

Town of Montgomery Planning Board Meeting
Held at the Town Government Center, Second Floor
110 Bracken Road, Montgomery, New York 12549
Monday, August 12, 2019

PRESENT: F. REICHLE, Chairman
J. BEAUMONT, Vice Chairman
R. PENNINGS, Board Member
R. McGUIRE, Board Member
R. MONTEMARANO, Board Member

ABSENT: W. KELLY, Board Member
J. BROWN III, Board Member

ALSO PRESENT: R. W. HOYT, Attorney for the Planning Board
L. DOTSON, Garling Associates, Planning Consultant
A. FETHERSTON, Engineer for the Planning Board
MEMBERS OF THE AUDIENCE

PLANNING BOARD CLERK: S. HADDEN

RECORDING SECRETARY: J. CASTON, Recording Secretary

AGENDA

7:30 PM Comment Session

7:30 PM Bluewater Industrial Partners LLC – Project Sailfish – NYS Rte. 17K & 747
SEU Permit and Site Plan – Continuation of the Public Hearing

7:45 PM Alicea Holdings LLC, ASAP Scrap Recycling, LLC – NYS Rte. 208
SEU Permit and Amended Site Plan – Continuation of the Public Hearing

Nelson and Popowick – Old South Plank Road & NYS Rte. 52
Lot Line Change - Presentation

Angry Orchard Cidery – Walden Lanes Parking Expansion – NYS Rte. 52
Amended Site Plan Approval – Discussion

Gas Land Petroleum – NYS Rte. 52 and Albany Post Road
Lot Line Changes Approvals – Extension Request
2nd 90-day extension expires 8/12/19

Doyle/Staples – NYS Route 208 – Lot Line Change Approval
Extension Request – 1st 90-day extension expires 8/12/2019

Chairman Reichle called the meeting to order.

Comment Session There weren't any comments received

Thomas Wolcott, Village of Maybrook asked why the Village Maybrook Library never received the FEIS for Sailfish?

Chairman Reichle said it is online and was sent to the Montgomery and Walden libraries.

Mr. Scott asked if there was a reason why Maybrook didn't receive a copy?

Chairman Reichle said no special reason why we left them out, but we had decided a while ago that's where we were going to send them, the same for the DEIS.

Mr. Scott said no, for Medline that went to all branches.

Chairman Reichle not Sailfish, there is one here at town hall. I'm sorry we didn't send it to Maybrook. We sent them to the same locations we did the original document or the DEIS for Sailfish and followed up at the same locations.

Woman in audience asked if answers would be given at tomorrow's Medline Public Hearing?

Chairman Reichle said no, the format for the DEIS will be to take public comment, maybe a question on the process we can address, but we will not be going in a back and forth over the different aspects of the job.

Chairman Reichle said we are going to begin this meeting with Sailfish this evening, because we will need to spend a lot of time on the first item.

Bluewater Industrial Partners LLC – Project Sailfish – NYS Rte. 17K & 747
SEU Permit and Site Plan – Continuation of the Public Hearing

Chairman Reichle opened the continuation of the public hearing and said the FEIS has been available since last Monday in electronic form, at town hall, and at the Montgomery and Walden libraries. You will be able to hand in written comments until noon on the 27th of August of 2019. All comments either written or verbally communicated will be looked at. He asked if the consultants for Bluewater wanted to update everyone on the status of the project?

David Everett, Attorney with Whiteman, Osterman and Hanna LLP, Donald Chase and Steven Butte, with Bluewater Industrial Partners and Charles Utschig, PE with Langan Engineering were present.

A long discussion occurred.

A stenographer was present and a copy of the transcript is available in the file.

Chairman Reichle said it's almost 8: 00, why don't we recess this hearing to later this evening so we can continue the ASAP Scrap hearing and then we'll come back to Bluewater?

