

FINAL MINUTES
Eden Planning Board
June 24, 2008

MEMBERS PRESENT:

Mark Agle
William Zittel
Kevin O' Gorman
Andrew Romanowski
William Mahoney (Alt)
Frank Meyer (Alt)

MEMBERS ABSENT:

Dennis Brawdy
Anthony Weiss
Juanita Majewski

GUESTS:)

Dana Braun (Engineer – Wendel Duschcherer)
James Gorecki (Dog Kennel)
Gary Gorecki (Dog Kennel)
Dan Blamowski (ERA Engineering)
Bob Bender (Tim Horton's)
Robyn Cierniak (WSA)
Art Kohl (Pastor- Faith Bible Baptist Church)
Jennifer Wright (Verizon Wireless)
John Engelbert (Verizon Wireless)
Andrew Przybysz (Verizon Wireless)
Ed Krycia, Jr. (Town Council)
Don Nowak
Bill Feasly

~~~~~  
Chairman, Mark Agle called the June 24, 2008 Planning Board meeting to order at 7:08 p.m.

Mark asked if anyone had any corrections or additions to the May 2008 minutes. **Motion to approve as printed by William Zittel, seconded by Andrew Romanowski, hearing no further comments or corrections. Vote: all "Ayes" motion carried.**

~~~~~  
NEW & UNFINISHED BUSINESS:

1. Faith Bible Baptist Church

They had been in 6-8 months ago with a preliminary site plan for an open space and parking lot for their church and they were given some direction at that time on preparing the final site plan, along with the engineering design for the drainage. Our engineers looked over the drainage design and since it is totally on Faith Bibles'

property, it will not negatively impact the towns system in any way. However, they did notice a few design issues that have been set forth in an internal memo that you may want to share with your engineers for their consideration. Our engineer will provide you with a copy of that memo. The revised plan in front of our board tonight does reflect the guidance we had given at the prior meeting; everything appears to be in order.

Motion made by Mark Agle to approve the current site plan as submitted.

Motion seconded by William Zittel: Vote: Unanimous - All “Ayes” – motion carried.

2. Gorecki Dog Kennel

This application has been in front of the Planning Board before. The proposed use requires a Special Use Permit (SUP) to be issued by the Town Board. This they have done with the condition that we approve a final site plan. We have looked at several site plans alternatives for this site and given the applicant some direction as to which one would be acceptable. The plan presented here tonight is a derivation of one of those options, however because of the way the building was positioned on the site the open dog kennel runs are too close to the property line per our zoning requirements unless they acquire a variance. The applicant has two options, either applies for the variance or we can conditionally approve the plan if you declare your intention to revise the building position 180 degrees on the site. Then you will have the required 200' to your property line for your dog runs. You may go on the record tonight if you want to revise the design to get the 200' to the dog runs. We could then conditionally approve it and then you would just have to submit the revised site plan prior to receiving a building permit. What is your position on this issue?

Mr. Gorecki- I prefer to not go for the variance and will revise the plan.

Dana asked what are the business hours;

Mr. Gorecki stated that the hours of operation would be as follows;

M-f 8-12 and then 4-6pm

Saturday 8-12(noon)

Sunday 5-6pm

Mr. Gorecki also stated that his ¼ mile driveway will be lit every 200' and he will have his own shut off so that those lights will be shut off after business hours.

Mark asked how many dogs would be at the property, and Mr. Gorecki stated that there would be 16 indoor and outdoor runs at times there may be 3 dogs in a run at a time per customers request, so the maximum could be 32 dogs.

Mark again asked Mr. Gorecki if it was his preference to submit the revised plans that meets the 200' setback to the open runs. **“Yes”-stated Mr. Gorecki.**

Mr. Gorecki asked about a pond. Mark Agle told him it would be a separate application based upon the procedure outlined within the Code.

Motion made by William Zittel to approve the submitted site plan with the condition that it be revised to attain the necessary 200' setback between the property line and the open dog runs and said site plan be submitted to the Building Department prior to issuance of any building permit,

Seconded by Mark Agle. Vote: Unanimous - All “Ayes” – motion carried.

