

LIVINGSTON PLANNING BOARD

October 02, 2019

The regular meeting of the Livingston Planning Board was held October 02 2019 and opened at 7:00.

In attendance were Chairman Phil Schmidt, Robert Bellinger, Bernie Stickles, Chip Keil, John Ross, Stephen Thibault and Martin Nayowith.

Attorney Ted Hilscher.

Engineer Michelle Mormile

Absent: James Mc Farland

A motion to accept the minutes of the August 07, 2019 minutes was made by Chip Keil and 2nd by Stephen Thibault. All voted AYE. Motion passed.

Correspondence: NONE

7: 04 the public hearing opened for Donald and Mary Jean Hamm represented by Attorney Ted Guterman. An area Variance to be able to subdivide 5.189 acres from 87.566 acres. The property has a Columbia Land Conservation easement located at 29 Hamm Road, Livingston. Fee Paid.

There were no comments from the public nor was any written correspondence received. Public hearing closed 7:05.

The Board reviewed the application and deemed it complete. The property (97acres) on the West side is not part of this application.

Attorney Ted Hilscher completed the Short Long Form EAF.

A motion to approve the EAF with negative declaration was made by Bernie Stickles and 2nd by Chip Keil. All voted AYE.

Motion passed unanimously.

A motion to approve the Donald and Mary Jane subdivision application as presented was made by Stephen Thiebault 2nd by Robert Bellinger. All voted AYE.

Motion passed unanimously.

The application continued for Global Montello Group Corp. for site plan review and special use permit pursuant to the Livingston Town Zoning Law. The project site that is located at Routes 23 and 9H, Town of Livingston, Tax Map Numbers 140.00-1-16, 140.00-1-15 and a portion of 140.00-1-14. The applicant intends to use the property for a proposed retail convenience center with a café and gas station.

Chairman Philip Schmidt recused himself.

Robert Bellinger chaired the meeting for this application.

Attorney Hilscher read:

**TOWN OF LIVINGSTON PLANNING BOARD
RESOLUTION AND FINDING OF NO SIGNIFICANT
ADVERSE IMPACT ON THE ENVIRONMENT**

The following resolution was presented at a meeting of the Town of Livingston Planning board duly noticed and held on October 2, 2019:

Whereas, Global Partners submitted a Site Plan/Special Use Permit Application for a gas station/convenience store for the intersection of Routes 9, 23 and 82, Town of Livingston, on or about December 26, 2018.

Additional material was delivered to the Livingston Planning Board including plans and modifications to plans under cover of correspondence dated January 25, 2019, April 18, 2019, May 30, 2019, July 2, 2019, July 25, 2019 and September 20, 2019.

The Livingston Planning Board began the SEQRA process on January 9, 2019 by declaring its intent to assume lead agency status, and designating the proposal an unlisted Action. Notice of Intention to Declare Lead Agency were sent to the following agencies: Columbia County Planning Department, New York State Department of Environmental Conservation, New York State Department of Transportation, and Columbia County Department of Health.

The proposed action does not meet any criteria which would require it be designated a Type 1 action.

In accordance with the designation of the project as an unlisted action by the Planning Board, the applicant submitted a Short Environmental Assessment Form Part One dated January 25, 2019. In order to provide additional information over and above the information found in the short form, the applicant submitted a Full (Long) Environmental Assessment Form Part One

dated May 21, 2019.

The Application was deemed complete and public hearings were held on February 6, 2019, March 6, 2019, April 3, 2019, and August 7, 2019.

The Planning Board has considered the application, all supplemental materials from the applicant, all correspondence received on this matter and all comments made at the various public hearings, including all correspondence from the public as follows:

1. Paul DeCrosta March 5, 2019
2. Mark Prezorski March 5, 2019
3. Charlene Paden March 3, 2019
4. Armen Donelian and Rose Caldwell March 2, 2019
5. Anne Macpherson March 1, 2019
6. Catherine Tyler February 27, 2019
7. Leslie Senn March 6, 2019
8. Didi Barrett, Assemblywoman March 6, 2019
9. Brian Shea March 6, 2019
10. Catherine Dare March 6, 2019
11. Andrew Snyder March 6, 2019
12. David Gordon/Emily Svenson March 6, 2019
13. Karen Fetty February 5, 2019
14. Manon Slome February 5, 2019
15. Priscilla Woolworth February 5, 2019
16. Al Scott March 6, 2019
17. Pam Kline March 5, 2019
18. Gail Shafer March 3, 2019
19. Joe/Julianne Fletcher March 6, 2019
20. Margaret Davidson March 6, 2019
21. Clayton Kirking March 6, 2019
22. Melanie Nelson April 3, 2019
23. Jonathan Gould
24. Steve Blair April 4, 2019
25. Roy and Mary Senn April 1, 2019
26. Catharine L. Tyler March 31, 2019
27. Anne Macpherson April 1, 2019
28. Carole Clark April 1, 2019
29. Stanley Green March 31, 2019

