

**TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008**

A regular meeting of the Town of Sweden Planning Board was held on Monday, September 8, 2008, at the Town Offices, 18 State Street, Brockport, New York, commencing at 7:00 p.m.

Members present: Richard Dollard, David Hale, William Hertweck, Craig McAllister, Matthew Minor, Arnold Monno, David Strabel

Also present: James Oberst, MRB, James Butler, Building Inspector, Charles Sanford, Fire Marshal, Kris Schultz, Michael McLean, Jeff Smetana, Craig Zogby, John LeFrois, Mark Rabjohn, Richard Hendel

The meeting was called to order at 7:00 p.m. by Chairman McAllister.

Correspondence passed to members for review.

Moved by Mr. Monno, seconded by Mr. Strabel, that the minutes of August 25, 2008 be approved.

Ayes – 7

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

Ayes – 7

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

1000 Transit Way Site Plan. 084.01-1-1.113

Mr. Kris Schultz addressed the Board. The proposal is for a commercial development on the corner of Rte. 31 and Transit Way. Color renderings were circulated to the Board. Since the last meeting, there have been a few plan changes, i.e., change in entrance showing a right in off Rte. 31. There has been a strong desire by the potential tenant to have an access off Brockport-Spencerport Road. NYSDOT has requested that the applicant eliminate what was originally proposed, which was a right-in/right-out off Rte. 31. Mr. Schultz explained that the landowner, Mr. Dan Hogan, has stated he received an informal agreement from DOT to have a right in only. Mr. Dave Goehring has asked the applicant to demonstrate that the right in is necessary for this application.

Mr. LeFrois explained that the potential tenant has made it clear, it doesn't want to be at this site if there isn't an access off Rte. 31. Also, he believes it will be harder to attract a second tenant if there isn't a Rte. 31 access.

Chairman McAllister stated it was interesting that none of the applicants, who took this project before the ZBA, requested an access off Rte. 31. Plus, this Board has made it clear it is not in favor of an access off Rte. 31 because there is no widening being done there. Mr. Schultz explained the applicant is trying to get a special request from NYSDOT. Chairman McAllister stated, even if approval were granted from NYSDOT, the applicant would still have to convince this Board to permit it.

Mr. Schultz explained that there is an existing access off Rte. 31 onto the Spurr parcel, which isn't used anymore and could be closed. If closed, it might make it possible for the right in only on this project to be permitted.

TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008

Mr. Schultz stated MRB's comments have been addressed, i.e., a sidewalk has been added along the frontage. A Knox Box has been added per the Fire Marshal's comments.

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

Richard Hendel, 298 West Sweden Road – Mr. Hendel stated he would prefer, as a consumer, to get off the main road to get in and out of a business than to try and do the traffic on Rte. 31, especially with the new Wal-Mart, gas station, and Spurr. He would think that the applicant would prefer to have an access off Transit Way. Mr. Schultz explained there is an entrance/exit shown off Transit Way, but the applicant would like a right in only, which means one could enter right off Rte. 31 traveling eastbound. He added, once again, this is being driven by the proposed tenant's request.

Mr. Hale stated, in his opinion, Verizon should just stay where it is at the old Dollinger dealership. Mr. LeFrois stated Verizon is looking for a bigger space to introduce its new interior space design. Mr. Schultz added that this lot works well because the previous approved variances could be used, parking is good, and the sub surface storm water storage is good.

Richard Hendel, 298 West Sweden Road – Mr. Hendel asked if there wasn't an existing space that could be used with all the open buildings in Brockport? Mr. Schultz explained that wherever there is a new Wal-Mart SC, that's where businesses want to locate. Mr. Hendel agreed because that's a busy corner in which he almost got hit. The Fire Marshal commented that the majority of accidents in that area start at Tractor Supply and go east which encompasses Sherry Lane and Transit Way. Mr. Strabel added that the Supervisor has requested DOT traffic control at the Sherry Lane intersection for the past three to four years, but the traffic flow isn't there so DOT won't do anything even though there are numerous accidents; just not enough deaths to warrant a study.