You're all set. You need to have your engineer revise that plan so that it meets the requirements submit that to the building inspector so you can get your building permit. Once again, if and when you decide to move forward with construction of the pond, there is a procedure outlined in the Code to follow.

General Discussion:

Kevin O’Gorman stated that he had concerns about the Special Use Permit already being issued by the Town Board. Having the SUP already conditionally granted makes this is a meaningless discussion. I think that with the politics involved on the Town Board, we are suppose to be an apolitical board that looks at basically the requirements of the laws of the Town of Eden and I think to approve something prior somewhat undermines our authority. I think the fact that the Town Board approved something before he [the applicant] met the requirements only puts political pressure on us to just to get this thing done, I think this is wrong.

Mark stated that he understood where Kevin was coming from but reminded that the Planning Board was not bypassed in the process. In fact they [the applicant] were in front of us twice before with site plan proposals and we gave them direction to guide them in preparing a plan that would meet the requirements. This information was further conveyed to the Town Board through our recommendation where we requested that they put a condition on that it comes back here for final approval. However, I do agree that it would generally be “cleaner” if, after the public hearing, the Town Board referred the applicant back to us for site plan approval. Then once we had an approvable site plan we could then advise the Town Board and then they could actually grant the SUP if they so choose.

3. Tim Horton’s

Over the past month the SEQR review process has run it’s course and we have received back comments from most of the involved agencies with the exception of the NYSDOT. However, our engineers have spoken with the NYS DOT today and they did indicate they had no major issues and would follow-up with a confirming letter. The site plan that we have been considering was revised as per our input at the prior meeting. These revisions include: an aligned access with the post office, a delineated cross walk on Legion Drive, a concrete crosswalk at the driveway to the site, a concrete sidewalk to the front of the building, and additional landscaping on the south and southwest corner of the property. The applicant did provide a letter from Dollar General confirming the fact that they are not interested in pursuing any cross access. A signage plan was also submitted. Our engineers and the code enforcement officer has reviewed this plan and issued a memo that the proposed signage is in compliance with our code. We still need a clarification of the enclosures height around the dumpster area, our code states a minimum of 6 feet but the plan still has conflicting

information on it. One note states 48” and another states 96” it’s just a matter of getting the notes clarified.

The Traffic Impact Study (TIS) was completed and reviewed by our Town engineers. Dana [town Engineer] gave some background on the applicants’ TIS. The study involved a series of traffic counts in May 2008 for the weekday AM and PM peak hours, 7:00AM to 9:00PM and 3:00PM to 6:00PM respectively. Volume counts were taken at North Main Street and 1) Legion Drive, 2) Schoolview Drive/Welch Lane, and 3) Shadagee Road. In 2007 they did a cueing analysis to get an idea of the backups at other comparable sites. They found the greatest back up occurred during Saturday midday peak hour and reached a total of 20 vehicles. The AM peak hour indicated a peak back up of 19 vehicles and the PM peak hour showed a back up of 3 vehicles. This was presented because the cueing capacity proposed for the drive thru is 21 cars and the parking area has 27 spaces. If the cars were to back up completely to the right of way edge of the state highway there is actually room for 24 cars and therefore the study shows that this site design has the capacity to handle the maximum back up anticipated. The pass-by percentage (number of trips taken from the existing volume on the roadway) driving past during the peak hours is 50%. The Level of Service (LOS) for a roadway or intersection is the quantification of how well an intersection operates. There was no tangible change in the LOS for any of the intersections in the immediate project area. The TIS concluded that the site driveway should be aligned with the USPS driveway on the west side of North Main Street and the access to the site should consist of one entering lane and two exiting lanes (one left turn and one right turn). We [Wendel Engineers] concur with these conclusions. We noted there might be a potential conflict due to proximity with Legion Drive by moving the intersection to align with the Post Office driveway. It will be 100 to 125’ between those two intersections and this could result in a potential issue in the future. The numbers right now are fine, however given the school traffic it is harder to measure the impact. The Board may choose to revisit this issue within 6 to 18 months after it’s built to make sure the numbers they looked at substantiated are running correctly and there are no problems from those additional turning movements that are happening in that small area. So we concur with the traffic study and NYSDOT has verbally indicated that they are fine with it and will be supplying a comment letter in that regard.

