

LIVONIA JOINT PLANING BOARD
August 23, 2021

Present: Chairman R. Bennett, D. Andersen, J. Brown, R. Haak, J. Palmer, Zoning Compliance Assistant J. Holtje, Secretary A. Houk

Excused: CEO A. Backus, Attorney J. Campbell, L. Willoughby.

Note, Public Meetings (Covid-19) precautionary policies were followed to the best of our ability and included:

- Applicants would typically be asked to wait in their vehicles until instructed to enter the building; however, the attendees at this meeting were able to maintain social distancing and wore face coverings.
- Hand sanitizer was made available at the entrance of the town hall.
- Meeting room occupancy was restricted to no more than 50% of the maximum occupancy (or 48 persons). Less than 48 persons attended this meeting.

Agenda:

- 1) Approve the meeting minutes. – June 14, 2021*
- 2) Mark Brown – Poplar Hill Road, Livonia, NY.
Approval of 1 lot Subdivision – 66.-1-44.320*
- 3) EV Energy – 3031 Rochester Road, Lakeville, NY.
Site Plan review– 65.-1-6.122*
- 4) Rising Storm Brewery – 5750 South Lima Road, Livonia, NY.
Site Plan review– 65.-1-12.702*
- 5) Brian Raffa – 3347 Rochester Road, Lakeville, NY.
Site Plan review– Farm Stand*

Chairman Rick Bennett opened the meeting at 7:00 p.m.

1) Approve Meeting Minutes for June 14, 2021. Chairman Rick Bennett asked for a motion to approve. M/2/C (R. Haak/J. Palmer) approved as submitted. Carried 5-0.

2) Mark Brown – Poplar Hill Road, Livonia, NY.

Chairman Rick Bennett asked Mark Brown to come forward for the Subdivision of Poplar Hill Road, Tax Parcel # 66.-1-44.320, located in the Neighborhood Residential District, (NR). The Browns are proposing to create 1 new lot, approximately 1.033 acres, subdivided from parcel

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number 66.-1-44.320. Mark stated that the lot has 150' of road frontage and is 333' deep. Chairman Rick Bennett referred to the 60' between lot 1 and the Losey's parcel. ZCA Julie Holtje stated that was for a future flag lot. Chairman Rick Bennett commented that there is still plenty of room to access the back lands, and the line of sight should not be an issue with the D.O.T. ZCA Julie Holtje stated that the future right of way has been reserved by the overall concept.

This Subdivision application was referred to the Livingston County Planning Board for review. Livingston County Planning reviewed the application and demined that it has no significant Countywide or inter-municipal impact. Approval or disapproval of this applicant is a matter of local option. It was also noted that the proposed property is currently included in Agricultural District #2. Because there is public water on Poplar Hill Road, and because some water lines have lateral restrictions on connecting non-agricultural uses in an Agricultural District, the applicant should confirm with the Livingston County Water and Sewer Authority to see if there would be any restrictions on public water hook-up for the building lot.

Chairman Rick Bennett asked for a Motion to waive the Public Hearing. Motion to waive: M/2/C (J. Palmer/D. Andersen) Carried 5-0

Chairman Rick Bennett and the Board reviewed SEQR. Negative declaration was determined. Motion to approve: M/2/C (J. Palmer/J. Brown) Carried 5-0

Chairman Rick Bennett asked for a motion to approve the Subdivision as presented. Motion to approve: M/2/C (J. Brown/R. Haak) Carried 5-0

4) EV Energy – 3031 Rochester Road, Lakeville, NY.

Chairman Rick Bennett asked James Marshall to come forward. James stated that they have redesigned their Site Plan and broken it down into phases. Tonight, he is hoping to get approval for Phase 1 & 2 of the project. James stated that Phase 1 would only be adding the Propane refill station that would refill small Propane tanks for customers. This would be a 1000-gallon Propane tank. Phase 2 would be to add a parking area behind the existing building. Phase 3 is the tank project, but that would be about two years down the road. Robbyn Haak asked if it can be approved in phases knowing that Phase 3, big fuel storage tanks will be coming down the road. Chairman Rick Bennett stated that there is no reason not to do it that way. It allows them to develop the property with the full understanding that the last phase may or may not happen, it's at their own risk. We have the ability to approve in phases. There is an understanding from the applicant that further phases may not happen. Chairman Rick Bennett stated that with Phase 3, safety was the biggest concern and the visual aspect as far as the big fuel tanks, these items will not be addressed at this time. Traffic flow for Phase 1 & 2 needs to be addressed. James stated that he is anticipating 20-30 cars per day for Phase 1 & 2.