Chairman McAllister asked if there were any more questions, concerns or comments? There were none.

Morphet Site Plan. West Sweden Road. 083.03-1-17.21

Mr. Richard Maier addressed the Board. This is a pre-existing subdivision completed last year. The Morphets are relocating from the Carolinas and would like to build on this property. There will be a septic system and private well. Comments from MCDOH, MCDOT and the Town Engineer have been received and addressed.

Richard Hendel, 298 West Sweden Road – Mr. Hendel is a neighbor to the Morphets and his first concern is how will the new house affect his taxes? His second concern is regarding his well, which was unusable for a few days. When the Morphets' other neighbor, the Rabjohns, run a lot of water, his well goes almost dry. Does the Town of Sweden offer any assistance if his well runs dry? He's very concerned.

Mark Rabjohn, 330 West Sweden Road – Mr. Rabjohn, neighbor, asked if there were any restrictions on the location of the new well? Mr. Maier stated not as long as the well is 100 ft. from the septic system, and is on the property, 20 ft. from the lot line. Mr. Rabjohn reviewed the plans. Engineers determined the driveway location before the Morphets purchased the land, which was south of the utility pole, due to the sight distance to the north. Mr. Rabjohn asked about the elevation of the house and how it was determined. Mr. Maier stated what's driving the height of the house is the septic system; it is a modified raised system.

TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008

Richard Hendel, 298 West Sweden Road – Mr. Hendel asked if the location of the Morphets’ septic system in front of the house would have any affect on his well, which is located in front of his house. Mr. Maier stated it shouldn’t because the Morphets’ septic system is on the side and is well over 100 ft. away. There will be a small pond in the front of the lot.

Chairman McAllister asked if there were anymore questions, comments or concerns. There were none.

Moved by Mr. Minor, seconded by Mr. Hale, to adjourn the public hearing to the regular meeting.

Ayes – 7

1000 Transit Way Site Plan. 084.01-1-1.113

Mr. Pat Laber continued review of this project. Revised plans were distributed to the Board. Major changes include a sidewalk, right-in access, additional plantings and the building footprint was tightened up. The changes reflect the comments of the Town Engineer, Highway Department and Fire Marshal.

Mr. Strabel confirmed that if the right-in access weren’t granted, the applicant would not buy the land. Purchasing the land from Mr. Dan Hogan is dependent upon this plan being approved. Mr. Strabel stated the Board isn’t against the development of this corner, just an additional access off Rte. 31 due to safety reasons. Mr. LeFrois mentioned Mr. Hogan has stated he has lost applicants due to no Rte. 31 access. Mr. Minor asked if he also stated that he created a lot of the parcels around this one, as well as Transit Way.

Mr. Dollard explained that the right-in access would add to the congestion, especially by Sherry Lane where drivers normally jump out to make a left, but will not be able to because of cars backed up to turn right into this site.

Mr. Schultz asked, besides the right-in access, is there any other issue to discuss? Mr. Strabel stated no as long as the Town Engineer has reviewed and approved the underground storm water storage system and elevations. Mr. Oberst stated the report was just received Friday and has not been reviewed yet. Mr. Monno asked if freezing is a problem with the underground storm water storage system? Mr. Schultz stated no, the system works very well. Mr. Monno asked what is the elevation from the top of the parking lot to the bottom? Mr. Schultz stated about 4½ ft. down. The water is not retained, but more detained and then released. It’s an underground dry pond.

Mr. Oberst asked how would the storm water quality be addressed with this type of system? Mr. Laber explained that the water from small storms enters the manholes and is pushed into isolated rows, separate from the system, which has filter fabric. Small storms get extra cleansing. Large storms go over the rows and enter into the other 28 lines in the system. SPEDES does not have to be adhered to because of the acreage. Mr. Oberst stated that the Town does have a law requiring a SWPPP be completed at 25,000 sq. ft.