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| 30.Elizabeth Nyland | April 3, 2019 |
| 31.Benjamin Banks-Dobson | April 3, 2019 |
| 32.Karen Fetty | April 3, 2019 |
| 33.Susan Bodo | March 29, 2019 |
| 34.Dick and Liz Livingston | March 27, 2019 |
| 35.Elisabeth Albert | March 20, 2019 |
| 36.Gary Sheffer | March 7, 2019 |
| 37.Suarez Family Brewery | March 20, 2019 |
| 38.Karen Fetty | March 16, 2019 |
| 39.Pauline Czajka | March 21, 2019 |
| 40.Catharine L. Tyler | March 31, 2019 |
| 41.Elizabeth Nyland | March 28, 2019 |
| 42.Craig Setari | March 26, 2019 |
| 43.Armen Donelian | July 4, 2019 |
| 44.David Fingar | August 7, 2019 |
| 45.Kenneth Flood | July 9, 2019 |
| 46.George R. Osborne | July 11, 2019 |
| 47.Joshua O'Connor | |
| 48.Thomas A. Butler | July 8, 2019 |
| 49.Jonathan Gould | September 4, 2019 |
| 50.Jonathan Gould | September 19, 2019 |

Paul Rubin, geologist, appeared at several public hearings and submitted correspondence dated March 6, 2019 and August 7, 2019.

Attorneys Ken Dow and David Gordon appeared at several public hearings and submitted correspondence dated March 6, 2019 and August 7, 2019.

Concerns with the proposal were noted by the Planning Board. Many of the concerns expressed involved potential impact to the aquifer beneath the proposed site. The major concerns were as follows:

- a. Surface water run-off or spills of petroleum products.
- b. Storm water discharges containing sediment due to ground disturbance.
- c. Ground water discharge of sanitary sewer.
- d. Leaking of underground fuel tanks.
- e. Impact on wetlands.
- f. Impact on nearby existing wells.
- g. Impact on threatened and endangered species.

- h. Increased traffic and traffic patterns upon entering or exiting public highways.
- i. Community character.
- j. Future status of adjacent gas station.
- k. Failure to meet requirements of Livingston Zoning Law.

Lengthy and detailed review was made by the New York State Department of Environmental Conservation. Review was provided by the Columbia County Department of Health dated January 18, 2019. Review by New York State Department of Transportation continues.

Upon consideration of all input received, and in looking at the proposed action and its environmental setting, the Livingston Planning Board finds as follows:

- a. With respect to surface water run-off or spills of petroleum products: the proposed use of a vehicle fueling station and bulk petroleum storage areas is considered a “hotspot” use according the New York State Department of Environmental Conservation (NYSDEC) stormwater regulations. As NYSDEC as outlined in their New York State Stormwater Management Design Manual (dated January 2015), defines a hotspot as follows: “a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies. If a site is designated as a hotspot, it has important implications for how stormwater is managed. First and foremost, stormwater runoff from hotspots cannot be allowed to infiltrate untreated into groundwater, where it may contaminate water supplies. Second, a greater level of stormwater treatment for hydrocarbons, trace metals or toxicants of concern is needed to prevent pollutant wash off after construction. This typically involves preparing and implementing a stormwater pollution plan that includes a series of operational practices at the site that reduces the generation of pollutants from a site or prevent contact of rainfall with the pollutants.”