What would be some possible remedies if we were to look at this a year from now and decide there is an issue? It gets into a gray area, because of public health, safety and welfare do you have the ability to look at these things, possible remedy would be if there is not enough right of way to put in a right turn lane escapement on the one side or put a left turn in for the south bound traffic but that all depends on right of way and the DOT being involved in any of those. You can’t predict the future of traffic as to what’s going to happen or what’s not going to happen with traffic. The school zone is 25mph so you do have a slower rate of traffic during school hours, maybe improving the visibility of that access, putting up extra safety lights up. That is beneficial to the traffic study, keeping the volume of traffic slower there will be greater gaps in the traffic to make those turning movements. We did bring up with

Tim Horton's at previous meetings about the reopening of the plan within a period of time a year, 18 months the ability to look at this again. For the record at that point in time it didn't seem to be an issue.

Bob Bender stated that if this project is saddled with the possibility of having to spend a ¼ of a million dollar in the future on an unknown possibility I think we'd rather say thank you and walk away right now. I can't fulfill the project not knowing if there is going to be that much more unknown money we would have to invest, it does not make it financially feasible. All the conditions that have been put on this project already has driven up the cost of development. The cost of special architecture and everything else we have accommodated this board with and then be required to commit to some unknown cost; it would just not be feasible.

Kevin O'Gorman stated that if you extended the school zone out another couple hundred feet and then you really shouldn't have a problem, to me I still get confused where to speed up.

Bob Bender - we are certainly not opposed to working with the Town if they are finding there is a problem. If there is that much traffic on site the people just won't stop. I don't anticipate there being a problem, it's leaving an unknown amount of money on the table.

Agle - I was not implying that you would be unreasonably exposed financially. Just that we have the ability to reopen and look at any traffic issues that may arise and have your assurance that you will work with us to help resolve any such issues. We did get a letter from the School Superintendent generally in favor of the project but expressing concern about the nearby area used for student drop-off.

Bob Bender said he spoke with the Superintendent and he did not have a problem with the traffic study nor access to Legion. I explained the driveway location and configuration to him. The fact that you have not heard from the school again since that conversation makes me think that he's satisfied.

I feel we have gone as far as we can with all the concerns. If there is an issue, the owner is right here. It's not like he lives in another state; he has every interest in making sure the site works for everybody.

On the subject of deliveries by bigger trucks, Bob said that those trucks would not be delivering during peak hours of operation. It's an independent delivery system; we have them pull straight in to our delivery sites. In this case, they would more than likely back into the site, roll off their delivery and pull straight out.

Dana Braun stated that the speed limit review committee would address any concerns that arise in the town. Also, the Town Board has asked for a crosswalk by Legion Drive and the Eden Boys and Girls Club is proposing a crosswalk across Route 62. So there are a couple of things happening behind the scenes to keep traffic flowing smoothly.

Dana Braun commenting on the SEQR. In my review, from the information we received from the applicant, I didn't feel there were any large impacts identified with this site and therefore I drafted a Negative Declaration for the project. This addresses the impact on the land, water, air, plants and animals, cultural and land resources, esthetic resources, historic and archeological resources, open space and recreation, energy, transportation, noise, odor, public health. Essentially, upon reviewing the

information before them, the boards' conclusion is that it will not have a significant impact on any of these resources within the town and thus the Neg Dec.

Mark Agle- This project is an Unlisted Action under SEQR; and
Whereas, the Town of Eden Planning Board has reviewed the site plan application and found it to be in compliance with all applicable standards; and

Whereas, the Town of Eden Planning Board reviewed the SEQR documentation, completed a coordinated review on June 9, 2008, determining lead agency and no significant concerns by interested and involved agencies; and

Whereas, the Town of Eden Planning Board has completed Part II of the EAF and collected additional information;

Whereas, the Town of Eden Planning Board has found no item of significant impact to the Town of Eden and that the development is in accordance with all zoning and plans for the development of the Town;

Now, Therefore, Be It Resolved, that the Planning Board of the Town of Eden hereby issues a Negative Declaration of environmental impact for the development of this project.

