

**Village of Webster**  
**Planning Board Meeting Minutes**  
Meeting Minutes of June 2, 2016

Community Meeting Hall  
29 South Avenue  
Webster, NY 14580

**Present:** Peter Adams, Peter Bowers, Chris Krawiec, Judy Gurnett, Atty. David Mayer, Building Insp./Code Enforcement Officer Will Barham, Deputy Clerk Jo O'Neill

Meeting came to order at 7:30pm.

Peter Adams mentioned some sad news that Phil Sinaguglia, prior board member and longtime committee member for the Village, passed away yesterday. He was a great guy and will be missed.

Reviewed minutes from the 5/5/16 meeting.

**Motion:** Judy Gurnett made a motion to accept the minutes as written. Seconded by Peter Bowers. All were in favor. Motion passed.

Peter Adams indicated there will be a change in order of agenda items.

1) **BID Presentation:**

David Galeazzo, representing the BID, informed the Planning Board of upcoming events and necessary signage that will be needed. The Band concerts will be starting on Friday nights, and on July 8<sup>th</sup> there will also be a Chicken BBQ in Memorial Pk, sponsored by St. Paul's Church. That night, the band "Keys to the Caddy" will be playing in the gazebo. ARK Enterprises from Seneca Falls will be providing the BBQ. David said he will ask ARK Enterprises for copies of their insurance and food service certificate prior to the event. David also said he will be checking with Will Barham about getting a temporary A-frame sign (approx. 2' by 3') to put up prior to the event. The BID will be having more activity in the Village with movies and more wine walks.

P. Adams inquired about the new BBQ restaurant in the Village and when it will be open. David replied that he didn't know, but they have remodeled the inside and appear to be getting close.

2) **NOCO Application:**

Hopkins, Sorgi & Romanowski PLLC, representing NOCO Energy Corp. (NOCO Express), at 54 W. Main Street, Tax ID# 080.46-1-1. Application for a Preliminary/Final site plan review and approval. Applicant seeks to redevelop current site reconfiguring site plan and constructing addition to existing building. Applicable Zoning Code 175-22, 23. Property zoned: Central Business.

P. Adams indicated there appears to be no changes since the previous discussion of the site plan. They have provided a Site Plan Resolution, Seaf part 2, Negative declaration for SEQR, the Monroe County Dept of Planning & Development 239m referral response, and the Monroe County Development Review Committee project review report, via email for our review.

**Presentation:**

Marc Romanowski, mentioned that they just received Monroe County's approval/referral this afternoon, and are ready to move on with their application for the Village's approval. He passed

around pictures of a proposed monument sign to replace their current sign. They have incorporated it into their site plan, and it is compliant to the code in terms of its location and size (35sf per side, 6' maximum height, actual sign is 4'x8' with a 2' pedestal). They will need the Planning Board's approval, as it is a ground level sign, not building mounted. The sign will be located on the corner of Corning Pk. and Main St., 3' from the property line. They may need a variance, and would have to go to the ZBA for that. The total allowed signage for the property is 100sf. They may be in excess of that with the building and monument signs. They will re-address that once they determine exactly what the building façade sign will look like. The building will have simulated cedar panels on the peaks, and vinyl vertical panels on the addition on the back of the building. They have updated their plans to move the propane tanks to the front (NE corner) of the building, and the air pump to the west side of the building. They expect to come back next month with more details pertaining to the signage.

P. Adams asked the board to review the Site Plan resolution they provided, which mentions the new proposed sign. It also cites our Village code as well as the NY Village Law.

Will Barham suggested the board considers the SEQR first, before acting on the proposed Site Plan resolution.

P. Adams confirmed that the existing metal guardrail will be replaced with a wooden one, and questioned if they have done any ground testing yet.

M. Romanowski replied that they haven't yet, but will when the digging begins to remove the old tanks. They will also be taking down one tree along Corning Pk.

#### **Open to the Public:**

Richard Walter, 20 Elm St., asked if they would be willing to provide a tree to the Village to put in along Corning Pk. He also asked how far back from the crosswalk the new sign would be on Corning Pk. Being 6' high, it could block the view of the cars waiting in the queue on Corning Pk. to turn onto Main St. It could also block the view of pedestrians on the crosswalk.

