

Town of Hamilton
Special Planning Board Meeting
Tuesday, October 10, 2023, 7:00 PM
Hamilton Town Community Room
38 Milford Street, Hamilton

Present: Mike Welshko, Elaine Hughes (late 7:15), Bettyann Miller, Mary Galvez, Kathleen Palmer, Deputy Town Clerk Elisa Robertson, Town Attorney Nadine Bell

Absent: Codes Officer Chuck Ladd, Planning Board Alternate Pam Salmon

Others Present: Ted Spencer, Eleanor Weyter, Mark Curtis, Deb and Karen Hotaling, Keith and Jody Palmer

7:10 PM Chairperson Mike Welshko calls the meeting to order. He reminds the audience that there is a sign-up sheet if one wishes to speak at the public hearing for the Terry Subdivision that is later in the meeting.

New Business

Paul Curtin/Mark Curtis; MAJOR SUBDIVISION, Preliminary Review; Spring Street; Tax Map #'s 154.-1-7.1 & 153.-1-8.2

This will be the PRELIMINARY REVIEW on an application for a **Major Subdivision** proposed by Mark and Patty Curtis. The applicant wishes to subdivide two pieces of property into five lots: totaling +/- 14 acres on Spring Street and Payne Street, Hamilton, NY. These properties are identified as tax map #'s 154.-1-7.1, 154.-1-8.2. Two of the lots have homes on them and needed variances because they were nonconforming lots. The one lot that the applicant lives on does not have adequate road frontage and the other lot is substandard in size. The applicant went before the ZBA to request variances and they were granted.

Chairman Welshko has the Board look at the maps provided and asks the Board if they have any questions. He asks if there are any questions about the application materials. The applicant understands that if in the future he wishes to subdivide lot 5 that it would be categorized as a major subdivision.

The Board moves on to review part one of the SEQRA short form.

A few changes need to be made to the SEQRA:

- The description of the project needs to be corrected from 2 lots to 5 lots.
- Question #4 should include Commercial Land Uses (the property next door)
- Question #9 Confusing to most communities; the Town Attorney, Nadine Bell states that either answer is acceptable.
- Question #14 was not answered, the typical habitats at the project site are:
Suburban and Forest

The document is signed by the owner/applicant's attorney.

Resolution 2023- 27: Motion to accept the review of Part 1 of the SEQRA short form declaration and declare the Town of Hamilton Planning Board lead agency.

Motion: Bettyann Miller

Second: Mary Galvez

Vote: YES – 5 NO - 0

ADOPTED

Resolution 2023- 28: Motion to schedule a Public Hearing for this application on November 14, 2023.

Motion: Mary Galvez

Second: Kathleen Palmer

Vote: YES – 5 NO - 0

ADOPTED

Old Business

William Getman/John and Jerrilyn Terry; MINOR SUBDIVISION APPLICATION, Public Hearing, 2200 Bonney Road, Tax Map # 154.-1-34.1

This is the PUBLIC HEARING on his application for a **Minor Subdivision** proposed by John and Jerrilyn Terry. The applicant wishes to subdivide their property into two lots: totaling +/- 3.25 acres on Bonney Road, Hamilton, NY. This property is identified as tax map # 154.-1-34.1. Unfortunately, the applicant could not be here. Typically, the public hearing is when the applicant explains what they wish to do and answer any questions the public may have. The Chairman can explain the application as it is a very simple application. The Town Attorney suggests opening the public hearing, see if anyone wishes to make comment; and leave the hearing open until the next meeting. There is no one here that wishes to speak to this application at this time.

Resolution 2023- 29: Motion to open the public hearing.

Motion: Mary Galvez

Second: Bettyann Miller

Vote: YES – 5 NO - 0

ADOPTED

Resolution 2023- 30: Motion to keep the public hearing open until the next meeting on November 14, 2023.

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: YES – 5 NO - 0

ADOPTED

Town of Hamilton; SPECIAL USE PERMIT APPLICATION, Public Hearing (Continued), Wickwire Road, Tax Map # 171.-1-8

The Board will continue the PUBLIC HEARING regarding an application for a **Special Use Permit** made by the Town of Hamilton for a public park. The purpose of the hearing is to hear public comments on the application. This application concerns a plot located on Wickwire Road, Tax Map # 171.-1-8. The application consists of a driveway, parking, a boat launch, and a pavilion to be constructed to create a Town Park.

