

Town of Harpersfield Planning Board

Minutes: **5/16/24 Special Meeting**

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

Also present: L. Page, A. Phillips, Jennice Chrisman, Vicky Klukkert and Mary Crisafulli.

D. Darling called the meeting to order at 2:20 p.m..

Minutes of the April 24, 2024 meeting were approved as presented on a motion by W. Keller and a second by A. Gallagher. Motion carried 5-0.

A. Phillips was present. The special meeting was called in order to devote time to New York Safety Track's application rather than trying to squeeze it =between the solar project application and other items in the regular meeting agenda.

She provided an update on the litigation, with NYSafety Track/ Mountain Top Airfield filing and Article 78, Mandamus to Compel, ordering the planning board to close the hearing or tell the applicant what is needed on the site plan or to make a decision.

Papers in opposition have been filed and A. Phillips reviewed the application and the history of NYSafety Track. She said parts of the Petition to compel the planning board to close the hearing in now mute as the public hearing was closed on May 8th. The papers in opposition to the Petition were filed on May 13. They have consented to adjourn the return date which is now July 8. The planning board will proceed with its review of the application while that proceeding is pending.

The planning board attorneys moved to dismiss, but the petitioner will get to file a reply. In the meantime it will sit in "limbo".

The planning board did receive a number of additional written comments, which were distributed to the planning board member and will become part of the record.

With the hearing closed, the planning board has 62 days from May 8 to review the application and make a decision (July 8).

The planning board must now determine its next steps.

The planning board reviewed the application and from Nov. - March reviewed Part II of the SEQRA process, determining moderate to large impacts or areas of small or no impact. There were areas they could not make a determination on due to not having enough or any information available.

The planning board still does not have a complete application and by law there are a number of standards they must review before making a decision. They need to determine if this is an application that can be approved under the Site Plan Review Law.

A. Phillips reviewed the standards in the Site Plan Review Law and the partially concluded Environmental Assessment Form with the Planning Board. The Planning Board elected to proceed with its review of the Site Plan standards.

F. Ciulla asked if the track was still asking for approval to operate seven days per week, and have the gates open until 10:00 pm.

A. Phillips said the track filed an application in 2022 with a number of changes in the scope of use and the construction of a new mini track. The application included a request to extend the days and hours of operation.

Any new land use activities requires a site plan approval and this also applies to any change in use. The Site Plan Review law required that any new construction or expansion would require a site plan. So they filed the application to amend the site plan.

The Board discussed Sections 5.040 and 4.010. Section 5.040 of the Site Plan Review Law considers four standards and general standards und Section 4.010. They would work their way through the law and answer the four standards in order to determine if the application is approveable.

The Board discussed the number of application revisions over several months. Including changes in scope of operation. What they were approved for in the original application and what are they seeking approval for. We are revieing the new improvements and expanded uses that are now proposed.

In 2014, after litigation, there was a determination by the town's Code Enforcement Officer regarding non-racing events, spectator events, the number of days and hours. Now they are seeking to operate 5 to 7 days. They were originally approved for 3 days per week, and the Code Enforcement Officer confirmed operation 2 to 4 days, during daylight hours was within the scope of that approval. Now they wish to operate later into the evening and 5 to 7 days a week. They originally asked for approval to double the number of riders, but they said they were no longer seeking approval to do that. They said they will not be doubling the number of participants will limit the new track to mini bikes and go carts.

The Applicant has also failed to make payment into the escrow account which allows the town to legal and technical consultants to help them review the application.

The planning board received reports from its acoustic engineer. He commented that that the proposed additional days had the potential for significant adverse environmental impact and that there were a number of things in the noise report provided by the applicant that did not address the scope of use they are proposing. He advised a comprehensive noise study would be needed and recommended the board not approve more days of operation until that was done.

The public hearing was opened for the planning board and the public made a number of comments related to the noise from the track. A history of noise complaints was also documented for the record. The public comments, along with additional information, were submitted to the acoustic consultant and he provided anotehr report

The applicant then submitted affidavits stating that it would not operate beyond the currently permitted 2 to 4days, to mitigate the need for further noise study. .