The applicant has prepared a Stormwater Prevention Pollution Plan (SWPPP) designed in accordance with criteria outlined in NYSDEC Stormwater Management Design Manual, dated January 2015, that includes a series of operation practices for the areas designated as a hot spot (vehicle fueling areas and bulk petroleum storage areas). A Stormwater Pollution Prevention Plan (SWPPP) is required in order to obtain coverage under NYSDEC State Pollutant Discharge Elimination

System (SPDES) General Permit for Stormwater Discharges from Construction Activity. The applicant has submitted a SWPPP, that outlines the proposed treatment train, which includes collecting runoff from the fueling areas and petroleum bulk storage areas. These areas are paved, curbed and graded to a series of collection catch basins on site that direct the surface runoff from these areas to a settling tank. The settling tank then discharges to an oil-water separator (with a valve on the effluent) prior to discharge to the proposed separator that is sized to treat 100% of the water quality of the contributing drainage area. Discharge from the separator is then sent to a standard pretreatment basin sized for 100% of the water quality volume prior to discharge to an infiltration basin. The SWPPP also includes operational practices at the site that will reduce the generation of pollutants from the site or prevent contact of rainfall with the pollutants. These operational practices include bi-annual inspections and log of results (NYSDEC Operation and Maintenance Checklist from the NYSDEC Stormwater Management Design Manual, dated January 2015) and mitigation measures taken, removal of sediment from practices by a qualified hauler as needed but at a minimum of twice yearly, and cleaning of structures from sediment and debris. Additional inspection and maintenance guidelines for the hydrodynamic separator are included in the SWPPP as well.

The applicant has provided correspondence submitted to NYSDEC. The applicant submitted the SWPPP and site development plans to the NYSDEC Region 3 Office staff, James Malcolm on June 19, 2019. Various discussions and e-mails between Mr. Malcolm and the staff at Bohler Engineering occurred which resulted in a final e-mail being sent by James Malcolm on August 26, 2019 to Michelle Mormile at Crawford and Associates Engineering, indicating that the NYSDEC requested an oil-water separator with a valve on the effluent end be added to the stormwater treatment train prior to discharge into the hydrodynamic separator in order to contain a potential spill. Further plans were submitted indicating the inclusion of the oil-water separation with a valve.

All plans have been reviewed by the town engineer.

- b. With respect to storm water discharges containing sediment due to ground disturbance at site: During construction, and prior to stabilization, there will be the potential for increased erosion due to reduced vegetation and increased ground disturbance. The proposed action may cause soil erosion, or otherwise create result in stormwater discharges that may lead to siltation or other degradation of receiving water bodies. Development of the site will result in a disturbed area in excess of one acre. Therefore, a Stormwater Pollution Prevention Plan (SWPPP) is required in order to obtain coverage under the NYSDEC State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. The applicant has submitted a SWPPP that outlines the erosion and sediment controls to be implemented during construction. The SWPPP includes an erosion and sediment control plan that are consistent with the New York State Standards and Specifications for Erosion and Sediment Control. It states that “silt fence, stabilized construction entrances, sediment basins, inlet protection, and seeding and mulching, as well as, other controls will be utilized as temporary surface water management features” and “establishment of turf grass, landscaping or any other stabilization measure that will significantly reduce the risk of erosion.”

All plans have been reviewed by the town engineer.

By correspondence dated September 17, 2019 NYSDEC indicated its approval of the SWPPP prepared by the applicant.

- c. With respect to groundwater discharge of sanitary sewer: The proposed action will require the construction of new wastewater treatment facilities. The proposed project is a commercial project with wastewater flows greater than 1,000 gallons per day (gpd). The wastewater system requires a State Pollutant Discharge Elimination System (SPDES) Permit from NYSDEC. Because additional treatment is proposed, a General SPDES permit will be obtained. The system will be designed in accordance with the NYSDEC Design Standards for Intermediate Sized Wastewater Treatment Systems (Design Standards). It will also be designed to the standards of the Columbia County Department of Health (CCDOH), which will review the system design, plans and specifications.

Site specific studies, including a geotechnical investigation, septic investigation, and a stormwater evaluation, have been completed at the site in accordance with federal and State regulations. These studies have been used to evaluate and assess site-specific soil and groundwater conditions at this location. Information gathered during these studies was used to determine the development of the site and mitigation of potential risk.

The laboratory testing, description of subsurface conditions, and records of subsurface exploration contained within a report from applicant’s expert all provide information concerning the ability of groundwater to migrate through site soils and local groundwater flow direction.

Appropriate site-specific testing has been completed to aid in the design of the modern septic and surface runoff treatment systems consistent with NYSDEC and CCDOH requirements. Testing include hydraulic conductivity testing and percolation testing as is consistent with both industry standard and developments of this size and type. Applicant's experts have evaluated conditions to determine the approximate groundwater flow direction.

All plans and reports were reviewed by the town engineer.