Alicea Holdings LLC, ASAP Scrap Recycling, LLC – NYS Rte. 208
SEU Permit and Amended Site Plan – Continuation of the Public Hearing

Chairman Reichle opened the continued Alicea Holdings LLC, ASAP Public Hearing.

Marissa Weiss, Attorney for the Applicant and with Jacobowitz and Gubits Law Firm said we have submitted a new submission in the last week that includes a revised site plan, a wastewater disposal plan, a highway right-of-way improvement plan, a revised facility operations plan, an operational SWPPP, a written response to all public comments that we have received up until this date, a specific response to Orange County Department of Planning letter for their 239-m,1 review, a letter regarding the existing scale on the property, a follow up letter regarding the noise decibal levels from the car crusher that are to be located on the property, as well as a follow up lighting plan.

Matthew Towne, PE with Willingham Engineering said there are a few items we are waiting on. We submitted for the minor commercial driveway entrance and we're still waiting to hear from the DOT. We completed the Phase I Archeological Study, we are waiting for the archeologist to prepare the report. Per verbal confirmation, he didn't find any sensitive areas. We'll submit that to SHPO for the SEQRA process. We submitted an operational SWPPP that's being reviewed by Riverkeeper now and it's going to the DEC after that, they want to review it. We coordinated with the Walden Fire Company, we have a site meeting with them next Tuesday to figure out what's needed for adequate fire suppression at the site. We've also coordinated with the Orange County Department of Environmental Facility regarding their approval on the project and we are waiting to hear back from them.

Chairman Reichled opened the hearing for public comment.

Steven Toth, audience, said I had to go to the police department and file harassment charges against Ed Alicea here and I don't appreciate him making a comment behind my back when he left the room and came around behind me; which I have a FOIL on the report from last week and then I had to make another report for his harassment earlier today when he started calling me. I was going through the zoning today and what the recycling and handling recovery facility includes and it says how even dust, debris and we already have a problem with their dust blowing over into our yard, summer's dry, wind picks up, their north of us, get a north wind, dust blows into our yard; who knows what debris in the future. It says for the maximum shall be no greater than 57 decibels from 7 a.m. to 10 p.m.; line H, right in your zoning. My mother called me this morning told me to come over, she had the windows open, shes's trying to sleep, 9:00 this morning, I can even play it for you. You can hear them beating on metal, yelling; they put all their work backover disturbing my mother. The noise problem is an issue, I took an actual decibel reading and I video recorded also and I'll get up over 70 decibels in her frontyard, with the noise that is already coming from them. Do they have anything with stormwater because they have been using a lot of pressure washing with the metal racks and everything. Is there any risk of paintchips being washed down into the river?

Mrs. Toth audience, said she got a letter last week from the town that they would like to come and inspect my place, the fire department. My husband passed away in 2016, the machine shop is closed and we are trying to clean up and we are closing the autosales dealership business also and have a few cars that we are in the process of cleaning up. This is retaliation and I got a phone call from some gentleman asking if I wanted to sell my house and how many bedrooms there were. I told him yes, I wanted to sell it and he wanted to discuss the rooms and everything and I said no, I will not answer on the phone because I didn't know the person.

Alicea Holdings LLC, ASAP Scrap Recycling, LLC – NYS Rte. 208
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Mr. Toth said I looked up the phone number and it came up to be Chappel Field's faxline.

Chairman Reichle said all of these issues that you're having aren't part of our purvue except for the noise and the dust, which we will look into. As far as Mr. Farr sending you a letter.

Mrs. Toth said we talked to them and it's cleared up. I want to be living peaceful, I lost my husband and I had open heart surgery twice. I would appreciate if you would take that into consideration.

Thomas Wolcott, Village of Maybrook asked at the last meeting that I attended, there was a discussion if it was properly permitted, the scale and the concrete pad, are there any answers on that?

