

**TOWN OF SWEDEN
Planning Board Minutes
January 27, 2014**

A regular meeting of the Town of Sweden Planning Board was held on Monday, January 27, 2014, at the Town Offices, 18 State Street, Brockport, New York, commencing at 7 p.m.

Members present: Richard Dollard, David Hale, Craig McAllister, Matthew Minor, Arnie Monno, David Strabel

Also present: James Oberst, MRB, Nat O. Lester, III, Planning Board Counsel, Walter Windus, Building Inspector, Kris Schultz, PE, Schultz Associates, A.J. Barea, LS, Adam Mesiti, Michael Moore, Hossein Ghazanfari, James D'Amico, Frank Gavaderes, Pat and Tom Pawlaczyk, Kelsey Metherel

The meeting was called to order at 7 p.m. by Chairman McAllister.

Correspondence was passed to members for review.

Moved by Mr. Monno, seconded by Mr. Dollard, that the minutes of January 13, 2014, be approved.

Ayes – 6

Moved by Mr. Strabel, seconded by Mr. Minor, that the regular meeting be adjourned to the public hearing.

Ayes – 6

Chairman McAllister read the notice of public hearing and affidavit of publication.

Five Sons Vineyards Site Plan. 1356 West Sweden Road. 113.01-1-4.11

Mr. Kris Schultz addressed the Board. He presented the plan and explained there is an existing house on the back parcel. The property was resubdivided for a second home, which was never built. At the present time, the owner has been successful growing grapes on that property and would like to grow the business by constructing a barn-type structure to offer wine tastings on a limited basis. This would be new to the area and agricultural related.

In summary, a building and access is proposed for people to come in for wine tastings, which is done throughout the year, but typically in the fall. The existing driveway will be used off West Sweden Road, and will be widened for emergency vehicles. A gravel parking lot to the west of the building with handicap spaces for the public is also proposed. The site has a lot of dropping grade to the north, which will be the focal point/view from the back deck of the tastings area. The impact of this proposal is basically the same as what there would be if a single residence was built (originally approved). The tastings area is designed for approximately a half dozen people coming at peak times, not a hundred cars, as far as concerns for additional people. The amount of people would be similar to that of having a fruit/vegetable stand and people stopping by, maybe 20 to 30 cars a day stopping by.

Sight distance was checked to avoid any safety issues for people coming and going. The volume of traffic didn't warrant any additional improvements on West Sweden Road. The site will have its own source of water and leach system. A rendering of the attractive building was presented. The north side facing south will have a large a-frame type structure with a lot of windows looking out. The west side facing east, looking from the parking lot, is where the entrance to the wine tasting area is proposed. The balance of the building is for wine production.

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The building will be steel-built, cream colored with a burgundy steel roof. It is a bit off the road so it can be viewed heading southerly down the road, but heading northerly it will be tucked behind the hedgerow. The existing hedgerow will remain intact.

The tastings building is a commercial type use permitted through the issuance of a special use permit from the Planning Board to make sure there are control measures or checks and balances.

Mr. Strabel asked for the square footage of the building. Mr. Schultz stated the tasting room is 28 ft. x 16 ft., and main building is 40 ft. x 40 ft., and the small area in the middle is 10 ft. x 16 ft.

Chairman McAllister opened up the meeting to the public and asked each person to state their name, address, comment or question.

Tom Pawlaczyk, 1220 West Sweden Road. Mr. Pawlaczyk asked if the intent of this project was to make a profit. Mr. Schultz stated yes. What is the estimated number of customers needed to attend in one year to make that profit?

Chairman McAllister commented that one thing to keep in mind is that the majority of profit has been in place for some time with the growing of grapes. Mr. Pawlaczyk stated he is only trying to get an understanding of the volume of business for the site. Mr. Schultz stated his existing business is based on the production and sale of grapes. The plan for the tastings room is a small portion of his long-term business plan. A busy day or at peak time might consist of a dozen cars there. Most customers will only stay for approximately 30 minutes.

How many spaces are there in the parking lot? Mr. Schultz stated 14 with 2 for handicap customers. How about buses? Mr. Schultz stated this is not set up for that type of business, this is a baby step compared to a full blown winery, which attracts buses of people. This operation is unique to this area.

Patricia Pawlaczyk, 1220 West Sweden Road. Mrs. Pawlaczyk is concerned about the limited sight at the end of the driveway. If your car is facing east looking south, there is a hill and one can't see. What are the County's thoughts? West Sweden is a dangerous road, especially when you have drivers not familiar with the road, the hills and blind spots. What will keep drivers safe with all of the above, especially if they end up intoxicated from the winery? Mr. Schultz stated there is not much that can be done with those who decide to drink and drive, law enforcement should be notified. Typically, that doesn't happen with a tastings room; one visits to taste various wines in order to buy bottles to take with them. Mrs. Pawlaczyk stated she has spoken to people where this has happened.