Town Supervisor Eve Ann Shwartz wishes to review the issues that were outlined in a letter submitted to the Board last week. She feels that the legal arguments submitted by the Town Attorney speak for themselves. The Town is against an imposed 50-foot buffer. The attorney can answer any questions that people may have better than she can. The Town does not recognize the Planning Board's authority to impose the 50-foot buffer; and that it would never be appropriate in this situation. Supervisor Shwartz did provide the Board with maps to illustrate what the impact of a 50-foot buffer would be, and she thinks that the maps tell the whole story.

Members of the Board visited the site earlier in the day to see where the property was staked. The property would be losing 14 parking spaces if the 50-foot buffer is imposed. There would only be 8 remaining spaces. The parking lot is the primary purpose, it was created to make safe parking, off the side of the road. That was the primary safety concern that many people mentioned. The public does not want the Town to develop in the back area. It would not be visible from the road and there were concerns about partying, etc. A gate has been put up to keep cars etc from going back there. That is as far as the Town is willing to develop the park. She cannot speak to the future, she will not always be supervisor, she will not speculate as to what may come. The buffer would really consist of the taking of public land by a private entity, as far as she is concerned.

The topographical map shows very well that there is a huge vernal pool in the middle of the property and the Town would have to build a road with a ton of fill to access that back property. The DEC may not allow that because it would impact the vernal pool. It would also be very expensive. They want to protect the vernal pool for there is a ton of wildlife that lives there.

The Town voluntarily offered to create a 50 foot no spray zone along the entire length of the property. There were comments made about the organic farming operations next door, this should address those concerns. The Town only sprays for weeds in two instances; around the gravestones in the cemetery and in the trenches put in along the roadside that are filled with large rocks. That is the only time that the Town uses herbicides. The Town is comfortable with having that as a condition to the Special Use Permit.

In terms of a fence, the Town Board is against that. There is no precedent for the Planning Board to impose such an onerous condition on any other prior Special Use applicants. If that

were imposed; the Planning Board would be holding the Town of Hamilton to a higher standard than any other applicant. This is a remote location with less intensive use than an event center or proposed Airbnb. The Planning Board is legally bound to treat all applicants as equally as possible to avoid being arbitrary and capricious. Although each application has slightly different circumstances; the same rules need to be applied to each applicant and the same conditions as appropriate. She cannot see where the condition of a fence would be ever necessary. The section of the Hamilton Town Zoning Law 6.2-2 does not require nor mention a fence. Fences are expensive and hard to maintain there are many arguments against it. It would undermine the beauty of the place, especially a plastic fence. The Town has offered, in their resolution, to create a dense vegetative buffer on the boundary line to the south that borders the parking lot. The goal of the resolution was this vegetative boundary, to pick plants that do not need to be maintained but that will grow to 4 feet tall. They would be set at least 2 feet back from the boundary line. They are prepared to do that, only along the parking lot. There has been some research done regarding the best plants for this barrier. Deer fencing may be used as the hedges are growing to make it clear where the properties meet.

Jocelyn Gavitt from the PCD may be able to give the Town guidance regarding someone to help pick out the vegetation for the border. She has recommended someone. Deer resistant plants are also recommended.

Lighting is discussed as well 6 downward facing lights inside the pavilion. There will be a shut off switch if there is a problem. There is a Town Noise Law that is coming, it will be passed with the new Zoning Law that is in the works. The Town is offering to have sound as a condition of the permit as well. There was also much concern about the enforcement of the rules.

Supervisor Shwartz called the County Planning Department and asked Scott Ingmire to speak about the experiences that they have had with their new park specifically Delphi Falls. They had a few incidents early on (during the pandemic) and from there afterword there has been no trouble. Enforcements will be based on complaints. Sheriffs or State Police will be called if need be. Tickets can be issued. The County has never had to do that, and they have 4 parks. She hopes that she has addressed all the concerns that the Planning Board has had.

Chairman Welshko asks if the Board has any questions?

Board Member Bettyann Miller had contact with some fisherman that night fish and stated that they are concerned about the hours of the park. Supervisor Shwartz states that if people want to go in there to fish at night, like they always have, they may if there are no complaints. This is the first time that this concern has been raised. This fishing is usually done in the early spring, March to May. The rules are really intended to prevent kids from partying there, not a traditional use of the park. If the parks rules change that would require an amendment. It is important that the Board continue to treat this application just like any other. The entire application would not have to redone just the modification. There are plans to clean up the wooded area; remove all the junk, etc.