Mr. Strabel asked how is the system cleaned? Mr. Laber explained the process by which an inspector starts at the manhole and shoots water down into the system with what he described as a heavy-duty sprinkler system. Mr. Oberst stated that a maintenance agreement would be required. Mr. LeFrois stated that as the developer and potential owner of the land, he would want to make sure the system is maintained.

Mr. Oberst asked if there would be any wall pack lighting on the building? Mr. LeFrois stated there would be some on the back of the building. This should be included on the lighting plan.

**TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008**

Mr. Monno asked what is the elevation of the existing lot and the finished building? Mr. Schultz stated the building is up 3 ft. in order to facilitate getting the storage system under the parking lot. Chairman McAllister stated that the grade of the parking lot is going to be 2 ft. higher than the grade of Rte. 31. With no berm in place, lights from cars in the parking lot will sweep across Rte. 31 into traffic. Mr. Laber stated there isn't any reason why a berm similar to the one proposed on Transit Way couldn't be added to Rte. 31. Elevations were discussed; the berm on Transit Way is 5 ft. higher than the center of Transit Way.

Mr. Monno asked because this is a small site, how will the dirt be dealt with? Mr. Schultz stated the dirt that is excavated would have to be immediately removed and trucked away.

Mr. Strabel asked how would snow storage be handled? Mr. Schultz stated that one to two parking places would be used for snow storage, and after that, trucked away.

Mr. Minor asked how many standing poles does the lighting plan call for? Mr. Schultz stated the "A" notations on the plan indicate a pole. They are all show box type, light shoots straight down. The number 5 indicates the amount of candle.

Chairman McAllister stated the Planning Board is waiting to receive the Town Engineer's comments. The MC DOH and MC Water Authority still need to stamp the plans. Comments have been received from County Planning.

Mr. Minor asked if anything could be done to the National Grid power pole located on the northeast corner, which has been hit/stretched many different times by trucks that don't make that corner. He is surprised it's still standing. Mr. Laber stated that the pole is shown on the plans, but is located past the water main easement R.O.W.

Moved by Mr. Hale, seconded by Mr. Hertweck, to table this project until the next scheduled meeting.

The Fire Marshal asked if the building would be sprinkled? Mr. Schultz stated yes, it's required. Mr. Sanford would like to add to his comment sheet that the fire connection would have to be a 4" STORZ, on the side of the building. Mr. Strabel asked why is the building being sprinkled; it's not required for this square footage? Mr. Schultz will have an answer in two weeks, at the next meeting.

Ayes – 7

Morphet Site Plan. West Sweden Road. 083.03-1-17.2

Chairman McAllister continued review of this project. The Town Engineer's comments have been addressed.

Mr. Monno suggested a note be added to the plans indicating how to put a holding tank in for a supply of water. The recovery rate was 15 gallons a minute, which isn't much. Mr. Maier wasn't aware that the well was already drilled.

Discussion took place regarding that the owner is adamant about not having a basement. Mr. Minor stated if Mr. Morphet changes his mind regarding a basement, the plans have to come back before this Board for an amended site plan approval.

**TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008**

Chairman McAllister stated the plans should be stamped by DOH. The Town Engineer and Fire Marshal are ready to sign. Mr. Minor would like the plans to show the proposed sewage cleanout.

Moved by Mr. Hale, seconded by Mr. Dollard,

WHEREAS, the Planning Board has received an application for site plan approval for the Morphet Site Plan on West Sweden Road, and

WHEREAS, the Planning Board held a public hearing on September 8, 2008, and all persons wishing to be heard were heard, and

WHEREAS, the Planning Board has reviewed the comments of the Town Engineer, Fire Marshal, and the Environmental Conservation Board,

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board approves the Morphet Site Plan contingent upon approval by the Monroe County Health Department, and receiving the Town Engineer's signature, and the Chairman be authorized to sign the plat.

