr. Heppner made a **MOTION**, seconded by Ms. Byrne, to **GRANT PRELIMINARY PLAT PLAN APPROVAL** to this 37.32+/- acres V/L, 6-lot Subdivision based on the submitted Preliminary Plan and survey received 4/15/21 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 5/13/2021.
2. Pre-Application Findings were made by the Planning Board on 8/08/19.
3. Public Hearing and Subdivision Development fees shall be paid prior to Final Approval.
4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Approval.
5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot, per Section 120-3F of the Town Code.
6. Town Engineering Preliminary Plat Plan Approval has been granted on 5/13/21.

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

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

The **VOTE** on the **MOTION** being **UNANIMOUS**, the **MOTION** to **GRANT PRELIMINARY PLAT PLAN APPROVAL** is **PASSED**.

Mr. Heppner made a **MOTION**, seconded by Mr. Baich, to **WAIVE THE FINAL PLAT PLAN PUBLIC HEARING**.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

THE VOTE BEING UNANIMOUS, THE MOTION IS PASSED TO WAIVE THE FINAL PLAT PLAN PUBLIC HEARING.

Mr. Heppner made a **MOTION**, seconded by Mr. Murray, to **GRANT FINAL PLAT PLAN APPROVAL** to this 37.32 +/- acres V/L, 6-lot subdivision based on the submitted Final Plan received 4/15/2021 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Parts 1 and a Negative Declaration was made on 5/13/2021.
2. Pre-Application Findings were made by the Planning Board on 8/08/19.
3. Preliminary Plat Plan Approval was granted on 5/13/2021.
4. Public Hearing and Subdivision Development fees have been paid.
5. Recreation fees in accordance with Section 144-70E of the Town Code have been paid.
6. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot, per Section 120-3F of the Town Code.
7. Town Engineering Final Plat Plan Approval has been granted on 5/13/21.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

THE VOTE BEING UNANIMOUS, THE MOTION IS PASSED FOR FINAL PLAT PLAN APPROVAL.

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. Pre-Applications Findings were made on, 3/14/19 and Preliminary Plat Plan Approval was granted on 1/9/2020. Petitioner is requesting Board to Grant Final Plat Plan Approval. Tabled by the Board on March 11, 2021 for Site Plan details, and Erie County paperwork.

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

Chairman Fabinsky explained that this particular project has gone through very high scrutiny. He asked if there is anyone that would like to briefly speak, prior to the Board voting in this matter. He also asked that the Town Assistant Engineer speak on the project.

Mr. Thomas Ostrander, discussed the history of this project, and he concluded that it is a betterment to the flood plain, with a deeper area. The project meets State and Federal regulations, with the detention ponds taking in no more than the present rate of water flow, and water leaving the site is of better quality.

The Chairman asked if anyone would want to speak in favor of the project.

IN FAVOR:

Mr. Chris Wood, Carmina Wood & Morris
487 Main Street – Suite 600
Buffalo, New York 14127

Mr. Wood spoke in favor of the project.

Mr. Thomas Johnson, Builder
6435 W. Quaker Street
Orchard Park, New York 14127

Mr. Johnson spoke in favor of the project.

Mr. James Jerge, Developer
6630 East Quaker Street
Orchard Park, New York 14127

Mr. Jerge stated that he is the developer and supports the proposed project.

The Chairman asked if anyone would want to speak against the project.

IN OPPOSITION: No one spoke.

Mr. Kaczor made a **MOTION**, second by Mr. Baich, to **CLOSE** the **PUBLIC HEARING**.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

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

Mr. Baich made a **MOTION**, seconded by Mr. Heppner, to **GRANT FINAL PLAT PLAN APPROVAL** to this 24.47 +/- V/L, 22-lot subdivision based on the submitted Final Plat Plan received 7/01/2020 with the following conditions:

1. All public notices have been filed.

2. This is an Unlisted SEQR action based on the submitted Long EAF Part 1, 2, and 3, a Negative Declaration was made on 6/11/2020.
3. Pre-Application Findings were made by the Planning Board on 1/09/2020.
4. Preliminary Plat Plan Approval was granted on 6/11/2020.
5. Public Hearing (\$100) and Subdivision Development fees (\$765) have been paid.
6. Recreation fees (\$49,500) 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 each lot, per Section 120-3F of the Town Code.
8. Town Engineering Final Plat Plan Approval has been granted on 5/13/21

The Chair called for a "roll-call vote" and then affirmed;

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

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	ABSTAINED
BYRNE	AYE

ON THE QUESTION: Attorney John Bailey spoke.

The Chair asked for comments from the Petitioners, and there were none.

THE **VOTE** BEING **(6) SIX IN FAVOR**, and **(1) ONE ABSTENTION**, THE **MOTION IS PASSED** to **GRANT FINAL PLAT PLAN APPROVAL**.