Board member Kathleen Palmer has some comments to make. She sent an email to the other members of the Board to help negotiate some middle ground for this application. She suggests putting a fence all the way down the southern border even though the Town is not required to

do so. She feels it would show good will and clearly mark to people where the border is. She is looking to the future. She states that if a playground is put in the future, she is concerned about the safety of the children. Chairman Welshko reminds her that the Town would have to come in for an amendment to do that. The concern is that since the Town Board is adamant that they don't need to be here for this that they may just go ahead and do what they want. Chairman Welshko addresses this by saying that the Board cannot approve or deny an application depending on "what ifs". The Town Board could ignore the conditions, he does not feel that that is the intent. Board member Galvez agrees. The adjoining property owners have the property posted with no trespass signs. Chairman Welshko states that what the Town does with regards to the applicability of the Zoning Law is beyond this Board's purview. It has been a struggle for other Board members as well to treat this application as if it were made by any regular property owner. There is some discussion of a previous application to illustrate the challenges of differing opinions on applications and how amendments are handled. There is some discussion about a noise study, and it is determined that all that could be detected would be ambient noise there would be no way to study any and all other noises that may occur.

Town Attorney Nadine Bell comments regarding procedure to help the Board set conditions she explains New York State Town Law 274B. Conditions need to be reasonable and directly related to and incidental to the SUP.

The Board is reminded that the current SUP will only be for what appears on the site plan. Chairman Welshko asks the Board to look at Page 59 of the Zoning Law Section 8.3-10b:

A Special Permit shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Special Permit (as determined by the Code Enforcement Officer in issuing a Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Special Permit shall require the granting of a new Special Permit or a Special Permit amendment.

A SUP is very specific to the site plan it is not carte blanche to do whatever they please. That is why the Board appears to be so picky with site plans. That is how they have control over issuing the permit, and what is allowed both the use and the construction that is in the site plan; and only that. That is applicable to all applications. It also helps for continuity when there is a new codes person or new board member. The benefit is to the Town and the applicant. Board member Palmer has a few procedural questions for the Town Attorney.

The Town decided to go through this process even though they have taken the position that they are exempt. They submitted themselves to this process for transparency and community involvement and to address any concerns. It would be inappropriate for the Town to get the SUP and to disregard the conditions that are set forth therein.

The presence of the Town Attorney, Nadine Bell, to explain procedure and the process has been helpful to some board members and the audience alike. Chairman Welshko asks the Board if

there are any more questions or comments for the public hearing portion of the meeting.
There are not.

Resolution 2023- 31: Motion to Close the public hearing.

Motion: Bettyann Miller

Second: Elaine Hughes

Vote: YES – 5 NO - 0

ADOPTED

There is more procedural discussion regarding when and how conditions are made. If the SUP is granted it means that the land use proposed is allowable in that area under certain conditions. Town Attorney Nadine Bell gives a few examples.

The Board proceeds to review part 2 of the SEQRA short form, all questions are answered small or no impact.

Resolution 2023- 32: Motion to accept part 2 of the SEQRA short form and direct the Chairman to sign part 3.

Motion: Mary Galvez

Second: Bettyann Miller

Vote: YES – 5 NO - 0

ADOPTED

The Board is prepared not to discuss the approval and possible conditions for this permit. The Board refers to a document that was presented to them on July 11, 2023, Planning Board Meeting that lists some of the possible conditions and gives details. The document is located, and the Deputy Clerk makes copies for those who do not have it handy. Topics that are discussed include: Lighting, Port-a-potty, spraying and signage. The Town does not regularly spray with pesticides except in the instances of the cemetery or rock filled trenches. Things that are on the site plan do not need to be repeated in the conditions. A good example is the number of parking spaces.

Conditions

- 1. Lighting - 7 light fixtures – There will be 6 lights inside pavilion and 1 facing the parking lot, downward facing, soft yellow, with motion sensors. That has an option for motion detector to be switched off.**
- 2. Voluntary No Spray Zone – The Town must maintain a 50 foot no spray zone along the entire southern boundary with parcel 170.-1-50.2 so long as organic farming certification operations are still in effect.**
- 3. Port – a -Potties – A minimum of one will be available April through November; will be maintained on a weekly basis and be universally accessible .**

- 4. Signage - There shall be a park sign at the entrance to the parking area with the rules to the left of the internal driveway. There will also be a sign in the pavilion listing the terms of use.**

Welcome Sign

Welcome to the Town of Hamilton 9-Mile Park Rules

- Open Dawn to Dusk
- Carry in-carry out
- No Hunting or Trapping
- No Fires
- Dogs must be leashed at all times
- Clean up after your pet
- No swimming
- No artifacts or plants to be disturbed or removed
- No off-road vehicles
- Please do not park along Wickwire Road
- This area is tobacco free