Ayes – 7

Heritage Square – Phase I Subdivision & Site Plan. Redman Road. 068.03-1-13.11, 14.1, 18, 19
Brockport College Suites – Lot 1 Site Plan. West side of Redman Road. 068.03-1-13.11, 18

Mr. Kris Schultz addressed the Board. Issues have been resolved with MC Water Authority, Pure Waters, and MC DOH since the last meeting. The first review of the Town Engineer has been completed and updated maps have been forwarded for a second run through. Mr. Schultz is comfortable that all the planning issues have been addressed and that the review is down to the small details.

Mr. Schultz stated they are on a very tight schedule, racing against the weather to make sure the earthwork is moved, and things potentially green and stabilized before winter arrives. Also, there is a start date to meet so that the suites can be open and running in time for next fall.

At the last meeting, the Board granted preliminary and final approval on the subdivision plat only, which will allow the map to be recorded. There is a pre-construction meeting with the general contractor dealing with clearing the Brockport College Suite site and associated earthwork, as well as setting the specific schedule for the project. At the end of the month, the plan is to have the title to the property transferred to the United Group for Lot 1. United Group's schedule calls for obtaining a foundation building permit by October 1.

The biggest issue that has come up is regarding the code that states not more than three unrelated people may live in a dwelling. Many calls have been made by Mr. Smetana, Mr. McLean and Mr. Schultz to resolve this issue. Mrs. Leisa Strabel has made a big effort to help reach a solution. Attorney Reuben Ortenberg has put together a letter stating that there shouldn't be anything from a Planning Board approval standpoint that prevents someone from building. What the ordinance actually says is an issue after the fact. Chairman McAllister rejected this letter because it didn't address the Board's issue with the ordinance. Mr. Hale added this would cause a major enforcement issue, and that one could build whatever one pleases; just build a fine into the rent charged to the students. Chairman McAllister stated this is an upfront issue because at many Planning Board meetings, this ordinance and what it doesn't allow has been talked about and the project's intent is clear. It would be highly defensible if this project ever went to court because everyone knew it was wrong.

TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008

Chairman McAllister explained to the Supervisor that Attorney Ortenberg addressed the issue in a manner that didn't resolve the Board's concerns, which may have been because he wasn't given the right information. Also, Mr. Hale is concerned that a supplemental SEQRA won't be completed. Chairman McAllister assured Mr. Hale that Attorney Ortenberg would take care of it. In response, the Supervisor wrote the attached memo to the Planning Board to resolve the issue regarding the ordinance.

With the above matter resolved, Mr. Schultz is seeking contingent final site plan approval for Heritage Square and Brockport College Suites. He plans to obtain signatures on the plans at the end of the month after the change in the ordinance so that a permit can be pulled October 1. The Town Board's intent is to hold a special public hearing in order to change the ordinance.

Chairman McAllister asked if the Town Engineer has completed his review. Mr. Oberst stated he hasn't completed his review, but doesn't see any major hurdles to work out. Details will be worked out over the next few weeks. Mr. Hale suggested dividing the Heritage Square – Phase I approval from Brockport College Suites due to fewer problems with Heritage Square.

Mr. Schultz understood Mr. Hale's concern that all the details aren't worked out with Brockport College Suites; however, the Supervisor has written the memo stating the issues will be taken care of, and there are time concerns. Mr. Hale agreed, but would like to see the proposed changes before final approval is given. Also, the Town Engineer has not completed his design review.

Mr. Monno asked if the request to change the ordinance was because of this project? The Board replied yes, there hasn't been a student housing application since the code was changed to prevent single-family homes from being turned into student housing. Mr. Monno asked if this situation was legal? Both Mr. Hale and Chairman McAllister stated it was legal and not unusual. Mr. Monno asked if the Board should table this project until the ordinance issue is resolved? Mr. Hale stated that is an option. Mr. Strabel stated the Board could certainly make this a condition to receiving final approval and the signing of the mylar. Mr. Monno recommended putting on record, the Board's decision. Mr. Hale stated the Board's opinion, especially his comments, have been documented in the minutes over past meetings.

Chairman McAllister stated through all the comments, the Town Board realizes that the wording of the ordinance has to be changed because they are interested in having student housing, but it needs to be properly planned. Also, the Town Board has hired Attorney Ortenberg to specifically remove the term family so concerns are related to health, safety and the way the unit is planned.

