

TOWN OF AURORA  
TOWN BOARD WORK SESSION  
May 6, 2014

The following members of the Aurora Town Board met on Tuesday, May 6, 2014 at 7:00 p.m. in the Southside Municipal Center Town Hall Auditorium, 300 Gleed Avenue, East Aurora, NY, for the purpose of holding a work session.

Present:	Jeffrey T. Harris	Councilman
	Susan A. Friess	Councilwoman
	Jolene M. Jeffe	Councilwoman
	Charles D. Snyder	Councilman
	James J. Bach	Supervisor
Others Present:	Ronald Bennett	Town Attorney
	Peggy Cooke	Recreation Director
	Patrick Blizniak	Superintendent of Building
	Bryan Smith	CRA Engineering
	Al Salter	ZBA member
	Davis Heussler	ZBA member

Supervisor Bach opened the work session at 7:00 p.m. with the Pledge of Allegiance to the Flag. Those present met to discuss the following:

1) Baseball Diamond Fencing:

Peggy Cooke presented the Board with information on quotes received for fencing at the Lilley fields at the Gleed baseball diamonds. Mrs. Cooke stated they have secured a donation from the Lilley Foundation in the amount of \$2,500 to be used for the fencing. There is currently \$2,150 in the baseball diamond donation budget. Quotes for chain link fencing materials were received from:

City Fence	\$3,269.31
Capital Fence Co.	\$4,042.56
Iroquois Fence	\$4,564.35

Mrs. Cooke noted that the first game is scheduled to be played on May 29<sup>th</sup> and the fences need to be installed before then. She requested that the Board vote on this tonight.

Councilwoman Jeffe moved to approve the purchase of chain link fencing for the Gleed baseball diamonds from City Fence, 3893 Walden Ave., Lancaster, NY in the amount of \$3,269.31. Councilwoman Friess seconded the motion. Upon a vote being taken: ayes – five noes – none	Action #142 Purchase of chain link fence for baseball diam.
Motion carried.	

2) Legacy Polo Grounds development:

Frank Chinnici, President of Legacy Polo Grounds, and Peter Sorgi, attorney for Legacy Polo Grounds, discussed a Settlement Agreement they are proposing to the Board. They are looking for the Board to agree to the following:

- 1) Legacy shall have the right to construct as many single family or two family homes in any combination on the chart set forth (Exhibit A in their presentation) which provides all the possible combinations of single family or two family homes not exceeding 560,000 square feet;
- 2) All construction of homes shall be located on the white portions of the map (Exhibit B in their presentation);
- 3) Legacy shall withdraw with prejudice its application for an area variance with the Town of Aurora Zoning Board of Appeals, however Legacy shall have the right to submit a future application for an area variance to the Town of Aurora Zoning Board of Appeals after the maximum number of single units pursuant to the chart set forth as Exhibit A have been put under contract to sell;
- 4) Legacy represents and warrants that the current foundation location map is attached (Exhibit C in their presentation) and agrees to update said map each time a new foundation is built and provide a copy of the updated maps to the Town Building Department and Town Clerk;
- 5) Legacy and the Town shall execute a Stipulation of Discontinuance of (the Article 78) proceeding Legacy initiated;
- 6) Legacy agrees to release the Town from any claim for money damages which may presently exist;
- 7) Legacy agrees to indemnify, hold harmless and defend the Town against any legal proceeding commenced as a result of this Agreement;

- 8) This agreement is subject to NY State Supreme Court approval;
- 9) Legacy shall pay any Erie County Clerk filing fees associated with this Agreement;
- 10) Legacy shall file a deed restriction (Exhibit D in their presentation), with the Erie County Clerk stating that under no circumstances can more than 47 dwelling units ever be built on the property and that all construction of homes shall be located on the white portions of the map (Exhibit B in their presentation);
- 11) Legacy represents that its existing construction is in compliance with all applicable wetland regulations and laws and agrees that any future construction will be built in compliance with all applicable wetland regulations and laws;
- 12) Miscellaneous provisions. (Address the settlement of the Article 78 agreement.)

A lengthy discussion ensued as to what the developer wants and what the Town will agree to. The following are excerpts from the discussion:

Peter Sorgi noted they have a map that shows what 560,000 square feet looks like at this location. Mr. Chinnici believes this to be the area that can be built on.

Mr. Sorgi stated there are no jurisdictional wetlands on the property and that Don (Owens) of Earth Dimensions went out and said there are no jurisdictional wetlands and the Army Corps said they agree. Earth Dimensions delineated the property, did an analysis and sent it to the Army Corps. Mr. Sorgi noted he does not take the existence of wetlands lightly.