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Robbyn Haak stated that Phase 1 & 2 will have most of the traffic with the exception of the big fuel trucks. It was previously stated by the applicant that they would have 30-40 cars per day. James stated that 30-40 cars is what they are hoping for, and would be when they are busy, 20-30 is more of an average of cars per day for Phase 1 & 2. Jeanne Brown asked if they were planning to install a Fence. James stated that they would be installing a Fence around the whole perimeter of the property. Part of the Fence would be wood if they wanted to have a storage container or a dumpster. Jeanne asked if the Board was going to discuss visuals. Chairman Rick Bennett stated that at this point, visuals would be discussed before Phase 3, as that is when they would be having the big fuel tanks. Robbyn Haak stated that it would still be a good idea to have a Fence or bushes for the tank in the front, street side. Jeanne stated that she has viewed other fuel storage locations and the tanks are extremely ugly. She hopes that they will be implementing some type of shrubbery to conceal the tanks. Robbyn Haak feels that the traffic is going to be an issue. In SEQR, question number 8 states: *Will the proposed action result in a substantial increase in traffic above present levels?* The applicant has checked "No". Robbyn believe that answer is "Yes". Chairman Rick Bennett stated that there are thousands of vehicles that go by there every day. Robbyn stated that they all aren't stopping to turn into the business. Now you will have an additional 20-40 cars stopping from either direction and turning into the business, that is substantial increase. ZCA Julie Holtje stated that the existing parking lot has 14 parking spaces. Robbyn Haak stated that there were never more than 2 cars at a time in that parking lot for the previous business. Dawn Andersen asked when the current building was proposed, was there traffic concerns at that time? Robbyn Haak stated that business was anticipated to have a low level of traffic for what the building was for when it was built. ZCA Julie Holtje stated that it was sized for the 14 parking spaces and the occupancy of the building. Robbyn Haak asked if the applicant has submitted a copy of their Site Plan to the D.O.T for their review and comment. James stated that they did not since this is already an approved D.O.T approved entrance. Robbyn stated that the applicant was asked to do that by the Livingston County Planning Board, and she believed the Town Engineer. Item #2 of the Livingston County Planning Board letter dated April 9, 2021, states: *"If not done already, the Applicant should provide the Site Plan to the New York State Department of Transportation for their review and comment"*. James stated that he has done many D.O.T applications but never on any existing approved entrance. Robbyn stated that Livingston County Planning Board wasn't talking about the cars, they were concerned about the trucks. ZCA Julie Holtje stated that she would check into this item. She felt that that Livingston County Planning Board's comments were in the context of truck traffic and safety, similar to the Dollar General and the D.O.T comments regarding the trucks turning around and into. ZCA Julie Holtje asked the applicant if he would be having 1 truck refilling the propane, and the rest would be car traffic. James stated that was correct.

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Robbyn Haak stated that in the Livingston County Planning Board staff report dated April 8, 2021, item #2 regarding traffic states *“Rochester Road has been identified as a safety concern in the past due to the nearby intersection curve splitting West Lake Road and Rochester Road and the posted 55 mph speed limit”*. It also discusses truck movement as well. Jeanne Brown stated that we could possibly look at the Livingston County Planning Boards comments regarding Sweeteners Plus. Robbyn stated that it is different as Sweeteners Plus was built for that. This building and curb cut was not built for the level of traffic this proposal is for. This application will increase the traffic. Chairman Rick Bennett stated that the building was designed for the load of traffic it would handle. Any point in time, you could have had 10-14 people in the parking lot, and how often would those people be in and out. Maybe you could say they were there a half an hour each, and that would result in 20-28 cars an hour. That’s the way you need to look at it from an Engineering stand point. Chairman Rick Bennett stated that the County is asking for a D.O.T review. ZCA Julie Holtje stated that referring to the Livingston County Staff report, the traffic and request for D.O.T comments seem to be in context for the trucks. Number 2 of the staff reports further states: *“According to the applicant, supply trucks consisting of 10,000 gallons of propane would make deliveries once or twice a day to the site depending on demand. A truck movement diagram has been provided by the applicant in the Site Plan, and the applicant notes that there would be two options for truck vehicles to turn around. Advisory comment: “If not done already, the applicant should provide the Site Plan to the New York State Department of Transportation for their review and comment”*. ZCA Julie Holtje stated that she will make sure that it is sent to the D.O.T tomorrow if we have not already. Robbyn stated that if it has already been sent, we should have a comment back from them. Robbyn stated that she feels that the D.O.T should also look at the vehicle traffic. Chairman Rick Bennett stated that we will wait for the traffic study from the D.O.T.