The applicant also submitted an affidavit that the shooting range had been decommissioned. The planning board had indicated the shooting range had not been shown on the application and was definitely a point of safety concern. A plan showing the shooting range was submitted and the applicant said it was decommissioned in July 2023.

The noise expert indicated that operation of the mini track could be drowned out by the larger track operations if they were both operating at the same time (simultaneously) and other controls were in place.

But these controls do not address the increase in days of operation. There was a great deal of public comment related to the noise, the shooting range and other concerns about the track. Some of those things, such as speeding cars and doing doughnuts on public highways, are not within the planning board's jurisdiction, but other things are.

The Applicant indicated they would limit the track operations to four days. However, there is evidence appearing online that corroborates what members of the public were saying about their intent to operate more days per week, that there are people camping and using the track in the evening for other activities that create noise, in addition to the operation of an airplane doing aerial shows and buzzing neighbor's houses. There is also a concern about stormwater runoff onto neighboring properties.

A. Phillips, in referring to the Site Plan law said our own noise consultant has recommended that the board not approve the request to expand the days of operation and allow racing without a comprehensive noise study.

All of the comments were submitted to the noise expert again. In January the final back and forth asked the applicant to put in writing specifically what they were asking approval for. The planning board chairman sent a letter with a list of questions to answer.

The Applicant submitted new materials on January 30, 2024 and a number of items were resubmitted to the board..

All of the mitigation for those items remain part of the process the planning board must use in making its determination.

A number of the public commented last month that the affidavit submitted by the Applicant should not be ruled as mitigation and they are not going to limit the number of days of operation. They submitted a print out of the calendar from the Tracks website and the Board members confirmed there is evidence of this online.

The planning board is in a position now where it would be arbitrary to disregard this information in the record. All the information in the record must be considered when making the decision. The online calendar show events taking place more than four days per week. Other online postings were discussed and copies will be included in the record.

D. King asked if there will be a site visit. A. Phillips said it was never approved because of the indemnity form and persona information required by the applicant. At the time the visit was requested, it was the off season when the track was not holding events. They never reached an agreement on the forms, so, the planning board was not able to do a site plan visit of the property, which the Planning Board has been able to do on other applications. D. King said the authority to review a site plan application should give us the right to do a site visit.

W. Keller also indicated the sign on State Rt. 23, advertising the track, advertised as a "racetrack" for cars and motorcycles.

The board discussed a number of items that have appeared on the internet that become part of the record and are readily available to anyone who goes on-line. Again, these materials indicate the Applicant intends to operate more than 4 days per week.

The public hearing comments also demonstrated that members of the public can hear the track from far away and are affected by the noise. The comments are verifiable and there is a history of complaints on this facility, complaints over the past 10 years. Public hearing comments expressed concern that this impact would be worse if the track was permitted to operate more days per week.

A. Phillip said they have to take all the information in the record into account when deliberating on the application.

W. Keller said the town's comprehensive plan and what's expected for the town and that they are in conflict. He wondered why the planning board would expect the applicant to adhere to the affidavits when there is evidence online that they do not plan to do what they say.

He also referred to the trees that have already been cleared from the site, in violation of the general stormwater permit. He also referred to the calendar posted by NYSafety Track that lists events for seven days straight and in one spot 14 days straight. There will be an impact on other people and the use or development of other property or businesses.

The SP Law indicates there should be orderly development, in harmony with the surrounding area. He said the Application is not in harmony with the orderly development of the town. He also referred to the noise expert's comment.

D. Darling said I want to see it. There is not enough information to say new impacts would be mitigated.

A. Phillips reminded the planning board they were not making a decision today, but could conduct straw polls on the various standards in order to have a direction on what the next steps should be.