M. Romanowski replied that they can look at shifting the location of the sign. They may need a different variance from the ZBA.

#### **Closed to the Public:**

P. Adams opened the discussion up to the board. He reiterated the need for the SEQR short form. The only issue with the short form will be if they encounter contamination when removing the old gas tanks. At that time however, the DEC will take over.

W. Barham mentioned that the Planning Board makes its decision based on the information that's available, not on any unforeseen issues that may come up.

P. Adams asked the board to review the Environmental Assessment Form. He then asked for a motion on the SEQR.

**Motion:** Judy Gurnett made a motion for a negative declaration on the environmental impact on the SEQR. Seconded by Chris Krawiec. All were in favor. Motion passed.

W. Barham indicated with the previous motion, we didn't have to state it was an unlisted SEQR since we declared it as having a negative environmental impact.

M. Romanowski commented that when the application is taken in by Will, he typically determines whether it will be a SEQR I, SEQR II or Unlisted. Then it's up to the board to make a determination based on that.

P. Adams stated there were no other changes to the site plan other than the monument sign, and asked for a motion to make a recommendation to the ZBA.

**Motion:** Peter Bowers made a motion for a positive recommendation to the ZBA for a corner monument sign, with the variance to be determined, to include the removal of existing signs at the time the new signs are placed. Seconded by Chris Krawiec. All were in favor. Motion passed.

P. Adams asked for a motion on the site plan approval, to include the replacing the existing metal guardrail on the east side with a wooden one. He also noted that Kathy Bills was not present for the vote.

**Motion:** Judy Gurnett made a motion for a positive approval of the site plan application for the redevelopment of the NOCO site, with the stipulations that the existing metal guardrail be replaced with a wooden guardrail, noting that the location of the new monument sign is subject to ZBA approval, and noting the removal of a tree. Seconded by Chris Krawiec. All were in favor. Motion passed.

### **3) Additional Business:**

Open discussion regarding the condition of an existing development located at the end of Kittelberger Pk. known as "Scenic Village Townhomes."

- J. Gurnett read the following statement, "I am a resident of the development in question and I have a financial interest, so therefore I am recusing myself from any discussion or voting on the matter before the board."
- P. Adams noted there have been no significant improvement to this development for about 4yrs. The roads are in disrepair, the lights aren't working and there are no sidewalks. How do we address this matter? Can we call in the developer and require new site plans?
- W. Barham indicated that Louis Fico and Bob Fallone are partners and own the property.
- Currently, there are 16 undeveloped units which have had no work done on them since the project started. There have been numerous complaints from the residents on the poor conditions, and we need to find out what the developers plan on doing.
- P. Adams asked for a motion to ask the developers to present their site plan and give us a timeline for completion. If they don't intend to complete it, what will they do to mitigate the site.
- We're not requesting a new "fresh" site plan, but since there hasn't been any movement on it in years, we want to know what their plans are for completing it.
- W. Barham gave some background on the property. Larry Frumusa originally bought the 27 acres, and was going to develop it in phases: one phase was building the Townhouses, another was the apartments. They built two Townhouse units and then Mr. Frumusa went bankrupt and it went into receivership to the bank. The bank sold it to Morgan, who in turn sold the Townhouses to Fico and Fallone. They built one unit and nothing else since then.
- It is common to take several years to complete large projects like this, but they have just stopped building completely.
- P. Adams inquired as to whether they should have come before the planning board when the project was sold, and resubmit the site plans.

- David Mayer replied that they are not required to come back to the board. The site plan approval goes with the property, not with the person who originally submitted the plan.
- When Morgan subdivided it, he did come before the Planning Board, but the original plans hadn't changed.
- C. Krawiec questioned whether we can legally "force" a developer to develop the lots.
- D. Mayer replied no, but we can require a property owner to address any existing safety issues. In VERY rare circumstances, you can withdraw the approval of an existing site plan.
- Remediation of vacant lots and infrastructure completion is most likely what we need to do.