3. **7:00 P.M. Public Hearing. P.B. File #01-21. "Haas"**, proposed One-Lot Subdivision, Vacant Land, 7793 Michael Road located on the South side of Michael Road, west of Transit Road, Zoned R-2. Pre-Application Findings were made on 2/11/21. Applicant is requesting Planning Board grant Preliminary Plat Plan Approval. (SBL#153.12-3-11.1)

APPEARANCE: Ms. Brenda Frank, "Haas" Executor of Estate

The Chairman called the Public Hearing to order.

IN FAVOR:

*Ms. Brenda Frank
7887 Michael Road
Orchard Park, New York 14127*

Ms. Haas spoke in favor of the request.

*Mr. Brian Russo
7901 Michael Road
Orchard Park, New York 14127*

Mr. Russo, a neighbor, spoke in favor of the request.

*Ms. Courtney Penn
7901 Michael Road
Orchard Park, New York 14127*

Ms. Penn, a neighbor, spoke in favor of the request.

AGAINST: NO ONE.

Mr. Baich made a **MOTION**, second by Mr. Kaczor, to **CLOSE** the **PUBLIC HEARING**.

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

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

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

Ms. Mombrea made a **MOTION**, seconded by Mr. Kaczor to **GRANT** Preliminary Plat Plan Approval to this 1.17+/- acre, 1-lot Subdivision based on the submitted Preliminary Plan and survey received 3/18/21 with the following conditions:

1. This is an Unlisted SEQRA action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 5/13/21.
2. Pre-Application Findings were made on 2/11/21 by the Planning Board.
3. Public Hearing and Subdivision Development fees shall be paid prior to Final Approval.
4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Approval.
5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot per Section 120-3F of the Town Code.
6. Town Engineering Preliminary Plat Plan Approval has been granted on 4/27/21.

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

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

THE **VOTE** BEING **UNANIMOUS**, THE **MOTION IS PASSED TO GRANT PRELIMINARY PLAT PLAN APPROVAL**.

Ms. Mombrea made a **MOTION**, seconded by Mr. Kaczor to **WAIVE THE FINAL PLAT PLAN PUBLIC HEARING**.

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

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

THE **VOTE** BEING **UNANIMOUS**, THE **MOTION** IS **PASSED** TO **WAIVE THE FINAL PLAT PLAN PUBLIC HEARING**.

Ms. Mombrea made a **MOTION**, seconded by Mr. Baich, to **GRANT FINAL PLAT PLAN APPROVAL** to this 1.17 +/- acre, 1-lot subdivision based on the submitted Final Plan received 3/18/21 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Part 1, and a Negative Declaration was made on 5/13/2021.
2. Pre-Application Findings by the Planning Board were approved on 2/11/2021.
3. Preliminary Plat Plan Approval was granted on 5/13/2021.
4. Public Hearing and Subdivision Development fees shall be paid prior to this motion becoming affective.
5. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to this motion becoming affective. .
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 Final Plat Plan Approval has been granted on 4/27/21.

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

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

THE **VOTE** BEING **UNANIMOUS**, THE **MOTION** IS **PASSED** TO **GRANT FINAL PLAT PLAN APPROVAL**.

4. P. B. File #11-21, 3201 Southwestern Boulevard, Tops Plaza, Outparcel, Zoned B-1. Keystone Novelties is requesting Planning Board approval for an Outdoor Tent Display to sell fireworks, 6/22/21 through 7/5/21. (SBL#152.16-7-1.1)

APPEARANCE: Mr. Chris Eygecenno, representing "Keystone Novelties"

Mr. Eygeceno told the members that their former location at the "Family Video" property, Union and Michael Roads, was sold. Since that time, they developed an agreement with Top's Markets to sell "Sparklers" in their parking lot area, located along Southwestern Boulevard. Mr. Eygeceno feels this is a better location.

Chairman Fabinsky expressed the concerns he had for operating this type of business next to the adjacent gas station.

Mr. Eygeceno stated that that all Town, State, and Distance codes will be met. He further stated that the sale of "Sparklers" is approved by Albany, New York.

In response to Mr. Heppner's questions, Mr. Eygeceno stated that Keystone Novelties does not sell products to anyone under the age of eighteen. In addition, he is not aware of any negative reports from any of their 160-New York State locations, nor from their 450-locations across the country.

Mr. Baich noted his concerns for security and theft at the site. He also inquired on the size of the requested tent.

Mr. Eygeceno stated that there is 24-hour monitoring of the site, and that during operating hours, a sales clerk is present 100% of the time. The size of the outdoor tent to be erected is 20-ft. x 40-ft.

Mr. Kaczor established that the site is located 150-ft. from the edge of the tent to the gas pumps. He also established that the Towns' Fire Inspector has given his approval for this request.