Chairman McAllister asked if any work will be done to the curb cut area. Mr. Schultz stated a sight distance analysis has been completed based on MCDOT's requirements. The plans have been submitted to the County for their review.

Mrs. Pawlaczyk's other concern is water issues. Most area wells are already strained and with the washing of grapes, etc., the water table decreases and impacts all neighbors on that aquifer. Mr. Schultz stated not necessarily, but it is a legitimate concern. MCDOH has a history of poor wells or well issues documented at the office, which will be brought to the engineer's attention and then addressed.

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Mrs. Pawlaczyk noted that the Planning Board Counsel is aware of the well issues, but wasn't sure if the Board was. Chairman McAllister stated the Board is aware of all the previous developments on West Sweden Road. Also, the Board requires a note on the plan, which states the Town is not responsible for the quantity or quality of well water.

Mrs. Pawlaczyk's additional concern relates to the impact on the H09 Wetland, which the Mesiti property borders and the impact on the North Branch of Black Creek with increased water usage, pesticides, etc. Mr. Schultz confirmed there is a wetland on this property which is regulated by the DEC, but it is more than 500 ft. from the development area. Typically, a 100 ft. buffer area is used by the DEC to protect the wetland. These plans have been reviewed by the DEC and a response has been provided, which was to be aware there is a wetland at the back of the property. Water permits are necessary if one is actually disturbing the wetland, which is not the case here.

Mrs. Pawlaczyk asked if the Town plans to initiate a SEQR. Mr. Schultz commented that a SEQR is required for every Town/Planning Board application so yes a SEQR determination will be made. Chairman McAllister confirmed that statement.

Mrs. Pawlaczyk wanted to know if the Town's Comprehensive Plan addresses wineries. Chairman McAllister stated he didn't believe so, but indirectly through the agricultural laws. Mrs. Pawlaczyk read the law "Notice of Project Near Farm Operations," and cited a case, Rivendell Winery v. Linda Donovan, for the Board's review.

Also, are there special events planned, and if so, how many. Mr. Schultz stated not at this time, but most likely there will be. Mrs. Pawlaczyk hopes the Town will regulate the events. Also, what will the hours of operation be; the County states the operation should be closed from 2 a.m. until 8 p.m., similar to bars. This would be awfully noisy, especially if one has a deck on the house. Mr. Mesiti stated the hours of operation would be from 10 a.m. until 6 p.m.

Mrs. Pawlaczyk asked how does the Town define the size of a winery, i.e., number of gallons/cases produced. She submitted an excellent article for the Board's review, "New York Zoning Law and Practice Report." This is a fantastic article on how to prepare for wineries. Mr. Hale questioned if Mrs. Pawlaczyk is aware of Section 76, A, of the Alcohol Beverage Control Law, which governs farm wineries. Mrs. Pawlaczyk stated yes it does play a role.

The Town of Sweden has a noise ordinance, which doesn't pertain to farming; however, wine tasting is not farming and wondered if the noise will be controlled. Mr. Schultz stated usually noise complaints are handled by the police. Mr. Mesiti explained there shouldn't be any additional noise produced. People will be inside the building tasting samples of wine for a short time. It is illegal to consume wine on premise.

Lastly, how much lighting is proposed? Mr. Schultz stated there will be motion lighting only on the building for safety, not all the time.

Mrs. Pawlaczyk submitted her comments as part of the record.

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Hossein Ghazanfari, 1353 West Sweden Road. Mr. Ghazanfari thanked the Board for its time and review of this project. From his point of view, there is going to be a commercial winery conducted at 1356 West Sweden Road, which is right across the street from his house. The assumption is that this is a retail business in that after the wine is tasted, a bottle can be purchased. The Board agreed.

Mr. Ghazanfari submitted his comments as part of the record.