So moved by Mark Agle, seconded William Zittel Vote: all in favor "ayes" – motion carried

Under our code, the Board has the ability to call for a Public Hearing on any site plan if we feel it is warranted. Since this an allowed use within the zone and requires no variances and in light of the coordinated agency review without negative comments, it is the Boards' decision to waive the need for a public hearing.

Motion made by Agle - That the Planning Board hereby approves the site plan as submitted by Tim Horton's with the latest revision date, conditioned upon the following information being received from the applicant.

1. The applicant shall satisfactorily address any outstanding comments received from NYSDOT relative to the Traffic Impact Study, if any, and that the Planning Board be advised how they are resolved.

2. The applicant provide to the Town, copies of the Erie County Sewer District #2 proposed sanitary sewer improvement permit.

3. The applicant provide to the Town, copies of the Erie County Water Authority/Health Department backflow approval letter.

4. The applicant provides satisfactory evidence to the Town's Engineer [Wendel] reflecting drainage revisions set forth in their [Wendel] memo dated June 23, 2008.

5. The applicant submits the required public improvement project (PIP) applications for the purposed catch basin installation on Legion Drive.

6. The applicant also agrees to work with the Town within the 18-month period following construction to resolve any yet unidentified traffic issues at the site.

Seconded by Kevin O’Gorman. Vote: Unanimous - All “Ayes” – Motion carried.

4. Verizon Cell Tower

In the packet is the latest submission from Verizon; at the last meeting they were given some direction on revising their site plan. To recap, Verizon is seeking a Special Use Permit to be issued by the Town Board. The Planning Board is a recommending body to them. The project is following the path procedurally, in that the Special Use Permit has not been granted and the revised site plan has been submitted to us for review. Ultimate approval for issuance of any Special Use Permit rests with the Town Board.

A couple of things that were asked of Verizon relative to the site plan. They were requested to depict where the town water well is located.

Mr. Przybysz of Verizon pointed out that it is shown pictorially on the plans; it is at the edge of the clearing where the power line actually ends, so access is not impaired in any way and that it would be further clarified by a notation on the final plan.

Mark stated - this proposal is located in a general business (GB) zoning district, and the Town Board has scheduled a public hearing for July 9, 2008 to consider this site. In preparation for that, this site plan was provided to us for review and comment. It is noted that variances required because the side lot clearances do not meet the requirements of our Code for Telecommunication Towers so variances will be sought and obtained in order for us to grant final approval of the site plan. As you recall we made a referral of this issue to the Zoning Board of Appeals at our last meeting. And I believe they will be taking this matter up at their next meeting.

The site plan was received a week after the deadline for our meeting so we have not had a chance to properly review and digest all of this information prior to the meeting tonight. The Town Board has opted, at the request of Verizon, to perform a segmented SEQR review on this proposal. This means we and the ZBA each must issue their own determination. Dana stated each reviewing body that has approval power of the project, will issue their own Neg Dec, based on their review as opposed to the more traditional coordinated review by the lead agency. Basically, each board acts as their own lead agency.

Kevin O’Gorman was concerned about the impact on the houses and businesses on Church Street. The triangle on the site plan is bordering the 10 acres; there is a 500-foot radius for the Zoning Board. He stated he did not see 500 feet on the site plan, it only shows a portion of it.

Dana stated the tower location has not changed since the submission of this site. Andrew Przybysz stated that it’s slightly more elongated, we found a swale and we did not want to impact the water or drainage there. Instead of being a complete

square of 100X100 it is slightly elongated 125X80 the tower location has not moved more than a couple feet to keep it away from the property lines as best we could. Dana stated that under the Town Board determination they did send a letter to Buffalo Southern Railroad and 239-m referral.