After extensive review and requests for plan revisions, correspondence dated September 17, 2019 from the NYSDEC approved the issuance of a SPDES permit and wastewater disposal system for the project.

Based on the foregoing the Planning Board concludes that the proposed action will not result in a significant adverse environmental impact to groundwater and surface water.

- d. With respect to potential negative impact on wetlands: A New York State Department of Environmental Conservation (NYSDEC) regulated wetland is upgradient to the project site. On August 13, 2018, a wetland assessment was completed at the site by Ecological Solutions, LLC which included identification of vegetative species to determine whether there was a dominance of hydrophytic plants and areas containing transitional but primary wetland-oriented species, determination of soil features for hydric (poorly and very poorly drained) natural soils, and observations of site features displaying evidence of wetland hydrology based on the presence of inundated areas, apparent high seasonal water tables, and evidence of saturation within 12 inches of the surface during sufficient periods during the growing season to provide for anaerobic/hydric soils. The report concludes that there are no federal or state wetlands located on the site that will be impacted by the proposed development.

Said report was reviewed by the town engineer.

Correspondence from the NYSDEC was received on June 26, 2019 indicating that a site visit was conducted by the Department to review how close the NYSDEC freshwater wetland is to the proposed project area. It was concluded by the NYSDEC that the project area would not be located within the wetland or 100' adjacent area.

- e. With respect to potential negative impacts on water flow to nearby existing wells: The proposed action includes the installation of a new water supply system. The proposed project is a commercial project with water demands up to 2,350 gallons per

day (gpd). The water supply system requires a Columbia County Department of Health permit and NYS Department of Health Application for Approval of Plans for Public Water Supply Improvements. The applicant has provided well data from the neighboring wells from Bells Pond Mobile Home Park. (Note: Wells are located approximately 300 feet to 650 feet from the proposed project site.) There are three (3) wells that are identified as being on this site, each with a flow rate of 7 to 20 gallons per minute and a depth ranging from 120 feet to 200 feet. Well pump tests (72 hours) and monitoring for the Bells Pond Mobile Home Park were completed by Claverack Pump between December 15 to December 22, 2007 and on September 24 thru 27, 2010. Recovery rates of the wells ranged from 10 minutes to 2 hours and 25 minutes. Based on the provided information from Bells Pond Mobile Home Park, the proposed project site will have sufficient water supply to meet the demand of the proposed project (2,350 gpd or 1.6 gpm).

The Bells Pond Mobile Home Park report was reviewed by the town engineer.

- f. With respect to leaking of underground fuel tanks: The proposed action will result in the installation of underground storage tanks for fuel storage over an aquifer and adjacent to a freshwater wetland. The proposed underground storage tanks will be installed in accordance with requirements specified in the NYSDEC Regulation 6 NYCRR Part 613 Petroleum Bulk Storage Program regulations to protect both groundwater and surface water resources. The tanks and piping will be fiberglass reinforced plastic of double wall construction. The fueling dispensers will be equipped with sumps and automatic tank gauge monitoring including interstitial monitoring. All tanks and piping will meet the NYSDEC's current standards and regulations.

In response to requests made by NYSDEC, safety measures including an oil water separator and a gate valve have been added to the stormwater pipe network.

All plans were reviewed by the town engineer.

The Planning Board finds that the aquifer will be better protected by the latest engineering techniques and state regulations used in the new gasoline filling station than by the continued use of the thirty year old existing gasoline filling station on the southern side of the intersection.

- g. With respect to potential negative impact threatened and on endangered species: The applicant submitted a Threatened and Endangered Species Habitat Suitability Assessment for the project site prepared by Ecological Solutions, LLC dated April 7, 2019 and revised May 30, 2019 that examines potential impacts of the project on threatened and endangered species. Bald eagles utilize open water areas to forage for fish; there is no habitat on the property that meets these criteria, and no nesting or breeding activity was observed on the site or within 660 feet of the site. The project site is currently a mowed meadow with no trees; therefore, no disturbance activities will occur to habitat for Northern long-eared and Indian bats or bald eagles.

On August 7, 2019 the applicant received a correspondence from the NYSDEC Environmental Analyst indicating “that based on the 50 feet average tree height in the wetland/shrub area east of Route 23, and the distance of over 660 feet from (a Bald Eagle) nest, these features should provide sufficient visual screening for the nearby Bald Eagle(s) to avoid any threatened or endangered species impacts.” Therefore, there will be no impacts to Northern long-eared and Indian bats or bald eagles.