1. Water Supply. The uses of the well for a winery are huge for the supply of water.

Mr. Schultz stated that Mr. Ghazanfari's calculations may be correct, except he didn't account for natural rainfall. These calculations would hold true in an irrigate climate. Mr. Ghazanfari asked once approvals are granted, does this stop Mr. Mesiti from using the well to irrigate the winery. Mr. Mesiti has planted grapes for ten years and has never irrigated once. Mr. Ghazanfari's statistics are primarily from California, which is an arid climate. New York grapes are not irrigated due to the clay soil, which retains water. Mr. Ghazanfari requested Mr. Mesiti to put that in writing to the Board that he will never irrigate the winery. Chairman McAllister stated that is not necessary; its farm land. Mr. Schultz stated the applicant is proposing to develop a pond that will hold water, and be a source first for irrigation. If the applicant were to draw ground water, it would impact his own well first. If this happens, it not only affects the applicant, but all of the neighbors' quality of life. Who is responsible for this situation? As Mr. Ghazanfari understands it from what he has heard, the Town is washing its hands of the responsibility of the safety and health of the residents of the area. Who would pay to correct this situation?

2. Additional Traffic & Quality of Life.

Mr. Schultz stated he could determine what percentage of increase in traffic there would be based on his professional experience, the type of proposed development, and familiarity with traffic impacts; this development will cause no appreciable or increase that is measurable. Mr. Ghazanfari stated that is an assumption, which is only good for today. It was stated if the business is successful, the applicant would like to expand. Mr. Schultz stated the applicant would love to see the business grow where the tastings room would need to be expanded. The Planning Board would get a chance to review/approve the project again noting any complaints, concerns received and its track record.

Mr. Ghazanfari stated everyone's intention is excellent, but the future is unknown as to how much additional traffic there will be on an already dangerous road. Who is responsible, the Town or the applicant? We do not know. Who would answer to the victims? Who would resolve this situation? Mr. Schultz stated law enforcement would take care of traffic violations. The traffic caused by a family of five, who all have their own vehicles, would cause more impact to traffic than this winery. Each time there is new development, whether a single family home or a small commercial operation, there is some impact.

Mr. Ghazanfari is still concerned that the possibility of more accidents as a result of too much alcohol will increase.

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3. Crime & Safety & Quality of Life.

Mr. Ghazanfari has been a resident for the last 33 years. It is not uncommon to anticipate additional crime with the increase in people visiting the area. Who is responsible for this situation? Who would answer to the victims of the crimes if that happens? To be addressed by Mr. Schultz.

4. Property Value.

Mr. Ghazanfari believes that the surrounding properties of a commercial wine making facility would negatively impact their property values. To be addressed by Mr. Schultz.

5. Zoning & Taxes.

To be addressed by Mr. Schultz.

In summary, Mr. Ghazanfari is against this development as it is presented until a comprehensive study can be conducted to address all of the questions and concerns above.

Jim D'Amico, 1352 West Sweden Road. Mr. D'Amico is the closest property owner to the proposed development. He explained that water is a huge issue in this area. There was a 25 ft. shallow well pump at Mr. D'Amico's house for years and it was fine. A few years ago, water could not be pulled from the 25 ft. well and an immersible pump had to be put in. Today, there is a 40 ft. drilled well at his house. It's just a matter of time before the 40 ft. well isn't good enough. The neighbor down the road had a 30 ft. shallow well pump that is useless now. The water level is down that much in the past three years. Chairman McAllister stated there has been three years of drought. Mr. D'Amico added and now this development will use more water.

Mr. D'Amico has read that a wine operation uses 20 gallons of water for every gallon of wine processed. How much wine will be made at this facility? Mr. Mesiti's goal and what exists in the ground right now, there is the ability to produce 3,500 gallons. Mr. Mesiti didn't understand where that information came from since there is no washing of grapes. Mr. Mesiti presently uses the 30 ft. well on the property and plans to use it for the proposed development. There have never been any issues.

Mr. D'Amico is concerned that a new well will have to be drilled on his property, which could run thousands of dollars.

Mr. D'Amico is also concerned how close it is to the backside of his house, approximately 50 ft. This is a wine tasting facility and people could drink too much wine, more traffic and a parking lot. The exit from the parking lot faces his house so that the headlights will shine directly on his house. The tree line has been destroyed from the ice storm. If this project goes through, the Board should at least require some type of privacy fence or buffer. He is also concerned about the additional noise produced from cars driving on a gravel driveway. Mr. Schultz estimated that the parking lot is approximately 60 ft. from his house. Mr. D'Amico questioned why the development has to be so close to his house when there are 45 acres to work with; he is not thrilled.

Another concern is expansion in the future, which will make all of the impacts stated above even worse. A major concern is the water.

Mr. D'Amico asked where the waste from the winery will go. Mr. Schultz stated there would be a leach system for the waste, restrooms, etc.

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Mr. D'Amico asked again if a SEQR study would be completed for this project. Chairman McAllister stated a SEQR approval is done for every project before the Board. He added after tonight's public hearing, a review would be conducted.