Mr. Dollard added that the Town Board is acknowledging in the Supervisor's memo that there is a problem and that the Planning Board's concerns would be addressed. Mr. Strabel stated it's in the Town Board's hands.

Mr. Schultz summarized the Heritage Square – Phase I site plan. Plat approval has been given to create the lot. The roadway has been designed with improvements. Plans have gone through the Town Engineer, revised and sent back. The plans have gone through the DOH, Pure Waters, and MC Water Authority, who did an extensive review and are satisfied. If the Board is satisfied with everything else, Mr. Schultz would like to request contingent final approval.

Mr. Oberst spoke with Don Doe, MC Water Authority, who stated that the hydraulics and size/location of mains have been approved; just the details have to be worked out. DOH has reviewed the plans with calculations left to review. Pretty much the agencies are at the same place.

TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008

Moved by Mr. Hale, seconded by Mr. Dollard,

WHEREAS, the Planning Board has received an application from McLean Development LLC for site plan approval of Heritage Square – Phase I, last revised August 28, 2008, and

WHEREAS, a public hearing was held by the Planning Board on August 25, 2008, and all persons wishing to be heard were heard, and

WHEREAS, the Planning Board has reviewed the comments of the Town Engineer and Fire Marshal, and

WHEREAS, the SEQRA process was completed by the Town Board during the rezoning, as a consolidated review,

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board approves the site plan, contingent upon the approval of the Town Engineer, the Monroe County Health Department, and the Monroe County Water Authority, and New York State Department of Transportation, and the Chairman be authorized to sign the plat.

Mr. Minor confirmed that this resolution approves roads, streets, and ponds, and that each new phase will need resubdivision and site plan approval. There are no buildings or building site being approved. Mr. Schultz stated that is correct; only roads, sewer, water, and utilities are being approved. Mr. Monno asked how do the changes talked about get included in this resolution? It was determined that the date of the last revised set of plans be included in the above resolution. Mr. Oberst requested that the signed maintenance agreement be listed as a condition. The Board stated that Mr. Oberst should hold off signing the plat until the agreement is in place. The maintenance agreement has to be reviewed by the Town Attorney and approved by the Town Board.

Ayes – 7

Chairman McAllister moved to the review of Brockport College Suites. Mr. Schultz explained that it is great to have received a contingent final for Heritage Square, but the applicant absolutely needs to have a contingent final approval for Brockport College Suites as well.

Mr. Monno asked is a special meeting going to be held? Mr. Schultz stated he spoke with the Supervisor who stated he would call an extra Town Board meeting.

Mr. Smetana presented his interpretation of the existing ordinance stating that there's nothing that would preclude this Board from granting final approval on how the floor plan is designed, but there would be issues after with the renting to four or more unrelated people. The suite design could be a three-bedroom apartment with a den.

Chairman McAllister stated the issue is that the applicant came before this Board with an application for student housing for three or four students, which is a violation of the code. The design is not the issue. The Board is not supposing what you may or may not do, it was stated as a matter of public record. Your intent was made clear. The issue is not the number of bedrooms, but the number of unrelated people occupying a suite. The Planning Board looks to see if an application is consistent with the Town's zoning codes.

Mr. Strabel added if the application were for a three-bedroom suite, there wouldn't be an issue. Mr. Smetana added why couldn't it be a three-bedroom unit with a den? Mr. Strabel stated we've already discussed that, and it will be resolved by waiting for the Town Board to change the ordinance.

TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008

Mr. Schultz agreed and stated everything else will be in place by the time the ordinance is changed and the Board can sign the plat. Mr. Minor clarified that final approval is contingent upon the ordinance being changed. Mr. Strabel stated it's just like any other contingency.

It was determined that the SEQRA determination for the rezoning should be amended due to a new target market and new impacts. Attorney Ortenberg is very experienced with this type of work, and is good at protecting the Town to make sure all potential details are covered.