The applicant will further mitigate any potential impact by performing construction or site preparation work at such times during the year to ensure there are no impacts to Northern long-eared and Indian bats or bald eagles. To the extent required by the NYSDEC to mitigate any potential impacts to eagle habitat, the Department recommends that site preparation and construction activities occur before December 1, but a restricted work window for site preparation and construction activities will not be assigned. The applicant/permittee will be required to notify the Department of their intended commencement date at least five (5) calendar days in advance of starting work, which will provide wildlife staff the opportunity to monitor the site and activities at the nest. Should the bald eagle(s) return to the Bells Pond area and begin nest-construction in a new location closer to the project site, the Department must be notified.

- h. With respect to potential increased traffic, and traffic patterns on the entering or exiting the site: The proposed project may alter the present pattern of movement of people and goods resulting from the construction of 4,800 s.f. café and market with gas and diesel fuel islands, and associated site appurtenances. The applicant submitted a Traffic Impact Analysis prepared by Atlantic Traffic & Design April 16, 2019. Traffic counts were collected to establish the Existing Traffic Volumes for the study area intersections, which include US Route 9 intersection with NYS Route 9H and NYS Route 82 and existing Xtra Mart/Mobil site driveways. The results of the existing traffic count and existing volumes were then projected (2 years) to the future traffic volumes that would patronize the proposed project. Estimates of traffic from other specific potential developments were also computed and added to the projected volumes to obtain the No-Build Traffic Volumes (i.e., without the proposed project). Estimates of the traffic generated by the proposed project were then made based on information published by the Institute of Transportation Engineers.

The Traffic Impact Analysis concludes that the additional traffic generated by the proposed development will not significantly change the levels of service at the area intersections when compared to the No-Build conditions.

All reports were reviewed by the town engineer.

The Planning Board does not believe the site will serve as a destination for traveling from outside the local area.

In response to NYSDOT concerns with southern access from the site to Route 9H, the applicant restricted the southerly 9H access to a right/in-out driveway.

The town's engineer has found the traffic patterns entering or exiting the site complies with stopping sight distance (SSD) standards.

- i.j. With respect to potential negative impact on community character and future status of the decommissioned service station: The Planning Board finds that the project is consistent with community plans. The proposed site is zoned C-1 (Commercial District) which permits the proposed project via special permit.

Adjacent land uses represent a wide range of uses, including a large number of commercial uses: Bells Pond mobile home park, Hannaford, gas station, vehicle repair garage with unregistered vehicles on site, former book bindery currently being used for outside storage, golf cart dealer, horse farm, and police station. The current Livingston Town Zoning Law, which allows a gas station in this location by Special Use, is based on the Livingston Master Plan. Directly south of the project and less than three hundred yards distant, is the Hannaford Market, where the building is larger in size, and the parking lot is larger in size than at the project now before us.

The list of the following conditions placed on the project by the Livingston Planning Board will ensure that the site of the current gas station will not be allowed to deteriorate into an eyesore:

1. Within six months of the opening of the proposed enterprise: (1) the existing gas station at the south side of the subject intersection (also operated by the applicant) will be decommissioned as a gas station in accordance with DEC standards, and (2) site plan addressing the decommissioned site until such time as a new use is proposed will be presented to the Planning Board for its review.
2. At all times the former gas station will be kept mowed, plowed during the winter to allow for emergency access, free of refuse, free of broken or boarded up entrances and windows and free of graffiti. Failure to comply following service of notice to remedy within a reasonable time will result in a fine of up to \$2,500, plus any expense incurred by the municipality due to municipal remedy of the neglect.
3. A deed restriction will prevent the former gas station from being used for the sale of fuel.
4. To the extent required by the NYSDEC to mitigate any potential impacts to eagle habitat, the Department recommends that site preparation and

construction activities occur before December 1, but a restricted work window for site preparation and construction activities will not be assigned. The applicant/permittee will be required to notify the Department of their intended commencement date at least five (5) calendar days in advance of starting work, which will provide wildlife staff the opportunity to monitor the site and activities at the nest. Should the bald eagle(s) return to the Bells Pond area and begin nest-construction in a new location closer to the project site, the Department must be notified.