Is Mr. Mesiti able to tell us the volume of wine that will be produced at this facility? Will there be grapes brought from other places to produce wine. Mr. Mesiti stated the amount of wine produced from a farm winery is significant. He added if this business is successful where expansion would happen, Mr. Mesiti would move offsite at a more visible location. This winery is a beginning of a project and if it works, it will be moved where there is a bigger draw of people. This is a boutique size farm winery and a hobby at this time. To answer Mr. D'Amico's question, Mr. Mesiti could possibly bring grapes from offsite, as well as planting more of his own on four acres. His goal is to not make more than 10,000 gallons, which is more than he could handle at this time. Mr. D'Amico believes from what he has read that the Board should base its decision on the maximum production possible when granting approval.

Mr. D'Amico submitted his comments as part of the record.

Thomas Pawlaczyk, 1220 West Sweden Road – Mr. Pawlaczyk stated the bottom line is that the tastings room is a commercial business in a rural area for which the residents are there because it's rural.

Mr. Mesiti stated that only farm products can be sold; he can't sell t-shirts, wine glasses, etc. His goal is not to have a Casa Larga, but a small boutique winery to share all of his hard work put in over the years.

Mr. Pawlaczyk asked the Board if it can put any restrictions on the approval, i.e. limit capacity. Chairman McAllister commented the Board can put those limits set forth in the zoning and along the guidelines of a special use permit. Mrs. Pawlaczyk and Mr. Ghazanfari believe from what they read that the Board has a lot of power.

Mrs. Pawlaczyk asked how many different wines are made. Mr. Mesiti stated there are six different grapes grown with the potential to grow nine or ten; the grapes can be blended. Most wineries allow tastings of four or five different wines. The idea is not to get people drunk but to offer a tasting to see if they like it and want to buy a bottle similar to Wegmans offering cheese samples. Mrs. Pawlaczyk stated cheese and wine are not the same.

Chairman McAllister added a winery has the same liability of a bar so that if someone is served too much that place of business is held accountable. Mr. Mesiti would turn away any intoxicated customers.

Chairman McAllister asked if there were any more questions, comments or concerns.

Mr. Ghazanfari asked if the public will get a response to its questions. Chairman McAllister stated the minutes and agenda are posted on the Town's website. The minutes will be posted after they are approved.

Mrs. Pawlaczyk wondered what the length of time for review of this project might be. Chairman McAllister stated it's uncertain due to the review hasn't started yet, most likely a couple months for a smaller project.

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A Special Use Permit granted by the Planning Board is not renewable, however; if use changes, a new approval would be required. A Special Event Permit is different in that it is a temporary permit used for grand openings, special sales, etc. It is limited to the number of times and days throughout the calendar year. It pertains mostly to the use of additional signage. Mr. D'Amico commented that he would hope that Mr. Mesiti would limit his events due to his house being so close.

Mrs. Pawlaczyk asked if there would be a sign for the winery. Mr. Schultz stated yes there will be a sign on the north side of the driveway, approximately 10 ft. to 15 ft. from the edge of pavement, but it will not interfere with sight distance. The sign will meet the Town's sign requirements.

Mr. Ghazanfari read the following from the article submitted by Mrs. Pawlaczyk, "communities that use a broader definition of agriculture to govern wineries may open Pandora's Box to activities related to wineries that they did not intend to allow." The point is that with all the good intentions of the Board and Mr. Mesiti to permit the winery, we do not know what the future holds. Additionally, a comprehensive study should be completed for SEQR before any approvals.

Chairman McAllister thanked the public for their input, which is nice to receive and beneficial; the Board seldom gets this much input. Your concerns and valid points will be taken into consideration throughout the review process.

Mr. Schultz added that it is good to hear from the residents that live nearby so that adjustments can be made to make the project run more smoothly. Thank you.

Mr. Ghazanfari added one last comment that he hopes Mr. Mesiti understands all of the concerns and doesn't hold the neighbors responsible, if circumstances were reversed, Mr. Mesiti would do the same. Mr. Mesiti stated he understands the concerns and doesn't hold anyone responsible.

Moved by Mr. Monno, seconded by Mr. Strabel, to adjourn the public hearing to the regular meeting.

Ayes – 6

Moore Acres – Resubdivision of the Campbell Road Subdivision. 295/299 Campbell Road. 085.01-2-36/35

Mr. A.J. Barea addressed the Board. He explained the applicant is proposing to merge the two lots into one.

Mr. Michael Moore, applicant, stated he is giving up an approved lot with the merge.