Ms. Weiss said the property owner wasn't at the last meeting and we didn't want to provide a response until we spoke to him on that. My firm was not engaged at the time that this scale was installed on the property and we were playing a little bit of catchup. There was another attorney, they were not represented by an attorney for the site application and special exception use permit that had not been filed, when that had been installed on the property. The property owner thought it was not a building and didn't think that he needed a building permit. Ignorant to the laws is not an excuse, but we are trying to take responsibility for that. In the interim there was another attorney that was representing this application in the very beginning, he has since retired and we have taken on the responsibility. Our firm was not involved at any point until June. With regard to what has actually happened, the gravel which was gravelled to regravell the site, it was just worn out, but the gravel was obtained to support the scale. It was installed within all of the required setbacks and meets all of the Zoning Code provisions; there just was no building permit at the time. We understand that that should have happened, Mr. Schmidt did come to the site in the fall before we were engaged and before even Mr. Donnelly's firm had been engaged, the previous attorneys. Mr. Schmidt was very aware, he told the property owner that he should technically have a violation, but he was going to hold off on that violation in acknowledgement that the site plan application amendment and the special exemption use, which would be using that scale, was forthcoming very soon and he said as long as the scale is not used, for any component, which it wasn't going to be, at that point it's not used for Headzup, the exiting site, that it was okay, but he would be monitoring it. I submitted the letter that describes all of that information to Mr. Schmidt and I did provide his email response to the board, which is, he agrees with the characterization.

Chairman Reichle said his ruling was he would hold off on the violation and you were not to use the scale.

Ms. Weiss said not to use the scale until the special exception use permit and the amended site plan approvals, which took all of that into account and actually was obtained and the SWPPP as well and that has been submitted to the DEC and your board.

Susan Cockburn, audience, said Walt Schmidt was hired during my tenure and when the neighbors at the last meeting asked about the things that went in without a building permit and they had been to town hall to look for this. I'm just questioning Walt Schmidt's integrity, capability, because August 6th the attorneys for this wrote an explanation about ignorance of the law and then August 8th they forwarded an email from Walt Schmidt explaining this, he wrote his email August 7th.

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Susan Cockburn - August 6th they say, it was a mistake, but he looked at it, but there was no record of Walt Schmidt having looked at it, he just wrote an email to cover whomever. I have a problem with this, you know Walt Schmidt filed a complaint against Crossroads Restaurant for having a tent outside.

Chairman Reichle said we'd like to stick to...

Ms. Cockburn said the planning board used Walt Schmidt's data to make its decision and I fear there is something wrong with what you have in you hands.

Chairman Reichle said we really don't.

Ms Weiss said let me briefly respond with the timeline issue there. We submitted a letter that describes what the applicant's understanding of the meeting with Walter was and I am very clearly am trying to explain it that way to Mr. Schmidt in the letter, that we went to the planning board. We never said that it was verbatim what he said, this is what the applicant's understanding of the meeting was, which is why it was sent to Mr. Schmidt, so he could corroborate that. He did corroborate that via email in his response, which is what I provided to the board.

Ms. Cockburn said I find it very strange that they met all the setbacks and all the requirements that are required by the planning board and yet they said they were ignorant of it, of obtaining a permit.

Ms. Weiss said we are far enough from the property line that I don't know if it was necessarily a choice to do that, in that we were like we need to be 130 feet from the property line, that wasn't specifically chosen, we just knew they were within those setbacks.

Ms. Cockburn said I know as a homeowner if I want to put a 12 by 12 shed down, I have to get a building permit it's that simple. How ignorant can somebody be?

Cherie Zahakos, Lake Vue Drive said at the last planning board meeting a discussion and a question turned something into gypsy truck. I was corrected by you and understandingly why you stated that you do not discriminate. I would like to make my peers and this board understand that I was using the Merriam Webster dictionary application of the term gypsy as being nomadic, and I feel that I was being framed in the light by that response, but doesn't reflect who I am. We call things gypsy moths and we don't stand corrected, but it has to do with this particular project and I did read that. Is this the applicant's first business?