Attorney Bennett stated that the document/letter regarding the wetlands was missing two pages, which he was able to obtain copies of. Jurisdictional areas appear on some of the maps we have. In talking to the Corps of Engineers, you can fill up to 1/10<sup>th</sup> of an acre, anything above that you have to mitigate.

Frank Chinnici stated they standby 100% that no wetland restrictions were violated.

Councilwoman Friess stated that this is considered a cluster development where you cluster your buildings and leave green space around. At the time this came up, there was no code for cluster development so we had to go by the State law which is where the 560,000sq.ft. of buildable land comes from. From the Town's perspective they thought homes could be clustered and a lot of this beautiful area could be left as green space. Mrs. Friess stated she doesn't have any problem with the original envelope where the development was going to go. She noted a couple concerns: 1) this encroached on the green space already; 2) the point isn't to use the entire 560,000 sq.ft., but to cluster the development and have open green space.

Peter Sorgi stated that the 560,000 sq.ft. is used only to get you the number 47 – units that can be built. There's the same amount of green space wherever you put the buildings. This is a different type of development. You don't own even a blade of grass outside your door.

Mr. Chinnici stated that every inch of dirt outside the buildings is common area. No body out there owns land. They only own their improvement. They have a 2.1% common interest in all the open land. The house will be in the red area (area marked on one of the maps they presented). We would only have 47 units. The only difference is whether they are touching houses (doubles) or not touching (singles). We're simply just spacing them so they are comfortable for the owners.

Councilwoman Jeffe stated that the first time we on the Board who had not voted on this, saw the plans, we saw a buildable area. That is what the previous Board approved. I believe that what Peter is contending is that once the 560,000 sq.ft. was identified, that goes away and you can build wherever you want.

Peter Sorgi stated the house location always changes.

Councilman Snyder asked if there were building envelopes on the plan that the Town Board approved. The response was, yes. If that was followed and not pulled...

Peter Sorgi stated it was pulled at the request of the assessor for SBL purposes. We have a copy of a letter....

Councilman Harris stated we are losing the cluster that was approved.

Peter Sorgi stated they got a memo from the Town stating do this, this is what we want. We did that and now....

Frank Chinnici stated that every time they put in a house they look to see how comfortably it fits in the development. We're not going to use up more area than is absolutely necessary.

Councilwoman Friess asked if they believe that they can put their places (homes) anywhere they want on the 560,000 sq.ft. area. Peter Sorgi responded, no. Mrs. Friess noted that there is nothing to prevent them from moving into common areas *if the envelope is not adhered to*.

Bryan Smith stated that what was aggregated common area in large areas, is now falling into side yards. It's a different intent than what was originally approved.

Councilwoman Friess stated she is hearing “I’m never going to build in here” and “I can build wherever I want to”.

Councilman Harris stated that anything marked “common area” on the maps should be labeled “green space” as that was the original concept approved by the Town.

Bryan Smith asked if there was a way they could present a plan that shows where they want to put the future building envelopes.

Mr. Chinnici stated he will have GPI put together a plan/map with a legal description of metes and bounds, showing the demarcated buildable area.

Councilwoman Jeffe stated there has to be some sort of a plan, that they aren’t going to just plop houses wherever.

Peter Sorgi stated there is never a plan where the houses will go, just where they won’t go.

Attorney Bennett stated the adopted plat was designed to maintain green space. The Town maintains that throughout the proceedings, there were 13 single units and 17 double units. Under Section 278, the Town had the absolute right to approve a plat which indicated the green areas. When the map was abandoned, you removed what the Town had approved.

Mr. Sorgi stated they file with the Erie County Clerk every time they build a foundation.

Councilwoman Friess asked what prohibits future encroachment into the green space. The intent was never to use up all of the 560,000 sq. ft.

Mr. Sorgi responded, no. 2 in the agreement.

Mr. Chinnici stated again that he would have the engineer do up a map with a legal description of where building can occur. We’ll file that map and we’ll live with it.

Peter Sorgi stated they disagree with the 17 and 13 units.

Bryan Smith asked if the chart (showing how many single/double units can be built using the 560,000 sq. ft. figure) was part of the agreement. No. 10 says you can build 47 units. Right now thirty-one (31) units have been built. The reality is 31 units have been built. You can build 16 more units. If you chose to build all singles you’d exceed the maximum density level on the chart.

Mr. Chinnici stated he would only build 47, but only with combinations that are on the chart. We’re asking the ZBA for a variance to allow 47 units, all within the same red area on the map.

