

Town of Harpersfield Planning Board

Minutes: January 18,2024 Special Meeting.

Present:K. All, F. Ciulla, A. Gallagher, D. King, W. Keller and D. Darling

Also present: Liz Page, A. Phillips, N. Brower, Elizabeth DeFalco, Bill Burdick, Kieth McCLean, Camberly VanValkenburg; Helen and Arthur Kinsley; Matt Moyse; Kitty Ballard; Kathryn Demby; David Cox, Vicky Klukkert and Alie E?.

Chairman D. Darling called the meeting to order at 2:11 p.m..

Minutes of the Dec. 13, 2023 meeting were approved with a number of corrections proposed by A. Phillips. There were a number of places where there was a great deal of discussion and she wants the minutes to reflect that. It was a three-hour meeting and the minutes are a summary of that meeting. Allyson summarized changes and submitted them in writing for Liz and the Planning Board to review.

Concern about oil and gas. A.P said the planning board does not have the jurisdiction to respond to spills. To consider additional study some info it actually occurred or a potential impact. Keller commented on the minutes, saying the comment by F. Ciulla in those minutes was a good comment, regarding the staging area. He cited a case at DEC where wells were contaminated. This is a really good point and there was discussion regarding the need for a site visit. There are people down hill from the site who have commented. Doesn't want people wondering if stuff running off the track is getting into their water supply. We are doing an environmental review right now. We don't have any evidence a spill occurred.

K. All said On that same point, DEC has regulations on the storage of gas. A.P. - The planning board asked if there was storage of petroleum and the applicant replied no.

F. Ciulla said on the big track, rubber is laid down on that track. It becomes dirty and if the rain washes off anything that is on the track and asked where it goes.

A. Phillips said the planning board is not reviewing the environmental impact of its current permitted operations. .C. thinks need to consider. W. Keller again referred to Tractor Supply and that they had to consider what was washing off their parking lot. Does DEP have more ability to regulate.. A.P. said they fall under the jurisdiction of DEP which has a different level of regulation. We do not make regulations. Can't compare. The consultant indicates that what they are proposing in the SWPPP does meet DEC's standards.

The minutes were then approved with corrections. Motion carried 5-0

D.Darling announced the meeting is not part of the public hearing and the planning board will not be expecting any comment from the public at this meeting. The public hearing is to be continued at a date to be determined.

A.P. said there is a list of follow up items from the last meeting.

Impact on Traffic. She has followed up with Fred Utter (Davenport highway superintendent) and Russ Hatch (Harpersfield highway superintendent). The original agreement to provide improvements to the town of Davenport was stopped by the lawsuit filed by neighbors and payment for improvements were never made. In 2023 Davenport had some issues with Parker Schoolhouse Road. It is likely a year or two off in the schedule of normal maintenance. The town of Davenport did do some temporary patching and filled pot holes last fall. There is some construction activity at the track which may have contributed but there is only a temporary repair for the roads.

Hatch said the majority of the traffic is over the Davenport portion of the roads. There have been some signs posted to slow traffic. That may have been due to public comments.

A. Phillips invited Fred U. to submit a letter, which he indicated was not likely, but he would attend a future meeting.

As for the Region 4 DEC contact. The mobile sources contact and A. Phillips have not yet connected. There were three questions the planning board could not answer, and were very technical. The DEC guidance says you can reach out to the Department if you need help trying to get them answered.

She also followed up with the applicant's current counsel regarding comments from the planning board's acoustic consultant received on the day of the last meeting, after he reviewed the public comments and to see if it changed his opinion.

She read the Dec. 13 SLR memo. She said not much new was provided and the prior comments were based on assumptions there need to be certain controls in place. She said there were affidavits submitted by the applicant in response to the August memo, in response to the previous memo that did recommend a noise study to quantify the noise. Can we accept those affidavits as mitigation. They were submitted on the assumption this is how the track is going to be operated. The applicant responded they would not operate more than 2 to 4 days, the two track will operate on the same days and there would be no racing events, and the mini track will only be used for training..

At the last meeting it was discussed if the planning board can accept the affidavits as mitigation to ensure there is not going to be a substantial adverse impact from noise. It deals with the EAF Part II section on noise and the section dealing with community character. We specifically looked at our comprehensive plan and it said. Since there is no zoning, it hangs on can the impact of uses be mitigated and can they be compatible with surrounding uses as well.