Mr. Bill Feasley stated that Verizon came to him about a possible site on his property and then they changed it to the current site. He expressed concern that the proximity of this site may have a negative impact on potential future residential development of up to 3 acres. Mr. Feasley said that he was not happy with this proposal because he has to live with that ordinance the next 30 to 40 years and now you want me to approve this thing, "no way". The building inspector showed me the plan and how it [the 500' circle] goes way out into my field, but I'm getting older now and someday I may want to sell my land, and developers will come along and say they do not want to develop that site if they would have to go 400' or 500' instead of 100' from the railroad property. It's a terrible place to put it. The Town wants towers away from people, and this surely isn't, there has to be another site. I showed them a site way in the back of the farmland and they [Verizon] wanted nothing to do with putting power way back there, but they just keep trying to put it in the center of town.

Kevin O'Gorman said that this is one of his concerns with Church Street, you have 10 acres this side of the track that could be developed for Town business or apartments or something that's out of the ballpark you just killed off 10 acres for any dwelling according to our zoning, it's the law, you can't have anything within 500 ft.

Mark Agle said that is not the law. The 500' refers to protecting existing houses from having a tower erected closer than 500'. However, future development can occur within 500' of an existing tower. The issue is just what Mr. Feasley said, that some day down the road if his land is rezoned for residential and someone wants to build a house within the 500 feet, the presence of the tower may deter some people but it does not by law prevent development within the 500 feet.

The 500 feet ring also serves as a basis for the notification to landowners for any public hearings on this site, such as the Zoning Board or Town Board.

Mr. Przybysz stated that Verizon provided additional engineering in the application, which helps us with regards to the variance and height of the tower. What we have done is, over-engineered the bottom half of the tower to reduce the fall zone to the distances of what we currently have to the property line it shouldn't impact anyone adjacent.

Mark Agle stated, that is an argument you will need to advance with the Zoning Board when going through your variance process.

Mr. Przybysz stated that they are seeking a reduced variance for a reduced fall zone, I guess we are not looking at it as a variance because our fall zone goes over the property line, we are providing additional engineering to reduce the fall zone.

Mark Agle said that our [Planning Board] is to provide input to the Town Board relative to the site plan. The Zoning Board will have to take care of their own issues. The recommendation that this board gave the Town Board cited many advantages of this site but as with any site there are always negatives as Mr. Feasley stated tonight. Dana stated that the coverage that Verizon needs to improve is in the center of town and the farther away from that location you go, the benefit from building the tower is diminished.

Mark Agle reiterated that we are here tonight to address this site. This site takes full advantage of the existing natural screening and by locating it on Town owned property; the Town can reap the financial benefits. Every site we have looked at so far all would have required variances for the fall zone, so that issue has not gone away from day one.

The Planning Board has shared Mr. Feasley concerns from the beginning that we were not crazy about any of the sites proposed because of the fact that they are in our hamlet area but we also recognize the practical reality that the current cell coverage is inadequate. Way early in the process we ran Verizon through the exercise of researching various alternatives from co-locating to other sites, etc. only to have each idea rejected based upon sound engineering data.

Kevin O’Gorman brought up the point of we never talked about maybe having two smaller towers. Maybe having two smaller towers would do the same thing as having one larger tower.

Mark Agle reminded that we did discuss at length the issue of tower height requirements and that they couldn’t get desired coverage because of the “shadows” created by the unevenness of the terrain.

John Engelbert said that Verizon has already addressed the issue of multiple shorter towers in lieu of one taller tower.

Mark Agle said that wherever they go, there would be issues and opposition. It is the Town Board that is the elected body and therefore they are the ones that are ultimately going to have issue the Special Use Permit. Our job here on Planning Board is to give them input in the form of a recommendation concerning the site plan in order to help them in their decision-making. There have been three viable site options on the table. The Zoning Board has to consider the variance issues and if Verizon doesn’t get the variances then we have nothing further to act upon.