### **Open to the Public:**

- Patty Dietz, 172 Seasons Trail, along with her neighbors are very frustrated with the situation. They came to the last Village Board meeting as well. She purchased her Townhouse in the Spring of 2012. Fico completed one unit that was already up, and built one more two story unit... then nothing. The road conditions are neglected and awful. There were 106 patches recently to the short area of binder that was laid. There are still no sidewalks, street lights or landscaping; it's unsafe. There's a tractor trailer that's been parked at the end for 2yrs, garbage strewn all over, and our property values are depreciating. The original "vision" was wonderful, but now it's neglected and we are paying a HOA fee for nothing. Some of us have planted our own gardens, paid for personally, because the developer isn't doing a thing. We've tried to contact Louis Fico via phone, US mail, email and texting, with no response. He is the President of the HOA, and we haven't had a HOA meeting in 3yrs. Can the Planning Board get him to come in and address these issues? Things are not done according to the original site plan. If he chooses not to build any more, he should just let someone else buy it and develop it and make it a nice community. Currently there are 16 occupied units which are paying into the HOA, but at some point repairs will need to be made, and there's not enough to sustain that. We have no recourse, as Fico is the President and the Board of the HOA.
- P. Dietz called a HOA meeting in May to address some of the issues, but it was considered unofficial since Fico never responded and didn't attend. They have recently contacted the Attorney General, but have not received a response other than they are investigating the matter.
- Mike Yanis said there's no official board; there's no secretary, no treasurer, Fico is it. We've heard that Bob Fallone is no longer involved. We need to do something. It's sad. It's embarrassing. It's an eyesore, and I'm concerned about my home depreciating.
- Mayor John Cahill (in the audience) has spoken to lots of people there and they need help. They've been dealing with this situation for 4yrs. Part of the site plan approval process is that they have to put in the roads to our specifications.
- W. Barham indicated that the road there is a private road. Our specifications for the Village roads are a little heavier duty. We have to allow for a certain amount, and weight of traffic (H2O standards).
- Mayor Cahill indicated the roads are not up to the standards the site plan said it was supposed to be, and were not meant for the binder to be put down and just left for 4yrs. Because we're talking about safety issues, can we do something with code issues or maintenance issues? Bring him in and enforce putting in the sidewalks, lighting, etc.? I think we need to help these people as much as we can.
- Bob Ross, 155 Serene Pk., is concerned about the road and having to put in a new one at a huge cost. They can't afford to do that out of their own pockets. If Mr. Fico had put up a bond to cover that it wouldn't be such an issue, but now they have no recourse. There's a sense of urgency to get this taken care of. And the Village needs to put something in their code to make sure this doesn't happen again.

- P. Dietz added that the binder has actually been down approximately 8 ½ yrs, and there's a 2" drop between the gutters and the road. The lights were actually on 2 nights ago. Approximately two weeks ago, when Fico's workers were there patching the road, a fire truck was trying to get through but the asphalt truck was in the way. Even after moving over, the fire truck could barely get by. In the winter, because they do not have the parking spaces that are noted on the site plan, with the holidays some people have to park in the street. The plows can't get through. If there's a medical or fire emergency, this is a huge concern!
- R. Walter, inquired as to whether the sewer lines are all capped the way they're supposed to be on the undeveloped sites? Are there violations now that could be sited?
- W. Barham will look into that.
- Mayor Cahill asked if our code currently requires a developer who purchases an existing site plan from someone else, to get a performance bond? Is it possible for this board to ask him to post a performance bond to give him an incentive to complete the infrastructure?
- P. Adams indicated that we probably should have done that when the property was subdivided.
- D. Mayer replied that the trustees set the performance bond, and the developer only posts a bond for what we ultimately take ownership of. We could request a performance bond now, but we can't force him to do it. It's not part of our code.
- P. Adams added, if we skipped an administrative part when the site was subdivided, why can't we say we neglected to ask you to post a performance bond during the subdivision, and you need to post one now, or we can pull the site plan?
- W. Barham replied that he has posed that question to Wade Beltramo, NYCOM General Counsel, and he said we can't require him to do that. That's not to say we can't try it, but it would leave us open to an Article 78.
- Mayor Cahill questioned if when the property was subdivided, there was some verbage in our code that says a performance bond is required before we will approve this site plan or division of a site plan.
- D. Mayer said the ability to do that is in the Village Law. A bond was posted, but it only covered water and sewer.
- W. Barham addressed the Mayor's question, that when the original site plan was approved, we had a performance bond that was posted for the whole original project. The intent of that bond was met. All of the infrastructure was inspected and we would tell the board that this portion of the bond is complete. Then the board would call the bank and say send a check to the developer for that part of the bond.
- P. Adams added that the Planning Board can ask the Village Board to request a performance bond from the developer for infrastructure; roads, sidewalks, street lights and remediation of any issues.
- The original site was divided in 2006, and there was a bond at that time.
- P. Adams reiterated that we need answers from the developer as to when the site will be finished, along with the sidewalks, the road, overflow parking and remediation of the undeveloped sites. We should send a letter from the Planning Board asking the developer to attend our next meeting to get answers on these issues.
- D. Mayer agreed that we can inform him that the validity of the site plan will be discussed, and invite him to attend and be a part of the discussion. David will research which board has the authority to potentially revoke the site plan. If we get to that point, he is entitled to a public hearing.
- Mike Yanis, 159 Seasons Tr., acknowledged that there is some uncertainty and gray areas about how to address this issue. They have contacted the Atty, General, but don't know what legally can be done. We're not sure what avenue to pursue things legally.