In this memo, the applicant saying going to do these things, but need controls in place to ensure they actually do them. Past shows little can do to monitor the facility. Have to review the project and confirm what they are seeking approval for.

We don't have the ability to issue a conditioned negative declaration. We can't say there is no condition for potential impact on the condition XYZ. Must decide, based on what is being proposed, is there no potential for significant adverse impact.

The memo was provided to the applicant. In the report consultant talks about control measures at different facilities and offers examples. Typical maximum sound levels for mini bikes, nearest receptors. If 20 mini bikes, etc. Various noise thermometers to determine what that level is. 33-40 decibels could cause annoyance from the mini track. Provides examples of dba levels dependent on types of sound.

If the mini track is operating by itself, it would have an effect. If operating simultaneously with the existing track the noise from the mini track is downed out. If not simultaneously that does not apply. Only way to determine ambient sounds is to conduct a survey, but the affidavit from the applicant proposes they will modify their activities so they do not have to do a survey.

Prior SLR memos said it would need to conduct a sound survey if they were going to engage in certain activities.

The Town needs a way to ensure controls in the affidavit are being implemented. A webcam, sound monitor was discussed. If they say they are going to do this and we have no way to know then it may not be sufficient mitigation. A full time web camera to show both track activities in real time and requirement the vehicles coming in to use the track pass sound testing. There needs to be a record of what equipment is being used and on what days. They are giving examples of what could be put in place. Could provide a record of stationary devices. Examples that could put in place to ensure mitigation measures are being implemented.

The applicant provided a response back. and A. Phillips wrote on Dec. 13 to the applicants current attorney on Dec. 23 and attached a follow up memo from the acoustic engineer.

If client intends to implement measures, please include so they can be reviewed as part of the application.

A. Phillips read the SLR memo and the email response from the applicant in reference to possible sound mitigation: A 5-8 foot dirt berm, according to the SWPPP; pre-entry noise technical inspection of all minibikes and go carts per NYSafety Track guidelines. Installation of a remote sound meters at certain footage in response to engineer's recommendations. A web camera available to the board's designee which would be incorporated into the project design. We need to consider what effect that would have.

It doesn't mean much to us unless we have someone who can review the data. Code enforcement officer has said he is not qualified. We don't have someone we can designate to monitor a web camera in real time.

W. Keller said he is coming from the view that the planning board has an acoustic engineer, but the community will be affected. Noise is an issue. Some meter so many feet from the track doesn't mean a thing if we don't have a set standard. It's all going to differ because the noise is different under different conditions at the same level of decibels, according to the literature. Need to understand: This what it is going to mean to the people who are living with the track. It is our responsibility to look out for the community and we're hearing that it is an issue. IF SEQRA doesn't allow us to review, it's remiss. It is an environmental issue that differs with condition. What I need to approve this is a review of what the anticipated noise is going to be and its impact, they anticipate on a living human being. It is somewhat subjective. Whatever they are proposing. It's going to change. What does matter is what is it doing to the people who are sitting here, it affects their life.

A. Phillips said the planning board is reviewing an application for a site plan amendment and potential impacts of what they are proposing that is new and not currently permitted.

W.K. - That noise even though it may be less at lower decibels, if it reaches the people it is bothering we need to know that impact. We have engineering stuff, but does that apply to its impact on the environment.

D. Darling. Our SEQRA review is going to let us do that.

A. P. - We are limited to the impact of the proposed changes and the expansion of the scope of use.

She referred to the August noise report.

At the last meeting the applicant wanted us to identify why we needed a site visit. To understand and consider the layout and locations of all existing structures and proposed improvements
Get a Response. Location of any outdoor lighting facilities and types of fixtures was identified. We need to observe the location of existing and proposed lighting in connection with their request to expand the hours of operation of the track and cleared area. We said we wanted to see the location, design and use of all existing buildings. Land clearing - a site plan doesn't show the setbacks and vegetation from the property lines. She reads on based on discussion at last meeting.

In response to that: applicant's attorney now says in an email they are not seeking approval to expand hours of operation. Applicant again changing the scope of the application. Jan. 2 letter from the Applicant was discussed

The response is that they are not seeking approval to expand the hours of operations, but it needs to be confirmed. Refers to August affidavit submitted in response to SLR memo, but it does not address hours of operations at all. Refers to SLR memos. They say they are no longer proposing certain activities, but it keeps changing.