5. The project site will not serve as a truck stop. No trucks will be allowed to remain overnight. In accordance with 6 CRR-NY 217-3, trucks will not be permitted to idle over 5 minutes. Signage shall be posted stating the same.
 6. Safety measures including an oil water separator and a gate valve have been added to the stormwater pipe network to mitigate any potential impact to the aquifer.
- i. With respect to compliance with the Town Zoning Law: From the outset, application was made for a special use permit, site plan review and the lot consolidation/lot line adjustment for the proposed convenience store and gas station at the Bells Pond Intersection. The project is located in the C-1 Zone, in which gasoline filling stations require a special use permit. "Retail business or service not otherwise specified," such as a convenience store is a permitted use.

In accordance with Section 6.6.12 of the Zoning Law, "the Planning Board, after public notice and hearing, may approve the issuance of a special permit provided that it shall find that all of the following conditions and standards have been met:

1. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
2. The location, nature and height of buildings, walls and fences and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.
3. Operations in connection with any special use will not be offensive, potentially dangerous, destructive of property values and basic environmental characteristics, or detrimental to the total interest of the Town and will not be more objectionable to nearby properties by reason of noise, fumes, vibration, electromagnetic radiation, flashing of lights and similar nuisance conditions than would be the operations of any permitted use not requiring a special permit.

4. The use conforms in all respects to all the regulations of this law and particularly to the specific supplementary regulations that may apply to such use.
5. All structures, equipment and materials shall be reasonably accessible for fire and police protection.
6. The level of services required to carry out the proposed activity or use is or will be available to meet the needs of the proposed activity or use.
7. Parking areas will be of adequate size for the particular uses, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.
8. The sewage disposal system must be adequate to accommodate the proposed use.
9. The Planning Board shall require additional conditions and safeguards to the special permit as are necessary to assure continual conformance to all applicable standards and requirements.”

The Planning Board considered each of the enumerated conditions and standards and found that each was met. The new project consists of a gas station and convenience store that will replace the gas station, convenience store and diner currently operating on the opposite corner of the same intersection. While the new structure and parking lot are both larger than that of the existing location, the new structure and parking lot are smaller than that found at the Hannaford Market less than three hundred yards to the south. The new parking lot and traffic patterns represents improved safety for pedestrian and vehicular use over that now found at the current location.

According to Section 6.7 of the Zoning Law, in its site plan review, “the Planning Board shall be guided in its review by the following:

1. The proposed use, building and layout shall meet the provisions of the zoning law and other regulations and ordinances of the Town of Livingston and shall meet the intent of the master plan.
2. The proposed use and design layout will be of such as location and in such size and character that it will be in harmony with the appropriate and orderly development of the surrounding area.
3. The proposed use and layout will be of such a nature that it will not make vehicular or pedestrian traffic hazardous. Factors for the Planning Board to consider in this determination are the turning movements in relation to traffic flow, proximity to and relationship of intersections, adequacy of site distance, location and access of off-street parking and provisions for pedestrian traffic.
4. The proposed location and height of buildings or structures, walls and fences,

parking, loading, and landscaping shall be such that it will not interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonably affect its value.

5. Signage shall be designed and located so as to not present a hazard, glare or unattractive appearance to either adjacent property or to motorists.”

The Planning Board finds that the applicant has provided all required information, and that the project meets the standards for site plan approval.

The transformer, parking spaces and light poles planned for the project do not violate the setback requirements of the Zoning Law which prohibits buildings from projecting into the minimum set back areas (Section 1.3).

In accordance with the designation of the project as an unlisted action, accordingly, the Livingston Planning Board answers the following questions found at the SEQRA short form Part Two as follows:

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? No.
2. Will the proposed action result in a change in the use or intensity of use of land? No.
3. Will the proposed action impair the character or quality of the existing community? No.
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? No.
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? No.
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? No.
7. Will the proposed action impact existing:
 - a. Public/private water supplies? No.
 - b. Public/private wastewater treatment utilities? No.
8. Will the proposed action impair the character or quality of important historic, archeological, architectural or aesthetic resources? No.
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)? No.
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? No.
11. Will the proposed action create a hazard to environmental resources or human health? No.

For these reasons,
NOW BE IT RESOLVED, the Planning Board finds that the proposed action will not result in any significant adverse environmental impacts.