At some point in time, in order to get a Special Use Permit, they will need an approved site plan from us. In my opinion, we did not receive this in time to thoroughly review it, this just came Friday, we have to do our SEQR review, our engineers have to review and provide us their input. Therefore I don’t think we should feel pressured to conditionally approve anything without them first obtaining their variances, which goes to the point that Mr. O’Gorman made earlier tonight. We already made a referral to the Zoning Board as part of our prior recommendation to the Town Board on this site. If Verizon is successful in getting their variances by our next meeting, we will then have had a chance to properly review and digest the information provided. We will also have the benefit of the public hearing feedback and the Zoning Board results. At that point, we can conduct our business on the site plan approval. The only thing that we need to give Verizon tonight is any further feedback on this site plan.

Dana stated that the Zoning and the Town Boards would hold public hearings on these items so the Planning Board will have the benefit of access to those minutes to hear any concerns. Verizon has submitted a full updated site plan application package including visual balloon tests, propagation studies, and their full EAF form. Mark Agle stated that he was advised that the Town Recreation Board does have knowledge of the site and he was verbally advised that they have no issue with it

Dana asked if this site meets Verizon's coverage needs for the hamlet area of the Town? Mr. John Engelbert answered "yes". Do you allow other providers on the tower? "Yes", if we excluded other providers on our towers the same thing would happen to us on theirs.

Mark Agle said that he did note when you first came to the board that we wanted to know if you could use existing towers in the town but we were advised that the location of all existing towers were inadequate to fulfill the gap in Verizon's coverage.

Kevin O'Gorman said at least it benefits the town, it's our town and we should get the benefits from the tower, if we are going to do it, it might as well be on town property.

Mark Agle said that the site plan submitted at this point the only modification would be the previously discussed notation on the water well. We can make a further recommendation to the Town Board that if all the rest of the stars align we can make an action on the site.

The recommendation would be that if the Town Board holds the public hearing and makes the determination that they want to move forward with the site that's entirely their call and if the applicant is successful in obtaining all necessary variances that at our next regular meeting, the ability to issue a Negative Declaration and under SEQRA by the Planning Board that we would take affirmative action on the site plan approval as provided to us tonight.

Kevin O'Gorman said that this is what he has been saying, if the Zoning Board comes in and says we've already approved it that puts pressure on them. I just want to table the whole thing, I think we should wait till everything comes back and then we could probably approve it but for us to go and say "YES" we will approve it, puts pressure on them, it's not fair.

Mark said that he had no problem with that thinking at all.

Kevin O'Gorman said that the discussion is going to be, is this correct site? What I want to telegraph is that we had nothing to do with the site selection, that is their job. All we are being asked about is this site plan.

Mark Agle said that we already made a recommendation on this site at our last meeting, and the recommendation was that if the Town Board considers this a viable site that we would support that, but it's their decision to decide if it's viable based on the public hearing and everything else. So our recommendation to the Town Board can stand as already made, it is a matter of record.

Bill Mahoney said that we just received these two days ago and he didn't feel we could act on anything with that amount of time.

The Board agreed to table the matter until its next meeting and affirmed its previously submitted recommendation to the Town Board should stand as is and as a matter of record.

Announcements:

- Renee Adams was before the Planning Board at last meeting, her Public Hearing is set for July 9, 2008 for her Special Use Permit and if granted she still needed to make a couple of engineering changes on her site plan and submit it with those

specified changes to the Building Inspector prior to issuance of any building permits.

- The Town Board is adopting our recommendation to allow the Chairman of our Planning Board to select appropriate courses to fulfill the State mandated training requirements. The Chairman will also be responsible for recording the hours the members put towards their requirement (4 hours per year are required) and annually reporting the same to the Town Board. They will also be adopting a similar policy for the ZBA and therefore the Planning and Zoning Boards may be able to coordinate these meetings for their mutual benefit and possibly opening them up to the Town Board members.
- O'Briens parking lot, they are debating different options at this time.
- Sonnybrook Phase III, PIP and bonds were approved at the Town Board session and he is moving forward with installing those improvements. He should be back in September for final approval.

Motion to adjourn the meeting at 8:40pm made by William Zittel, seconded Kevin O'Gorman. All "ayes" motion carried.

The next Planning Board meeting is tentatively scheduled for July29, 2008 for 7:00pm

Respectfully submitted,

Diane Herzog, Planning Board Secretary