Councilwoman Friess stated that their envelope has grown since the beginning.

Councilwoman Jeffe stated she would like to summarize where we agree:

- 1) We agree to the combinations that are on chart.
- 2) All construction of homes shall be on the shaded or red portions of the map.
- 3) What’s before the ZBA will be withdrawn, if we reach an agreement.

Attorney Bennett stated he would not want to see the situation where they used up the 560,000 sq. ft. with 44 units and then went to the ZBA saying we really want 47 because that was approved.

Councilman Harris stated that when they say more than 15 singles, they are saying the total number of units could be less than 47, say 44 or so, according to the chart. The 560,000 needs to take precedent, not the 47.

Peter Sorgi stated a double is two units. There will never be more than 47 families living there.

Councilwoman Jeffe stated the density will always be the chart.

Frank Chinnici stated they would never ask the ZBA to allow us to build outside the red area.

Bryan Smith asked if they would go before the ZBA to ask for more units than the chart allows.

Mr. Chinnici stated never more than 47 units.

Councilwoman Jeffe asked if it is correct in stating they will never go to the ZBA to ask for additional units above and beyond the chart.

Mr. Sorgi stated it’s above and beyond the area.

Councilwoman Jeffe stated, then we’re not in agreement. You would have to agree that you would not go to the ZBA to ask for more units than what are allowed on the chart.

Councilwoman Friess said she is hearing that they would want to build more units in the red area than what is on the chart.

Frank Chinnici, yes.

Peter Sorgi, it’s not more units, it’s never more units than 47.

Councilwoman Friess stated it's more units than would fit in the density restrictions of that chart.

Sorgi and Chinnici, yes.

Peter Sorgi, when you do a cluster development you do your as-of-right plan to find out how many unit numbers you can make in the area. This is a settlement agreement which means that different sides aren't getting exactly what they should be getting.

Frank Chinnici, everyone needs to give a little. We're giving a lot.

Councilwoman Friess noted we're giving you extra space to build. This unit is already built outside the box.

Supervisor Bach, do we agree on no. 5? All responded, yes.

No. 6, yes.

No. 7, yes.

No. 8, yes

No. 9, yes

Councilwoman Friess stated that what no. 10 does, if we approve this settlement, then in the future we have a cap on what can be approved. Is 47 the right cap? It puts a cap on their ability to ask for a variance.

Bryan Smith stated if they build all the remaining units as singles and come back and ask for more singles they could end up with more than 47.

Councilwoman Jeffe stated with the way things are built now, you wouldn't be able to go over 44 units, correct.

Peter Sorgi responded, no, the chart says 47.

Councilman Harris stated, so you're planning to build 47 no matter what.

Councilwoman Friess noted we're giving you more space to spread out your houses and we're leaving the door open for more units by you going to the ZBA in the future.

Supervisor Bach continued with:

No. 11 ( the wording represents vs. warrants)

We are not in agreement with No. 3 and No. 10.

Councilwoman Friess stated if you have the intention of asking for 47 units you need to map out and show there is room for 47 units.

Frank Chinnici stated each buyer picks a home design and we don't know what they will pick so they can't map out where each house will go.

Peter Sorgi stated the town had to make a determination as to the max number of dwelling units. That number was 47. That is in your documentation. We will never ask for more than 47. He noted that this is going off of State law which is pretty bare bones.

Bryan Smith noted that the forty-seven (47) units are based on a map submitted and approved.

Pat Blizniak noted that there are two (2) variables – different square footage for doubles and singles and he stated he has a problem with the 47 units. We gave them the square footage numbers for singles and doubles. At the time we did not have a cluster development code and the sitting board was concerned with green space. Wasn't the number of singles and doubles part of the agreement at the time to have the Board approve the plan?

Bryan Smith responded that the table of allowable unit combinations came from the developer's engineer and that this development was approved under NY State Code since the Town's Cluster Development code was not yet in effect.

Supervisor Bach stated we need to discuss this as a board with the Town Attorney.

Councilwoman Friess moved to enter into executive session to confer with the Town Attorney on the proposed Polo Grounds settlement agreement; seconded by Councilman Harris. Upon a vote being taken:  
ayes – five      noes – none      Motion carried.

Action #143  
Board enters  
into exec sess

Councilman Harris moved to come out of executive session and adjourn; seconded by Councilwoman Friess. Upon a vote being taken:  
ayes – five      noes – none      Motion carried.

Action #144  
Board exits  
exec sess and  
adjourns

Martha L. Librock  
Town Clerk