There is a consensus that the Town Comprehensive Plan requires that impacts be mitigated. 5.040, Question 1. There is an existing facility but they are proposing to expanded the scope of uses and operate more than four days. The Board discussed the public hearing comments and its experts recommendations and concluded that expanding the days of operation would discouraging appropriate development and use of other properties.

The board discussed 5.040 Item 3. The board discussed whether what is proposed is detrimental to personal safety. F. Ciulla said the front stretch of the track has no guardrails. D. King said vehicles are leaving the track and coming out onto a public road where they are doing wheelies and racing. There are unregistered vehicle on a public highway. A. Phillips said the planning board has no control over this and NYSafety Track cannot control what is going on along a public highway. But increased noise and traffic can be detrimental to the natural characteristics of the site and the present surrounding uses.

The shooting range is on the site and there was never any approval for a shooting range. There is no information provided anywhere. They submitted an affidavit that it would be decommissioned. There is no shooting range approved and it would remain prohibited.

D. Darling asked about lighting. The lighting was submitted by the applicant as an option, but does not state that it is part of the site plan nor does it provide any information about the angles of the lighting. If there is camping, it is a matter of safety to provide lighting. But the applicant has never asked for approval for camping and none has ever been permitted. So, it remains prohibited.

It is being advertised on the internet that people can arrive before 10 p.m. on the day before. The applicant said it is to allow recreational use of the track for frilling (**grilling**) and socializing. Here again, the neighbor's say there will be more noise late into the evening if the hours of operation are extended. The board discussed that these comments and concerns are credible.

Item 4 lists general standards.

Item 1 - Lighting and signs. The new track is a structure that is not visible from the public road and therefore the first part of this standard is not applicable. Exterior lighting was discussed. At first it was not proposed, and the applicant did not show any exterior lights on the plans. But they were requesting to

extend the hours of operation into the evening and D. Darling said it is a safety concern. The Applicant then submitted an “optional” lighting. The plan was discussed but the applicant has not provided the information indicating the lighting will minimize glare. The materials describe them as solar motion sensor flood lights and shows them in the area of the existing roadway, or staging area/ paddock. D. Darling said it is just one more point of confusion. It is unknown if they are actually proposing the lighting as it is identified as “optional”. A. Phillips reminded the board that this is a Type I Action under SEQRA. She said the planning board cannot give a conditional negative declaration. The optional lighting plan was discussed, and the lighting sheets were reviewed. There was no information indicating the lights have shielded fixtures to prevent lights from shining into neighboring properties or into the sky. It is not known if the lighting will have any impact on neighboring property. At this point, based on the information in the record, they can't say that it won't.

4.010-2 N/A No new driveway or changes to the existing driveway or intersection with Town roads are proposed. Also, no snow removal is needed. ,

4010-3 location arrangement of off-street parking and loading. There is a new area that they have identified as a “staging area” It was called a “parking lot” in the Applicant’s earlier SWPPP. They are saying there are no additional vehicles coming in as the mini track will be used by the children of those who are already coming in. They are saying they will operate simultaneously. Some materials online indicate there may be more people in attendance and the applicant did not confirm if there would be separate events taking place on the mini track at the same time. If there are new uses, they must be included in the plan or they will be prohibited, but there is no way to verify that and it is unknown. The board has to consider the facts submitted at the plan shows new room for staging or parking. However, the board is unable to determine, based on the information in the record, if it is sufficient for the new and expanded use. .

4.010 - 4 There is no pedestrian access identified on the site plan and none are proposed as part of the Application. The 2015 amendment for a storage structure was conditioned on people would not be crossing the track when it was in use. It was identified as a safety issue, but it was indicated it was not part of the track's commercial operation and no utilities were being hooked to it. no one can cross the track to access that structure while it is operating. That condition was made and remains in place. The 2015 resolution will be entered into the record.

Those conditions were read out loud, it states it shall be built according to the building specifications of the manufacturer as submitted in the site plan application, it shall not be equipped with electricity or plumbing or be served by any on-site or off-site water supply or septic/wastewater disposal system. Any future plan to outfit the building with lights, plumbing, water or sewer/septic will requires site plan review and planning board approval, access to the new storage structure will be restricted to those times when the track is not in active use.