Resolution moved by: Chip Keil

Seconded by: John Ross

Those voting aye were as follows:

Roll Call Vote:

Chairman Philip Schmidt Recused

Bernie Stickles AYE

John Ross AYE

Robert Bellinger AYE

Chip Keil AYE

James McFarland ABSENT

Stephen Thibault AYE

Martin Nayowith AYE

Those voting nay were as follows: NONE

Resolution Granting Site Plan and Special Use Permit Approval to Global Montello Group Corporation-Alltown Fresh

Name of Project: Alltown Fresh

Name of Applicant: Global Montello Group Corporation

Date: October 2, 2019

Whereas, the Town of Livingston Planning Board has received an application for a Site Plan and Special Use Permit Approval and lot consolidation/lot line adjustment from Global Montello Group Corporation for the development of a gas station and convenience store on a 3.21 acre parcel (Tax Map Parcel Nos. 140.0-1-14, 140.0-1-15 and 140.0-1-16) located on NYS Route 9 and US Route 9H in the Commercial (C1) Zoning District in the Town of Livingston, Columbia County, New York; and

Whereas, the applicant submitted a Proposed Site Plan prepared by Bohler Engineering, entitled "Site Development Plans-Alltown Fresh", consisting of Sheets 1 to 14 dated November 27, 2018 and revised on January 21, January 25, April 17, May 29, June 3, June 12, July 26, and last revised September 20, 2019; and

Whereas, on May 1, 2019, the Planning Board, after duly circulating the project application and Full Environmental Assessment Form (EAF) to all Involved Agencies, was designated the lead agency for the purpose of conducting a coordinated review of an Unlisted action pursuant to SEQR; and

Whereas, the Planning Board has reviewed the Special Use application against the general standards for a Special Use Permit found in 6.6.12 of the Town of Livingston Zoning

Law and the site plan application against the general standards for Site Plan Approval found in §6.7.1 of the Town of Livingston Zoning Law;

Whereas, the applicant waived the timeframes for the Planning Board to make a decision on the proposed site plan; and

Whereas, on February 6, 2019, the Planning Board opened a duly noticed public hearing on the Site Plan application, which Public Hearing was continued on March 6, 2019, April 3, 2019, and August 7, 2019, at which time all interested persons were given the opportunity to speak and the Planning Board closed the Public Hearing on August 7, 2019; and

Whereas, the Planning Board had deliberated on the application and all the matters before it.

NOW THEREFORE BE IT RESOLVED, that the Planning Board has determined that.

- a) The site plan meets the provisions of the town zoning law and the intent of the town master plan.

The Planning Board hereby grants a Special Use Permit, lot line adjustment and Site Plan approval in accordance with the plans and specifications heretofore submitted, subject to the provisions of the Town Code, and subject to the following conditions and modifications:

- A. Obtain approval and permit from the Columbia County Department of Health for the proposed water supply system and proposed well.
- B. Obtain approval and permit from the New York State Department of Environmental (NYSDEC) Conservation SPDES Permit for the Sanitary & Industrial Wastewater Systems (GP-0-15-001).
- C. Approval and permit of the Stormwater Pollution Prevention Plan (SWPPP) by the NYSDEC and submission of an acknowledgement letter of coverage from the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002).
- D. Obtain approval and permit from the New York State Department of Transportation (NYSDOT) for the proposed facility entrances.
- E. Submission of Site Plan drawings for stamping and signing in the number and form specified under the Town's Zoning Law, including all required P.E. and L.S. stamps and signatures.
- F. Should water testing by Department of Environmental Conservation and Columbia County Department of Health for the well or wells serving the project not include testing for petroleum, said water shall be tested under the direction of the town engineer, at the expense of the applicant, on a yearly basis, upon 72 hours notice, except in the event of an emergency. Testing shall continue throughout the lifetime of the operation of the project.
- G. Within six months of the opening of the proposed enterprise: (1) the existing gas station at the south side of the subject intersection (also operated by the

applicant) will be decommissioned as a gas station in accordance with NYSDEC standards, and (2) site plan addressing the decommissioned site until such time as a new use is proposed will be presented to the Planning Board for its review. Any contaminated soils, identified during decommissioning shall be disposed of by the applicant, and the site fully remediated in accordance with NYSDEC regulations.