Ms. Weiss said it's a secondary business.

Ms. Zahakos asked is it his first time ever engaging in business?

Chairman Reichle said no.

Mrs. Zahakos said my answer is to be answered please by the board or the representatives.

Ms. Weiss said no.

Alicea Holdings LLC, ASAP Scrap Recycling, LLC – NYS Rte. 208
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Mrs. Zahakos said he is aware of due processes when it comes to business, correct? He also is going into a property that resides within the Town of Montgomery and has already gone through the due process. The fact that you can understand if you were not involved, but you have a business man who surely has not been born yesterday as to the requirements of the due process, that's required by the town. To go forward and to lay a scale without knowing not even a permit, but application for the activity for a SEU is beyond reason and does not suggest transparency and honesty. It is excusable that he doesn't understand that his ability, but what's not excusable is that he preempted the wards in this town, who they represent in our laws and seem to be without regard to them. You speak of when you bring these vehicles in that you're going to put them on the scale, correct? This scale you say is 130 feet from the property line, correct? It is the scale that is under the reclaimed use of the site, the scrap component? You acknowledge that the scale was placed 130 feet from what is a residential district.

Chairman Reichle said no, it's industrial; it's in I-3 just like this site.

Mrs. Zahokas said there are no residents near that, the set back is 75 feet. The noise that incurred was due to the scales being implemented on the site and that should not happen and it was stated that because the vehicles will be driven up onto the scale. If a caravan brings in a car that is broken and does not run, how is it possibly to be quiet and driven upon and failed, what processes do you use?

George Sanchez, applicant, said we can answer that question. Is that the last one?

Mrs. Zahakos said no sir. You are going to collect tires, figuring 250 cars a year at 4 tires is over 1,000 tires. What is the process that you are going to scure them with? The batteries that you take out of the cars, how many do you plan on storing because right now I can't find anything in our Zoning Law that speaks your batter storage? Orange County Planning Department Department asked a very specific question, how many in a week, a month, and a year and the answer came back as we don't know. According to the document from 130-40-30.26 it does require you to state very clearly, the facility's operation plan must be submitted indicating the time of operation, expected quantities of material to be received and process to be used. This plan must include an outline of operations and maintenance schedules and this is required. The cars and how you are going to regulate them at maybe two carriers a week?

Mr. Sanchez said it could be cars or just scrap metal containers, either one. Once you're finished we can address all your questions.

Mrs. Zahakos asked these tire and processing facilities, under that section the owner operator with a timely removal of the tires, have you established the specific market that these tires are going to go, and you do have a vendor that would take the tires?

Mr. Gilson said yes.

Mrs. Zahakos said eagles were discussed and they are pretty important on the DEC site, and people have been siting eagles both near Benedict Park, along the River Park near Bailey Road. They are territorial, but they are incredibly disturbed and on the DEC site stating that disturbance is such as noise, activity and other events.

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Mrs. Zahakos said you disturb them, there's an environmental change, and they will leave an area and they will begin to eat and or attack other eagles for their territory. If we're eliminating a territory have we done anything to notify the DEC of the apparent and the disapparent, so we may be able to understand that, in order to protect what's no longer an endangered species, but a threatened one?

Edward Alicea, owner said that whole area has been changed for the last 5-years, because it was a dead zone, it had been abandoned for 8-years. I'm sure there were bears, there were college kids hanging out on the property, there was different wildlife on the property. In regards to the eagles, we have pictures, we still see the eagles. There was a bear on our property recently, I've seen turkeys, all kinds of wildlife. Our property was used as hunting grounds for a lot of locals, because it was empty and abandoned for so long. As far as changing the landscape of the property, it's being used for its intended use. We purchased the property as commercial industrial useage for certain activities. We want it to be metal recyclers, my current business is shelving, we recycle shelving. We do about 3-million pounds a year of cut off steel and we do it from site and also off site, on demo jobs and we use the third party scrap processors, to process the steel. This has been always a national evolution for Headzup to do it ourselves, to process our own steel.