4010-5 Stormwater and drainage. SWPPP to obtain coverage under the general permit for amount of acreage that is being disturbed. A July 2023 submitted by the engineer recommended certain revisions, such as level spreaders. No additional comments were made after they made the revisions to the plan. The public has indicated there is stormwater runoff into other properties SWPPP must be developed so it is not affecting water flow. Consultant engineer felt the revised plan met the NYSDEC requirements. NYSDEC has sent a notice of violation because they commenced the work before SEQRA was complete. Noone from the Town has been on site to review if what they have done complies with the SWPPP. NYSDEC ordered them to stabilize the area and stop the work.

If the planning board denies the application, it doesn't have to complete the SEQRA. D. King said the review by the consulting engineer indicated it met the NYSDEC requirements.

At his point (4:33) Fred Utter, Superintendent of Highways for the town of Davenport to discuss access to the facility and the condition of Parker Schoolhouse Road, the majority of it located in the town of Davenport, which accesses the track on Zimmerman Road. This is relevant to Section 5.040(2).

He said the town never had that amount of traffic on the roadway prior to the track. It is a dirt road not suited for the type of traffic it receives. Track owners made an agreement to make certain improvements and to provide estimates. However with the number of complaints being received regarding the track and subsequent litigation, the agreement fell through. "They agreed to it, but they didn't do it."

His issue currently is that the Governor has said she is going to eliminate CHIPS funding, which means the town will not have money in the future to repair the road. He did stone and oil the road to help its conditions and to keep dust down, but it needs more work. He said the cycle to repair roads requires 10 years before a road can be done again. Parker Schoolhouse Road is reaching that time-limit and is in the queue for road repairs, but it will not happen and cannot be prioritized over other town roads.

The Board discussed if the days of operation are expanded, the use of the road by track users will be increased, increasing wear and tear on the roadway. Utter said whatever decision the planning board makes "they are going to do what they want - money talks" The Davenport taxpayers pay for that road and the town is not getting any benefit from the track.

A. Phillips said even if the track is impacting the residents of another town, it must be considered by the planning board in its determination. The law asks them to confirm that existing streets are adequate for the new and expanded use.

F. Utter said it went awry when it first started. Some people don't want him to fix the road, because they believe its poor condition keeps the traffic slowed down. He said the track users have no respect for the people along the road. "They fly up that road. Some day, somebody is going to get hurt." There would be problems if he fixed it. He said the town crews have to be very careful when doing work on the road. He said the track owners did put up signs.

Davenport cannot afford to fix the road for the town of Harpersfield. He reiterated that those coming to the track do buy some gas at local gas stations, but they also bring their own fuel. He does not believe they patronize local businesses to any extent. He said the roadway is on the list for repair, but at this point he is only able to do emergency repairs.

They should be able to do what they said they were going to do, but they are not doing what they said they were going to do.

The board has to determine if the existing roadway is suitable and accurate to carry the anticipated traffic.

F. Utter said it is essentially a dirt road and under current standards is not suitable to handle the larger, heavy truck traffic which is deteriorating the shoulders and causing the roadway to break up. There is more traffic when the track is operating than the days when there are no activities at the track. He also explained that vehicles are hauling trailers with cars and dirt bikes, which is heavier than normal, everyday traffic that would use the road. The consensus of the board was that the existing road was not suitable or adequate to handle an increase in traffic that would result from the expanded use.

The board also discussed the latest response to the County Planning Board 239 referral which recommended disapproval. The planning board can override the recommendation, but only with a super majority.

A motion was made by D. King, with a second by W. Keller to set another special meeting on May 21 at 2 p.m. to continue the process. Motion carried 5-0

A motion was made by W. Keller, with a second by D. King, to adjourn the meeting at 5:42 p.m.. Motion carried 4-0.

Respectfully submitted, Liz Page

Recording secretary.