- H. At all times the former gas station will be kept mowed, plowed during the winter to allow for emergency access, free of refuse, free of broken or boarded up entrances and windows and free of graffiti. Failure to comply following service of notice to remedy within a reasonable time will result in a fine of up to \$2,500, plus any expense incurred by the municipality due to municipal remedy of the neglect.
- I. A deed restriction, to be reviewed by the Planning Board attorney, will prevent the former gas station from being used for the sale of fuel.
- J. To the extent required by the NYSDEC to mitigate any potential impacts to eagle habitat, the Department recommends that site preparation and construction activities occur before December 1, but a restricted work window for site preparation and construction activities will not be assigned. The applicant/permittee will be required to notify the Department of their intended commencement date at least five (5) calendar days in advance of starting work, which will provide wildlife staff the opportunity to monitor the site and activities at the nest. Should the bald eagle(s) return to the Bells Pond area and begin nest-construction in a new location closer to the project site, the Department must be notified.
- K. The project site will not serve as a truck stop. No trucks will be allowed to remain overnight. In accordance with 6 CRR-NY 217-3, trucks will not be permitted to idle over 5 minutes. Signage shall be posted stating same.
- L. All fees owed to the Town of Livingston related to the expenses of the consultants hired by the Town of Livingston to review, research and make inspections and report on this application shall be paid in full prior to stamping plans or issuance of certificates of occupancy. Failure to make payment in full within 60 days of the date of approval shall render said approval null and void.
- M. By accepting plans stamped by Town of Livingston Planning Board chairman or building permit signed by the Town of Livingston Building Inspector, applicant agrees to comply with all conditions.
- N. A violation or non performance of any of these conditions may result in a revocation of this approval by the Planning Board. Violations of any conditions are to be considered violations of the Town of Livingston Zoning Law and shall be subject to prosecution in Livingston Town Court and/or Columbia County Supreme Court. The applicant shall pay the costs of all attorney fees and litigation expenses of the town in the event of a plea or a conviction in favor of the town.
- O. The Special Use Permit and Site Plan Approval shall be affective as of the date of the receipt of the last necessary permit and the conclusion of any litigation that may serve to delay the project.

When the above conditions have been satisfied, four (4) sets of the above referenced plans shall be submitted for Planning Board Chairman endorsement. One (1) set shall be returned

to the applicant, one (1) set will be retained by the Planning Board, one (1) set will be provided to the Town Engineer, and one (1) set shall be filed with the Town Clerk.

Changes to the Site Plan shall require the approval of the Planning Board.

- A. The following conditions shall be fulfilled prior to the issuance of a Certificate of Occupancy(CO):
 - 1. A CO shall not be issued unless all proposed improvements have been completed in accordance with the approved Site Plan, with the exception of the requirement to decommission the existing gas station.
- B. The following are general conditions which shall be fulfilled throughout the construction and operation of project:
 - 1. The applicant shall continue to comply with all conditions imposed by any of the outside agencies in their permit.

BE IT FURTHER RESOLVED, that within five (5) business days of the adoption of this resolution, the Chairman or other duly authorized member of the Planning Board shall cause a copy of this resolution to be filed with the Town Clerk, and a copy sent to the applicant.

On a motion by Stephen Thibault , seconded by Chip Keil, and a vote of

Roll Call Vote:
Chairman Philip Schmidt Recused
Bernie Stickle AYE.
John Ross AYE.
Robert Bellinger AYE.
Chip Keil AYE.
James McFarland ABSENT.
Stephen Thibault AYE.
Martin Nayowith AYE.

Resolution declared: October 02, 2019.

Resolution Certified, Filed with the Town Clerk and Mailed to the Applicant

Eileen Yandik

10-08-2019 9:47

Both passed unanimously.

Phillip Schmidt returned as Chairman.

7:55 The public hearing for Tarpon Towers continued a Special Use Permit and Site Plan Approval for a wireless telecommunications facility. The property located at 51 Danski Road, Livingston, New York.

Attorney Benjamin Botelho represented the applicant.

Mr. Majercik spoke and said the tower will be located on his property. Peter Lenz also wished to look at the map. It was discovered that it was only a tax map for the site not showing any boundaries.

The applicant will be required to have a licensed survey done. Michelle requested an independent analysis done for a list of all towers in the area.

Charles Schneider was concerned that the board is not following the Zoning Code.

Paul Jahns is concerned with the laws for a private road. The fireman will need room to turn around.

Attorney Hilscher will notify the Columbia County Planning Board.

A motion to continue the public hearing to November was made by Bernie Stickles and 2nd by Stephen Thibault. All members present voted AYE.

There being no further business a motion to adjourn was made by Robert Bellinger and 2nd by Stephen Thibault.

All present voted AYE. Motion carried.

Next scheduled meeting will be held November 06, 2019 at 7:00 p.m.

Meeting closed at 8:15

Respectfully submitted,

Eileen Yandik
Secretary Planning Board.