Pavilion

- Pavilion is on a first come first serve basis
- Carry in and carry out
- Leave pavilion as you found it

- 5. Dense Vegetative Hedge – The Town shall establish and maintain a dense vegetative hedge along the boundary of the parking area and property #170.-1-50.2. This barrier will be a maximum of 4 feet wide and 5 feet high; with the option of establishing a temporary fence to serve as the boundary until the hedge is fully established. The hedge and fence shall go from the western edge of the parking lot to the gate (as seen on the site plan) on the eastern edge of the parking area.**

This application was referred to the Madison County Planning Department under GML 239 (log # 092-2023) It was returned for local determination. With comments “Since the proposed plot of land has long been informally used by the community as a launch point into Nine Mile Swamp, we see no adverse Countywide or intermunicipal impact resulting from legitimatizing Nine Mile Park as it will make it more accessible and safe for residents. Therefore, this will be returned for local determination. We appreciate the towns transparency in going through the approval process.”

The County had the opportunity to make comments or modifications, there were none offered. When the New Zoning Law is passed soon this property will be subject to the new noise law that will be included.

There was a question from an audience member about the GML recommendation report. They were concerned about the top portion where it states why the application was sent to the Madison County Planning Department. The box that is checked says because it is a state or

County Highway the audience member was concerned because it did not state because it was near a farm operation in the Ag district. It is explained that that would not affect the outcome or the comments from the County Planning Department. It is explained that the County looks at the property covering all aspects of the application.

Chairman Welshko reviews the criteria for granting a Special Use Permit Located on page 58 section 8.3-8 in the Zoning Law.

8.3-8 Criteria

In considering and acting on Special Uses, the Planning Board shall consider the public health, safety, and general welfare. The Board shall also consider potential environmental impacts and the comfort and convenience of the public in general, the residents of the proposed development, and the residents of the immediate surrounding area. The Board may prescribe such appropriate conditions and safeguards as may be necessary in order that the results of its action shall, to the maximum extent possible, further the accomplishment of the following objectives:

A. Compatibility. That the proposed use is of a character compatible with the surrounding neighborhood, incorporates a site design which is consistent with the rural character of the town, and is in harmony with the land use policies and goals as officially adopted in the Comprehensive Plan for the Town.

B. Vehicular Access. That proposed access points are adequate in width, grade, alignment, and visibility; are not excessive in number; are located at appropriate distances from intersections or places of public assembly; and satisfy other similar safety considerations.

C. Circulation and Parking. That adequate off-road parking and loading spaces are provided to minimize, or, where required, to eliminate the need for parking of vehicles on public highways by any persons connected with or visiting the site of the use; that the interior circulation system is adequate to provide safe accessibility to all required parking spaces; and that adequate separation of pedestrian and vehicular movements is provided.

D. Landscaping and Screening. That all parking, storage, loading, and service areas are reasonably screened at all seasons of the year from the view of adjacent residential areas and that the general landscaping of the site is in character with the surrounding areas. Such screening shall be maintained as a condition of the special permit.

E. Natural Features. That the proposed use, together with its sanitary and water service facilities, are compatible with geologic, hydrologic, and soil conditions of the site and of adjacent areas and that existing natural and scenic features are preserved, and aquifers and watersheds are protected, to the maximum extent possible.

Resolution 2023- 33: Motion to grant a Special Use Permit for the Nine Mile Park consistent with the site plan prepared by Gavitt Associates titled 9-Mile Park, Town of Hamilton S-1/1 dated 10-22 and subject to the previous conditions.

Motion: Bettyann Miller

Second: Mary Galvez

Vote: YES – 5 NO - 0

ADOPTED

Record of Vote

	Member Name	Aye or Nay
Chair	Mike Welshko	AYE
Member	Mary Galvez	AYE
Member	Kathleen Palmer	AYE
Member	Bettyann Miller	AYE
Member	Elaine Hughes	AYE

Resolution 2023- 34: Motion to APPROVE the minutes from September 12, 2023.

Motion: Kathleen Palmer

Second: Elaine Hughes

Vote: YES – 5 NO - 0

ADOPTED

Signing of vouchers

Resolution 2023- 35: Motion to adjourn at 9:01 PM .

Motion: Mary Galvez

Second: Bettyann Miller

Vote: YES – 5 NO – 0

ADOPTED

Next Meeting: November 14, 2023

Materials cut off: November 2, 2023

Respectfully submitted by
Elisa E. Earnest
Deputy Clerk