Mr. Schultz stated time is of great importance, and that is why the applicant is pushing for a contingent final approval tonight. If the project is put on hold for the next two weeks, closings between United Group and McLean Development may not happen, and a permit won't be able to be pulled by October 1. Discussion took place regarding the timetable of events.

Mr. Hale stated he would not vote for anything tonight until he sees the proposed language for the change to the ordinance, and how the SEQRA review is handled. Mr. Strabel stated a SEQRA review has to be completed before a change to the zoning code can be done.

Mr. Dollard stated referring to Attorney Ortenberg's letter, the ordinance deals with a single-family dwelling, not what is proposed, which are many dwelling units, i.e., apartment complex, condos, hotel, etc.

Chairman McAllister stated the Supervisor's memo states the Planning Board will be given the opportunity to review the new ordinance. Mr. Strabel stated so the Board will have its input reflected in the new ordinance before the Board signs the plat.

Mr. Smetana asked if the Planning Board would approve the project authorizing the applicant not to rent to more than three people in a dwelling unit? When the new ordinance is changed, than it would authorize the applicant to rent to four people in a dwelling. The Planning Board doesn't deal with the intent of a project, but the zoning code.

Chairman McAllister stated if Mr. Smetana would like to go on public record and state that the Brockport College Suites will not rent to more than three people as a new intent, not a contingency; he doesn't have a problem with the existing ordinance and this project. Mr. Strabel suggested an affidavit could be signed.

Mr. Monno adamantly disagreed with Mr. Smetana. Mr. Monno explained that both the applicant and this Board are aware of how this project was first presented and to change it now is ridiculous and he doesn't want any part of it.

Mr. Monno left the meeting at 9:15 p.m.

Mr. Schultz explained Mr. Smetana is trying to say he will sacrifice the project and restrict the number of renters to get the project approved and kept on schedule.

Mr. Strabel added that the real issue isn't with the ordinance being changed because that will happen; it is with the scheduling meeting tomorrow. Even if things go as planned with the Town Board, the public hearing won't get advertised until after Saturday's meeting. That means the hearing is put off until September 23, and the SEQRA process to be completed as well as the resolution. The Chairman probably won't be able to sign the mylar until October and earthwork will need to have been started by then.

**TOWN OF SWEDEN
Planning Board Minutes
September 8, 2008**

Mr. Smetana stated that was his sole reason for suggesting approval of a three-bedroom unit so there are no contingency approvals. Mr. Strabel added that's only if the Town Engineer doesn't have any other issues, and with a project this size, he's sure there will be some. His point is whether or not the applicant is prepared to accept not being able to move dirt around until October. Discussion took place regarding the ability to do earthwork prior to the mylar being signed, what would be required, and the risks involved.

Mr. Minor stated the applicant has had a lot of time to plan this project, and he doesn't like the fact that the Planning Board is pushed into the corner to hurry up and accommodate the applicant's lack of planning.

Moved by Mr. Minor, seconded by Mr. Strabel,

WHEREAS, the Planning Board has received an application from the United Group for site plan approval of Brockport College Suites – Lot 1, last revised August 25, 2008, and

WHEREAS, a public hearing was held by the Planning Board on August 25, 2008, and all persons wishing to be heard were heard, and

WHEREAS, the Planning Board has reviewed the comments of the Town Engineer and Fire Marshal, and

WHEREAS, the SEQRA process was completed by the Town Board during the rezoning, as a consolidated review,

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board approves the site plan, contingent upon the approval of the Town Engineer, the Monroe County Health Department, and the Monroe County Water Authority, New York State Department of Transportation, and modifications to the definition of family according to §175-7. Definitions. of the Town of Sweden Zoning Book, Supervisor's memo, dated September 8, 2008, and all other required signatures received, and the Chairman be authorized to sign the plat.

Moved by Mr. Hale, to table the motion until the next meeting. Motion failed due to no second.

Ayes – 5
Nay – Mr. Hale

Motion passed.

The meeting was adjourned by motion at 9:45 p.m.

Planning Board Secretary