Ms. Byrne established that the insurance taken out is for a one-million dollar bond.

Chairman Fabinsky asked that the definition of a sparkler be defined by Mr. Eygeceno. He then questioned the "fountain" type sparkler as being potentially dangerous, as it can reach up to 10-ft. in height. Mr. Eygeceno explained that sparklers are not fireworks, as they do not leave the ground. He told the members that there were record sales last year with this sparkler, and no known incidents occurred. No one under the age of 18 can purchase these.

Mr. Orffeo noted that the Workmen's Compensation form has expired and the Disability form expires soon. Mr. Eygeceno stated that he will provide new forms that are current.

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich to **GRANT** an **OUTSIDE DISPLAY**, for Keystone Novelties from June 22nd through July 5th, 2021 to operate a display with fireworks for sale in an outparcel space located in the Top's Plaza, per the location plan received 3/21/21, and the following conditions and stipulations are to apply:

1. This is a Type II SEQR action and therefore no SEQR determination is required.
2. There will be no additional outside lighting for the display or temporary structure.
3. There will be no banners or additional signage for this facility.
4. Sales are to take place in a 20-ft. x 40-ft. tent.
5. Hours of operation are 9:00 AM to 9:00 PM.
6. If any issues or complaints arise, the Building Inspector is to submit a report to the Planning Board detailing the complaint.
7. Security will be provided on a 24-hour basis.

8. Applicant is to submit Workers Compensation and Disability paper work with current dates.

ON THE QUESTION:

Chairman Fabinsky asked that Mr. Kaczor add Item #7 to the motion.

Mr. Heppner asked that Item #8 be added to the motion to include Worker Compensation and Disability paper work with current dates.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

THE VOTE BEING UNANIMOUS, THE MOTION IS PASSED.

The Applicant was advised to check with the Building Inspector regarding a temporary banner.

Additional discussion followed regarding safety concerns with “fireworks”.

CONCEPT REVIEW:

1. P.B. File #16-2020, Speedway, Vacant Land, Corner of Southwestern Boulevard & Angle Road, (adjacent to the Dollar General Store), located on the south west corner, Zoned B-2. (SBL#153.07-1-8.3) “Speedway” is requesting to develop a Convenience Store and Fuel Sales Facility with access driveways. The Planning Board declared themselves “Lead Agency” on 12/12/20 for this Type 1 SEQR Action. Conservation Board approval granted on 2/2/21.

APPEARANCE: Mr. Rob Sweet, McBride Dale – Clarion
Ms. Karen Majownowski, Civil Engineer

Mr. Sweet presented and explained the proposed plans to construct a 4,600+/- sq. ft. Convenience Store and Fuel Sales Facility at this site. He stated that they received an approval letter from the Town of West Seneca advising that they will provide access to their sewer system. A copy of the Sewer Agreement will be sent to the Planning Department. He, also, told the members that they have two shared driveways with Dollar General; one on Southwestern Boulevard and the other on Angle Road. Mr. Sweet noted that their Landscaping Plan had been approved by the Conservation Board on 2/2/21. He explained the buffering at the site and at the back of the property, stating that they also feel the building, itself, acts as a buffer with the topography of the site. It was established that there are a total of 31-parking spaces. Mr. Sweet discussed the lighting plan for the site.

The members’ questions and comments were as follows:

- Ms. Mombrea stated that the land here looks marshy.
- Mr. Baich discussed the size of the proposed project and established that the size of this project is a little larger than the existing “Speedway” located in the Village of Orchard Park.
- Mr. Kaczor discussed the Zoning of the property and feels the Senior Complex located here must be protected from sound and lighting. Lighting should be more toward the front of the building and not the back. This is a twenty-four hour operation.

- Chairman Fabinsky discussed emergency situations that could occur at the site.
- Mr. Sweet stated that Speedway has their own emergency systems and security system.
- Mr. Murray feels this project will change the character of Angle Road. It's a quiet road and he has mixed feelings on the proposed project.
- Mr. Kaczor suggests the entrance way into the site be predominantly Southwestern Boulevard and the Angle Road driveway should be down played.
- Ms. Byrne spoke of the existing Dollar General.
- Mr. Heppner is concerned for the Senior Complex and lighting from this site. He also worries about snow removal at the site and it placement. Mr. Sweet will get information regarding the snow removal placement for the Board.
- Chairman Fabinsky spoke of snow removal, noting that if the snow exceeds the storage area, it will need to be trucked-off the site.
- There is a concern for fuel tanker deliveries using Southwestern Boulevard for access into the site.

There being no further business, the Chairman adjourned the meeting at 7:30 P.M.

DATED: 9/03/21
REVIEWED: 9/06/21

Respectfully submitted,
Rosemary M. Messina
Planning Board Secretary

Harold Fabinsky
Planning Board Chairman