- P. Adams stated that they have done things properly to this point, by contacting the HOA, the Village Board, the Planning Board and the Attorney General. Now the Planning Board is going to take action by informing the developers that the site plan is going to be discussed at the next meeting. He posed the question to Will Barham and Atty. David Mayer as to who actually owns the property.
- D. Mayer replied that it could be difficult to find out if it's owned by an "LLC". You can find the LLC and who set up the LLC, but not who actually owns the LLC in the public record.
- P. Adams indicated that we will send the developer a letter requesting copies of the site plan, and asking him to attend our next meeting.
- C. Krawiec noted that we can send him a letter, but he can completely ignore it. It's not truly a Planning Board issue because we don't have the enforcement capability. Will is the enforcer because he can site code violations. That may be the only way we get him to come to a meeting. He's under no time constraint.
- P. Dietz is concerned that in order to even see the developer, if he does in fact come to the meeting, he will view all of us in a negative light. As of July 1<sup>st</sup>, we have been informed that Fico will be handling the finances for the HOA. I have no intention of contributing and sending him any fees.
- B. Ross asked if the developer would need to get more permits to continue with building.
- C. Krawiec indicated that we can't refuse a permit if it is in compliance with the site plan.
- W. Barham reported that he did just issue a permit to him for another building.
- R. Walter inquired as to whether the homeowners can get a class action suit against the developer.
- D. Mayer replied yes they can. It would be up to the Atty. General, but they could hire their own attorney and sue the developer directly for breach of contract and obligation to complete things. The residents can try to have him removed as president of the HOA, and have standing to file a law suit against him. It would be worth consulting your own attorney about it.

#### **Closed to the Public:**

- P. Adams asked for board comments.
- C. Krawiec replied that we should go ahead with sending a letter, requesting him to attend our next meeting, and ask his intentions for continuing on with this project.
- P. Adams asked for a motion to draft a letter to the developer requesting their presence at our July 7, 2016 Planning Board meeting to discuss the site plan, its validity since no major construction has been done in a number of years, to discuss safety concerns, the completion of the site plan infrastructure, and going forward with the completion of the site plan. The letter to be determined by the Planning Board and our attorney.

**Motion:** Chris Krawiec made the motion for the Village Planning Board to draft a letter of invitation to the current owner/developer of the Scenic Village Townhomes to present at the next Planning Board meeting a discussion for the future continuation development of the said infrastructure of the subdivision on the site plan that is in existence.

Seconded by Peter Bowers. All were in favor. Motion passed.

#### **4) Discussion regarding the New Construction Code:**

- P. Adams questioned if we need to add and/or revise our code so that the Scenic Village situation doesn't happen again. When we approve a site plan, do we put a time limit on its completion? Or the applicant will have to show significant construction or improvement to the site during a certain time frame?