Mrs. Zahakos said my question is has the DEC been contacted to resolve the understanding that you have sited eagles and people have said they are no longer sited? They are territorial and they will move, they have up to three nests.

Mr. Sanchez said we have seen them recently, as far as technical questions my attorney and engineer are here.

Mr. Towne said as part of the SEQRA process there is a review for any endangered wildlife in the area and the US Fish and Wildlife Service didn't have any come back.

Mrs. Zahakos said they also stated in that same document that there has not been a review of this territory to assess that statement and make it valid, at this point they are in agreement, but their ending clause is, there is no real basis for them to say yes or no. There's also an environmental assessment on this environmental impact, it does not meet certain things in depth for what other impacts might be. Have you notified DEC that there are eagles and whether they accept this process and I understand that you say that it is industry but you are also to understand this is a speial use exception, it is not an automatic shoe in. If you knew that you wouldn't dismiss our Town Law by putting something in before you even knew it was allowed. You're a businessman, shouldn't this businessman know the process?

Mr. Alicea said he doesn't know the process to everything, that's why I'm hemorrhaging money right now on engineers, attorneys consultants and other professions; that's why I have professionals to help me because I don't know everything.

Mrs. Zahakos asked is there an answer to the batteries and tires?

Mr. Sanchez said the tires that are to be taken off will be put in a container, which is supplied from the third party, which I believe is going to be Bob's Tires. They will put a container there, the tires will go in the container, once that container is full they will take it and replace it with another one.

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Mrs. Zahakos asked it is a completely enclosed container?

Mr. Sanchez said the top will be open.

Mrs. Zahakos said the top can not be open because there are statements in our rule book, you are not allowed to have tires stored in the open.

Mr. Sanchez said of course if it's going to be open to throw tires in there and then it gets closed, we put the lid on the container; there's no other way to put them in there. As far as the batteries go, once they are taken off they will be put on a pallet, there will be a carport there. There will be a row of batteries, 3 high, with cardboard and then shrink wrap and they are put in a container; that's closed. Once we have a load of batteries, that's when the batteries go out.

Mrs. Zahakos asked if that is for the board to put regulations on for that?

Chairman Reichle said the idea is to keep everything out of the weather, as best as possible.

Mr. Sanchez said and off the ground.

Ms. Weiss said there was conversation before about electric batteries that will be coming in. Electric cars will be accepted at the facility, but those electric cars that are accepted at the gate, will not be allowed to have batteries in them as part of the policy and they will be checked. Once they are checked in and registered, they will be checked again as soon as they're put on the scale by the weighmaster. If there was a battery that was in it for an electric car, it would be taken off site and they would be told not to return until the battery was out.

A discussion was held on the scale regarding the base of concrete and gravel underneath.

Mr. Alicea said I want to give an example of how we're cleaning up the environment, you go on google earth and you look at Walden and Montgomery. You are going to see a lot of people that have stuff in their yard, stuff that is leaking into the ground. This is an example, a random example where this individual has 30 cars, or machines, or boats and I can't imagine that. There is no way that this person is using all 30 of these vehicles and if you go on line and you look at situations like this, this is the real plague to the community. It's people who are careless and they're leaving things outside, nobody's checking what's out there and stuff is leaking into the ground. The function of ASAP will be to clean that up. First of all we're open to the public, so anybody can come in with a dishwasher or an old car, they can bring it and they can get paid to recycle it. We are not keeping any of the stuff, we are simply a transfer station for the mill. Everything gets processed and it gets sent to the mill. The mill will do the actual shredding, we're not going to be a shedder, we're more of what the scrap business would call a transfer yard, or a transfer station. The whole reason behind this is because we're already recycling so much metal from the shelving business, that this was supposed to be a natural revenue stream, but it's also good for the community. During cleanups we're going to put containers out so people can throw their metal scraps away and once again, we're open to the public. I think that we're going to have a lot of good impact on the environment and nobody is focusing on the good and situations like these can be cleaned up.