Chairman Rick Bennett asked to proceed with reviewing Phase 1 & 2. We have requested the applicant to add additional landscaping in the front and a Fence. The Sign is within Code and the applicant will work with Building & Zoning for that process. ZCA Julie Holtje stated that she does not have a dimension of the height off from ground, but that is something they would handle with the Building Permit and those details would be worked out. The sign does appear to be under 20 square feet. Chairman Rick Bennett stated that the proposed sign is basically what is currently there. Chairman Rick Bennett stated that Phase 1 & 2 will be tabled until we receive a response back from the D.O.T.

5) Rising Storm Brewery – 5750 South Lima Road, Livonia, NY.

Chairman Rick Bennett asked Bill Blake and Jeff Riedl of Rising Storm Brewery to come forward for discussion regarding the apparent violation of their site plan approval. The Town has received anonymous complaint(s) about loud music and the number of events. Chairman Rick Bennett stated that their Site Plan allows for one event per weekend and we have received numerous complaints and noise issues. Chairman Rick Bennett also noted that he lives three quarters of a mile away to the west. When the music is playing his wife is able to hear the music and sing along. Bill stated that they did not remember that the one event per weekend was part

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of the original approval, but that they could certainly remedy that moving forward. Their goal is not to be a nuisance to anyone, especially the neighbors. The weekend of September 3 & 4, they do have two music events scheduled, but after that there is nothing planned. Regarding the noise, they are stopping prior to the time that they said they would in the approval. Chairman Rick Bennett noted that the sound was the issue. Bill Blake stated that direction they agreed the music would face was towards Sweetener Plus where there are no residences. Chairman Rick Bennett stated in past situations similar to this, we request a contact person and phone number if we get complaints and that person could physically go and turn the music down. Rising Storm is down in a valley and it echo's all over the place. Bill stated that they are not trying to be disruptive. The reality is the nature of the property they are located in, and what is zoned for, there could be a lot worse going on. They are trying to bring a family quality business to the area and not trying to be disruptive. Bill stated that they will be aware of the noise level and provide a contact and phone number for any concerns. Dawn Andersen asked if any of the neighbors approached them directly. Bill stated, no they have not. Jeff Riedl asked what the decibels were supposed to be, and if there were meters to read it? Chairman Rick Bennett stated they we have been told repeatably that you can't take a meter out to a site and come up with an accurate reading. Most of those times its in a contained space, tested under certain standards. Jeff stated that when the Train goes by, they would like to know what decibel that is at. ZCA Julie Holtje stated that CEO Adam Backus has stated in the past regarding Wedding Barns, or other areas when there was an event, they have gone out with a hand-held decibel meter and had an agreement with the applicants regarding the limit to the sound level. If in the future we get another compliant, we can go out and repeat that process. ZCA Julie Holtje referred to the July 9th, 2021 memo from CEO Adam Backus.

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"Special events and outdoor festivals will be a maximum of one weekend night per week on Friday or Saturday evening, potentially outdoors from April/May to September/October, weather dependent. Live music would be small, local musicians that would be lower in volume and be often of the acoustic nature. There will not be any "rock" concerts. The live music will conclude by 9:30 pm. All speakers & musicians would face to the south, a direction away from nearby residences. The nearest resident to the east is approximately 500' from the stage area, with the rise of the railroad tracts between. The nearest neighbors on Pennsylvania Avenue are 1000' from the stage area. The nearest neighbors to the south are approximately 750' from the stage area, with their building in-between. All neighbors face the opposite direction to which the music would be facing. Sound levels shall not exceed maximum decibels, per Town Code. Occasionally local themed beer festivals may be held on the premise, on the southeast side of the property. They would take place generally in the afternoon or early evening time. This will be further away from the neighbors and reduce any chance of disruption."

"There will be a Manager on staff to monitor the noise level for all events to ensure noise would not exceed the allowable level. There will be an ability to lower live music noise via reducing the amplifier volume. Suspension of outdoor festivals, marketplaces and or live music as necessary should disrupting of neighbors become a concern"

Joanne Palmer asked Chairman Rick Bennett what type of music he was hearing at his residence. Chairman Rick Bennett stated that it was the whole nine yards, its not specific to the base or the drums, you can hear everything. Its almost as loud as the soccer field next door, and their

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property has a row of trees all the way across, except for a small portion of the yard. Vitale Park is the same distance away and they have the same problem with them. If he can hear the music three quarters of a mile away, then Pennsylvania Avenue residents are right there and they can hear the music. Chairman Rick Bennett wife has documented the music and events and most times the music is done shortly after 9pm. Chairman Rick Bennett stated in past when this situation occurs, a neighbor makes a phone call and the contact person is notified and the music is turned down. In the case of the Wedding Barns, its usually the base, but in this case, it is all the music noise.