- W. Barham referenced the code 137-5 (l)1, Subdivision of Land. This covers the performance bond or Letter of Credit. “The bond or letter of credit shall assure the complete installation of the required improvements within such period, not longer than three years, as shall be fixed by the Planning Board.” So the Planning Board determines the approval process for the letter of credit, and the Village Board determines the amount of the bond. Reading further, “The Planning Board, with the consent of all parties to the bond, may extend such period upon written application of the subdivider filed with the Village Clerk prior to the expiration of such period or upon its own motion at any time prior to a declaration of a default in the bond by the Village Board.”
- W. Barham posed the question to our attorney, “What happens when the 3yrs are up and the project isn’t finished? Do we say, even if the construction isn’t done, we’re going to take your letter of credit and finish the infrastructure ourselves?”
- D. Mayer replied as things are completed before the 3yrs are up, the board can reduce the bond. If things are not completed, we can declare them in default, cash in the letter of credit and say we’re going to finish the roads, sewers, etc. with the money. We have code already for infrastructure and maintenance bonds.
- P. Adams indicated that the bond for Scenic Village was only for water and sewer, which were completed, so there was no reason to renew the bond. We can require bonds for other things such as sidewalks, roads, street lights and remediation of vacant properties, but we didn’t in this instance.
- C. Kraweic questioned if it happened that we exercised the bond because the site wasn’t finished, and we put in the roads and sidewalks, who would be responsible to fix them if they got destroyed as the construction continued? Then we would need another performance bond from the developer stating that if they destroy those things, they will be responsible to fix them.
- P. Adams commented that he would like to see something as part of the site plan approval process where we can go back on the developer if no substantial work has been done for “X” amount of years.
- C. Kraweic noted that it needs to be quantified to be enforceable. The term “substantial” is vague, and means different things to different people. For instance, we could say if no new construction has been done within the last 2 (3 or 4) years, we can declare the site plan invalid.
- D. Mayer will research what we can do if a developer fails to complete a project. Can we take the site plan away from them? If we can, they will be entitled to a hearing, and we would have to research what the parameters for the hearing would be. Dave will research this further.

#### 5) **Proposed Sign Code Discussion:**

- Darryl Byerts said it was difficult to interpret the Sign Code recommendations based on the wording. According to the wording, shelving and/or other window material would be considered a window sign if it’s within three feet of the window.
- P. Adams agreed that the wording appears to be vague, but that could be interpreted in our favor. He indicated many stores won’t be compliant with the new code change. They will not be grand-fathered. They will need to become compliant within a certain amount of time. “Nestings” has displays on the bottom of the windows, but it doesn’t block the window.
- D. Byerts commented that “Jeff’s Computers” had balloons across the windows that covered more than 20% of the windows. Do you consider the balloons as window signs? Or other window material? It blocks the view into the store.
- P. Adams stated that would be considered window material, as it blocked the window.
- R. Walter questioned if we are encouraging stores to remove windows.
- W. Barham said the code states that stores must have 4% and 8% of natural light and ventilation.

- R. Walter referenced the store on the corner of Lapham Pk. and E. Main St. They have more windows than they need. Are we encouraging them to “board off” windows if we limit what they can put in the window?
- D. Byerts replied that the landlord would not allow them to do that.

P. Adams indicated he and David Mayer will get together next week to draft the letter. Then we can go forward with discussion on New Construction and changing the code to avoid what’s happened with Scenic Village in the future.

D. Byerts asked how long a developer has to begin construction once their site plan is approved.

W. Barham replied they have a year to begin construction.

D. Byerts inquired as to whether Morgan is coming up on a year on North Ave.

W. Barham said that Morgan has cleared the site and removed the building. The site engineer left here with a signed set of plans for the resubmission of that area.

P. Adams: Asked for a motion to adjourn.

**Motion to Adjourn:** Peter Bowers made a motion to adjourn the meeting.  
Seconded by Chris Krawiec. All were in favor.

Meeting adjourned at 9:28pm.

The next Planning Board Meeting is scheduled for 7:30pm on July 7, 2016.

Respectfully submitted,  
Jo O’Neill, Deputy Clerk