Alicea Holdings LLC, ASAP Scrap Recycling, LLC – NYS Rte. 208
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Mr. Sanchez - It can be cleaned up by people being encouraged to fix up and bring it to us and get paid to recycle or it could be encouraged by the town, enforcing and being a little tougher on people that let stuff sit on their property and letting it rot.

Mrs. Toth said you sent a drone over our property, twice already and that's illegal.

Mr. Gilson said no, not true. I didn't mention your name, but this is your property. I took this picture with my phone from my air space.

An argument between the applicant and the neighbor occurred about the photo that was displayed.

Chairman Reichle said we are going to extend this hearing out, we're owed some information yet. We are going to be terribly busy on the 26th. Why don't we go to the first meeting in September, the 9th 2019 at 8:00 p.m. and we will continue the hearing then and this will be the public's notice.

Member Pennings motioned to adjourn the Alicea Holdings, ASAP Public Hearing to September 9, 2019 at 8:00 p.m., seconded by Vice Chairman Reichle. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Bluewater Industrial Partners LLC – Project Sailfish – NYS Rte. 17K & 747
SEU Permit and Site Plan – Continuation of the Public Hearing

Chairman Reichle said we will resume the Sailfish Public Hearing, we're still in comment here.

The stenographer resumed transcribing this portion of the meeting.

Vice Chairman Beaumont motioned to adjourn the Bluewater Industrial Partners, Project Sailfish Public Hearing for the SEU Permit and site plan to September 9, 2019 at 8:00 p.m., seconded by Member Montemarano. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Nelson and Popowick – Old South Plank Road & NYS Rte. 52 - Lot Line Change – Presentation

Kimberly and Scott Nelson and George Popowick presented the proposed lot line change.

A discussion was held and the board's consulting planner's review will be forwarded tomorrow, along with the Offer of Dedication note that will need to be added to the plan.

Angry Orchard Cidery – Walden Lanes Parking Expansion – NYS Rte. 52
Amended Site Plan Approval – Discussion

Present for the discussion were Dominic Cordisco, attorney for the applicant and with the Drake, Loeb Law Firm and Daniel Garrison with Angry Orchard Cidery.

A brief discussion was held.

Chairman Reichle read most of the draft Negative Declaration into the record.

Member Pennings motioned to adopt the Negative Declaration, seconded by Vice Chairman Beaumont. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Member McGuire motioned to grant a conditional final approval for the amended site plan application, conditioned on the merging of the lots, the landscaping plan being signed off on, everything in the adopted Negative Declaration and any outstanding fees. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Gas Land Petroleum – NYS Rte. 52 and Albany Post Road
Lot Line Changes Approvals – Extension Request
2nd 90-day extension expires 8/12/19

Dominic Cordisco, attorney for the applicant and with the Drake, Loeb Law Firm was present for the extension.

Chairman Reichle reviewed the extension request form.

Member Pennings motioned to grant a 90-day extension to the Gas Land Petroleum lot line changes approval, to extend from August 12, 2019 to November 11, 2019, seconded by Vice Chairman Beaumont. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Doyle/Staples – NYS Route 208 – Lot Line Change Approval
Extension Request – 1st 90-day extension expires 8/12/2019

Dominic Cordisco, attorney for the applicant and with the Drake, Loeb Law Firm was present for the extension.

Chairman Reicle reviewed the extension request form.

Vice Chairman Beaumont motioned to grant a 90-day extension to the Doyle/Staples lot line change approval, to extend from August 12, 2019 to November 11, 2019, seconded by Member McGuire. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Member McGuire motioned to adjourn the meeting, seconded by Member Pennings. All in favor, all ayes, Members Kelly and Brown III were absent, motion carried.

Respectfully Submitted,
Suzanne Hadden, Clerk