Mr. Barea stated that Mr. Moore is aware that he no longer will be able to build on Lot 3 unless he makes application to the Planning Board again. A note is on the plan to this effect.

Mr. Barea requested the public hearing be waived. Chairman McAllister explained that per State mandate, the Board can't waive the first hearing, only the final one.

Moved by Mr. Hale, seconded by Mr. Dollard, that the Moore Acres, Resubdivision of the Campbell Road Subdivision be accepted for review.

Ayes – 6

The public hearing will be February 24, 2014.

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Five Sons Vineyards Site Plan. 1356 West Sweden Road. 113.01-1-4.11

Chairman McAllister continued review of this application.

Mr. Hale asked why a Special Use Permit was required for a winery. Chairman McAllister stated a lot of information was received from the State regarding farm wineries. One of the recommendations was if there is nothing in the Town code, a Special Use Permit can be used to control the operation of the winery.

He also questioned the statement that wineries are not agricultural. In terms of SEQR, agricultural farm management practices are, including buildings, on the list of Type II actions for which reviews are not required. Chairman McAllister stated except wineries, which are a separate classification, which was included in the handouts the Clerk mailed out. Mr. Hale didn't receive the handouts.

Mr. Monno explained that when he attended Ag classes in Batavia, there were different categories. Chairman McAllister stated per the State, because Mr. Mesiti's property is zoned Residential and not in an Ag District, the application has to be reviewed by local zoning.

Mr. Monno added that where the building is now there were deep hole tests done. The reason the testing is shown is because it was an approved building lot. Mr. Schultz explained that the original perc location was going to be used because it was already done, but a section of the vineyard would be lost and the septic located too close to the vineyard so a different location was chosen. More percs need to be done.

As a follow-up to the impacts, Mr. Mesiti would be glad to put up a fence. However, Mr. Schultz suggested planting a staggered row of pines instead as a better barrier, especially for sound.

Mr. Minor suggested changing the vehicle direction so the lights will not shine on the neighbor's property.

MRB Comments

1. Cross access easement will be completed.
2. Dimensions are shown on the plan for the proposed driveway stalls and aisles.
3. Deep hole tests need to be submitted.
4. Septic system will be approved by the DOH.
5. MCDOT will review and approve plans. Driveway is being widened to 20 ft. The sight distance meets the minimum requirements.
6. A SWPPP will be completed.
7. Building elevations have been submitted. Basically, a metal building/roof, cream colored building, green trim and red roof. Attractive building. The height of the building is approximately 21 ft.
8. Exterior lighting on the west side triggered by motion.
9. As built drawings required. See Note #6.
10. Fire Marshal should review plans. Done. Driveway/access should be increased to 20 ft.
11. Signature block has been added to the plan for the Fire Marshal.
12. Roof leaders and sump pump discharge are on the plan.
13. Mailbox detail is shown on the plan.
14. Signage is shown on the plan at the north side of the driveway.

Fire Marshal Comments – See comment #10 above.

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County Comments

- Estimated water consumption. Restrooms/floor drains. Mr. Schultz will get numbers based on Mr. Mesiti's process to determine how many volumes of water. Residue from grapes; compost or not. Chairman McAllister asked if there were floor drains in the building. Mr. Schultz stated if there are floor drains, they will connect into a septic system.
- MCDOH requires the septic system design be submitted.
- No monumentation on site.
- Extending driveway culvert 10 ft. Done.
- Intersection sight distance should be 3 ½ ft. tall.
- State Wetlands are on the property 525 ft. from area of disturbance, no permit required.
- SWPPP has been submitted to MRB.
- Federal Wetlands are 575 ft. from the area of disturbance, no permit required.
- SHPO not in an archeological sensitive area.
- No occurrence of endangered species.
- 855 ft. from a 100 year flood plain
- 1075 ft. from creek
- Will follow up on location of septic system.

Building Inspector/Storm water Management Comments – Same as Fire Marshal's comments.

ECB Comments

All favorable comments.

Mr. Strabel asked Attorney Lester where the application stands with a Special Use Permit.

Attorney Lester confirmed that the correct zoning for this property is Residential, R1-2. There is a permitted use of customary agricultural operation, which the code doesn't define.

Special Use Permit, Section 175-10, A. The Planning Board may grant special use permits as set forth in these zoning regulations.

Special Use Permit, Section 175-10, B. When a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the ZBA for an area variance. For this application, it is a use variance, not area variance.

All of the above was discussed and tabled until a future meeting.

The meeting was adjourned on motion at 8:30 p.m.

Planning Board Clerk