D.K. -My biggest concerns different owners, lawyers, contractors or engineer and a ton of paperwork from them all. What are we review and being asked to approve.

A.P. - It's a moving target where they keep changing the goal posts. Because this is a Type I action we can't put conditions on a Negative Declaration. Have to review what they are proposing and make a determination.

W.K. – We review the EAF and analyze what they are proposing and whatever impact it will have on the community.

D. D. - We have to get back to what we are reviewing with an amended application.

A.P. What are they proposing. We have worked with them on these repeated changes. Now they are changing it again.

N. Brower. The constant chasing of the plan. He said the county planning board had recommended that an amended application should be provided. For the applicant to come up with a final, concise plan.

A. P. – Normally you have a project. They change and mitigate the impacts based on comments received through the review process. We're studying it then they say they aren't proposing it. If the applicant is no longer proposing or requesting approval for activities, we need an amendment and revised EAF

D.K. - Deal with one owner, not a handful. Deal with one lawyer, not a handful. Things change every week.

A.P - They are on their third lawyer and we don't get anyone to attend the meetings. So, it requires a lot of follow-up. It's not our job to define their project. Not our job to dictate to them what they are applying for. If the board wants to require them to submit an amendment to clarify what they are applying for, I can communicate that.

D. D. - We need to put together a response to them. Lets get a concise response confirming what they are now proposing and go from there.

W.K. - expresses his concern to have the review include not only the technical data but the actual impacts to be mitigated.

A.P.- We don't even know what they are proposing so it has made it hard to continue to review potential impacts.

N.B. - You can't change the plan to address the concerns that are brought up is a good thing, but the constant chasing a moving target. Need to confirm the action and what they are seeking approval for.

D.K. - No more we will change it today to match tomorrow.

AP - I think we need a formal amendment and a concise EAF. It is not our job to craft the application.

D.D. - I agree we have to get back to basics.

D. K. Questions who they are dealing with and who has ability to act on behalf of the owner and operator.

A.P. - Do they have the ability to make those decisions.

D.D. - I agree we need to put together a response to the Applicant's email and get back to a basic start with this.

A.P - We're not saying they need to start over, but we can build off of what we have, which is very useful information and months of comments. They need to confirm what they are proposing and what are they seeking approval for and base decisions on that.

D.K. - What they are proposing has to match our review under Part II.

A.P. - Everybody deserves for us to get this right.

This may be all we can do for today. I do want to discuss the scheduled site visit. There was a considerable amount of back and forth on why we need the site visit. Then they were going to allow the visit, last week they required certain forms asking for personal information such as Social Security numbers, drivers license number, medical information, etcetera. Also a form to agree to hold harmless and indemnify track owners and other entities in order to be allowed access. It raised many legal questions for the board and the visits did not take place.

The planning board members had some questions, which does require me to provide legal counsel. The board does need a closed session. I would like to provide legal advice and counsel that goes outside the scope of the open meeting law.

A motion was made by W. Keller, with a second by A. Gallagher to enter an executive session at 3:35 p.m. to receive legal advice and counsel from the planning board attorney, that is outside the scope of open meetings law. The planning board recording secretary and county planning representative (county

planning is a client of A.P./ Young Sommer) were included under the understanding that there is a common interest that will be furthered by the legal advice and counsel and they adhere to the attorney/client privilege. Motion carried 5-0.

As attendees were leaving and prior to the executive session beginning, Matt Moyses questioned the term amendment for the site plan and another woman questioned how it came to this point.

The board came out of executive session at 4:45 p., on a motion by W. Keller with a second by F. Ciulla. Motion carried 5-0.

D. Darling said Weaver Road Solar project applicant had sent a request to change from stationary array panels to tracking panels. A motion was made by D. King with a second by F. Ciulla to refer it to the planning board's consultant, Delaware Engineering, for review, before the planning board responds to the applicant.

W. Keller referred to acid rain and now climate change which is changing the average temperature and is related to ground water recharge. Can we ask them to do that to consider this until DEC changes its regulations? D.D. said they would ask them when they come back to the meeting.

D. Darling also asked p.b. members how and when they wanted their one-time stipend.

On a motion by D. King, with a second by W. Keller, the meeting was adjourned at 4:52 p.m. Motion carried 5-0.

Respectfully submitted,

Liz Page
Recording secretary