Chairman Rick Bennett asked for comments regarding the Labor Day event and if the Board feels they should be allowed to proceed as they have planned. Robbyn Haak stated that we do allow for holiday weekends with other venues. Chairman Rick Bennett stated that the Board is requesting Rising Storm Brewery to return again with an updated Site Plan if they would like to include extra events, noting that they would not allow two nights a week again, but would consider holidays such as Labor Day, Memorial Day, 4 of July, etc. and that needs to be stated in the revised plan. Jeff Riedl asked if they were okay to proceed with their Labor Day events. Robbyn Haak stated that she didn't not have a problem with that. ZCA Julie Holtje suggested that maybe they have the music a little lower than usual. Chairman Rick Bennett stated that the contact person needs to be given to the Building & Zoning office this week and they can proceed with their Labor Day plans.

6) *Bryan & Debra Raffa – 3347 Rochester Road, Lakeville, NY.*

Chairman Rick Bennett asked Bryan & Debra Raffa to come forward for the Farm stand discussion. ZCA Julie Holtje stated that in the Neighborhood Residential District, we have Farm stand subject to Site Plan approval by the Planning Board, as well as a Conditional Use Permit from the Zoning Board of Appeals. We have had some complaints and concerns about traffic safety. This is a good time to review off-site parking and we will be referring them to the ZBA for the CUP. Bryan Raffa provided letters from his neighbors, James Sloan and Jeff Weaver stating that they had no objections to the Corn stand, and could use their properties for parking if needed. Robbyn Haak asked how people will know that they can use the neighbors' properties? Debra stated that they could put up signs. Most people pull in their driveway which is a 120'. ZCA Julie Holtje stated that there could be issues if someone has pulled into the driveway and is trying to back out onto Rochester Road. If there is another car parked on the side of the roadway, it could create a blind spot. Jeanne Brown asked if the Board could tie a Conditional Use Permit to a property that may change hands in the future. Robbyn Haak asked if the parking would be a part of the Conditional Use Permit, and is the allowance to have the stand there the Conditional Use Permit? ZCA Julie Holtje stated that the Conditional Use Permit would be for the use in the Neighborhood Residential District with the Site Plan approval. The Conditional Use Permit does not go with the property. In the instance that the property owners move, the C.U.P would be void. Chairman Rick Bennett stated that Jeanne Brown is referring to the C.U.P for the use of the neighbor's property for parking. ZCA Julie Holtje stated that in that instance, they would have to return to the Planning Board for a Site Plan modification. Robbyn Haak asked if the C.U.P includes the parking? Chairman Rick Bennett stated no, the Site Plan would include the parking.

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Chairman Rick Bennett stated that the applicant has been there for five years and there have not been any issues. It is correct that there are not supposed to use roadside parking. In the same token if you drive down Rochester Road everyone uses roadside parking, including the Three-Legged Pig, who was strictly prohibited to park where they park. Jeanne Brown asked that since the stand is on wheels, would it be considered not permanent? Bryan stated that he will only operate until October 31. Once Halloween is over, he will be closed. Chairman Rick Bennett complimented Bryan on the Corn Stand appearance and stated that the advantage to having the stand on wheels is that it could be moved if it proves to be an issue. From the Boards perspective, this is not a negative impact on the neighborhood. The Planning Board will recommend the application to the Zoning Board of Appeals for the Conditional Use Permit. When returning to the Planning Board for Final Site Plan approval, the applicant will tie in the two approvals from their neighbors. If the property changes hands or if there is an issue, the applicant would return to the Planning Board for Site Plan review. Debra asked if the Farm stand located next to Quicklee's required a Permit. ZCA Julie Holtje stated that location is zoned for sales, and that person can go under the umbrella of Quicklee's, and they are watching the stand. Bryan stated that person has six signs on Quicklee's parking lot, plus two nailed to the Telephone poles. All those people park on the side of road and traffic cannot make a right turn heading towards Geneseo. You cannot pull out of Quicklee's, and come back the other way and see if traffic is coming if there are cars parked there. ZCA Julie Holtje stated that if Bryan is going to have people come in his driveway, he will also need to keep an area clear enough for cars to see backing or pulling out onto Rochester Road. Robbyn Haak confirmed that there were numerous signs for the Quicklee's farm stand.

Chairman Rick Bennett stated that the Planning Board is referring the applicant onto the Zoning Board of Appeals for the Conditional Use Permit request. The Building & Zoning office will provide a letter stating this for the applicant, and forwarded the letter to the ZBA. When the applicant returns for the Site Plan approval, the Planning Board will add the two letters that were provided from the neighbors. If in the future the Planning Board receives enough reasonable complaint's, they will request that the applicant return for Site Plan review.

With no further questions, Chairman Rick Bennett asked for Motion to adjourn the meeting at 8:02 p.m... Motion to adjourn: M/2/C (R. Haak/J. Palmer) Carried 7-0

Respectfully Submitted,
Alison Houk, Recording Secretary