

MINUTES of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, March 22, at 7:30 pm.

ATTENDANCE: Chrm. Conero, Mbr. Weeden, Mbr. Crowley (absent)., Mbr. Steed, Member Romano, Atty. Kevin Dowd, Eng. Dawn Kalisky of Lanc & Tully, Christopher Jinks, Gary Beegle, Chris Nickerson, Kelly Naughton, Ryan McGuire, Ross Winglovitz, Marc Devitt, Maria Beltrametti, Don Berger

OPEN: Chrm. Conero opened the meeting with the Pledge of Allegiance.

PUBLIC HEARING

RE: RIVER STREET SUBDIVISION 208-1-24.1

A MOTION was made to **OPEN THE PUBLIC HEARING FOR THE RIVER STREET SUBDIVISION** by Mbr. Weeden and seconded by Mbr. Romano and carried 4 Ayes 0 Nays.

Mr. Winglovitz introduced himself. This is a 1.8 acre parcel located on River Street, just north of Union Street. They could put one home on it but they are proposing a two-lot subdivision that allows one additional home on the property. They were before the Board in January regarding the initial application; they had to go to the ZBA because a variance was required for lot two-those variances were granted at the end of February. They came back to the Board to set the public hearing. There will be two proposed homes; one on lot 1, the front of the lot, and one on lot 2, which will be behind the Boylan residence, next to the Village Park. Marc's house is in this location (he indicates on the site plan). Both houses will be connected to sewer and water, provided by the Village. The lots generally drain to the north to the existing ditch line that runs along the north side of the property. He asks if there are any questions.

Chrm. Conero asked him to go over the variances granted to them.

Mr. Winglovitz reads, "The Village of Montgomery Zoning Board of Appeals granted a 20-ft variance to proposed lot 2 (for the width of the frontage on River Street), from the 40-ft requirement. That variance came with conditions:

- The single family dwelling to be located on lot 2, the rear lot, shall be oriented so that the side of the dwelling faces, and is essentially parallel to the rear lot of the adjacent Boylan property.
- The single family dwelling to be located on lot 1 shall be set back from the common boundary with the adjacent Boylan property at a minimum of 60 ft. We agreed to set this back further required by code. 30-ft is required and we agreed to 60.
- The owner of lot 2 shall plant a minimum of 4 evergreen trees (4-6 feet high) along and near the common boundary line with lot 1 and a minimum of 4 evergreen trees (4-6 feet high) of the common boundary line with the Boylan property as depicted hereon, and those plantings be maintained and replaced as needed. They will be a visual buffer between the house locations on the property.

- The swales indicated hereon (the swales being the drainage for lots 1 and 2) shall be installed in conjunction with the construction of the house and driveway. These swales will divert the water down to the ditch at the north end of the property.
- Once the driveway is installed for lot 2, (which is this driveway to the back, directly adjacent to the Boylan property), the owner of lot 2 shall, as said owners cost, be obligated to mitigate any drainage issues on the Boylan lot that may be caused by the driveway. So that storm water from lot 2 or 1 onto the Boylan property. These are downhill and the concern was construction of this driveway may back up water on the Boylan property so we indicated we grated this (indicates on site plan) so that it promoted the flow of drainage to continue north to the swale and that condition just assures that.
- Water on the Boylan property is allowed to drain off and is not retained provided that the owner or agent of lot 2 receives the appropriate permission to enter the Boylan property to do such work. Any area disturbed on the Boylan property shall be properly graded and re-seeded once the work is done at the cost of the owner of lot 2.

Chrm. Conero asked if the swales that they are proposing are going to mitigate any water buildup that might go on the Boylan house. Mr. Winglovitz said yes; that everything flows to the north to the ditch line. The concern was that the lot 2 driveway could somehow backup drainage on the Boylan property. Chrm. Conero asked if the swale was made out of asphalt. Mr. Winglovitz stated that it is a grass swale to properly direct the draining around the house and out to the existing ditch line.

Chrm. Conero said they still need County Planning comment. He opened the public comment portion of the public hearing.

Chris Jinks – 90 River Street – I have a question Marc. When you subdivided the upper property did that not come into this parcel? Mr. Devitt said no. The original lot line came into about here (he indicates on the site plan). We squared it off.

Chris Jinks – The other question I have, we spoke about mitigating the water flow where the drive is going to be. You didn't mention about mitigating any of the water flow here (indicates on the site plan), which we already have a problem with that. Either a better culvert or a bigger ditch. We get water pooling toward the rear of his house (pointing to the man sitting next to him) on the property line, again, a lot of it on his. As it is now, depending on the rainfall, he gets water in his basement from this property line.

Chrm. Conero asked, you're saying that...when you look at the topo on this, it's all pointing down, right? What's being mitigated is going out toward the back of the property. Mr. Winglovitz asked if he was the property or two to the north. Mr. Jinks said he's the 2nd one. Mr. Winglovitz said their concern is what it impacts to them.

Mr. Jinks said this ditch is not properly draining towards the rear. It takes a long time for the water to go down. During the torrential flow of water, both his driveway and my driveway get flooded. My question is what are we doing to mitigate water that could possibly come to the street toward the front of our driveways which we already have a problem with that. This ditch is not inclined/declined enough to get that flow of water going to the back.

Chrm. Conero asked who owned the ditch. Mr. Devitt said it is on their property. He has approached DPW for the last two years. They have two culverts that drain onto that property and

that's where some of the problem is. They drain the culverts at the end of the property and nothing was ever been cleared. The water started to form its own path and it goes to the back of Gary's property, now. He offered to try work something out with the Village to remedy that. Whether it was to provide an easement where they put drainage pipe in, all the way back to the Village property and clean that up. And he's happy to still do that. Or the Village can take those culverts and tie them in down the street, further, and connect to existing drainage that is across the street from your house (to Mr. Jinks).

Gary Beegle – River Street – the Village is always down there cleaning that drain out on the opposite side, so I think there's an issue with sediment accumulating.

Chrm. Conero asked if this culvert is owned by Mr. Devitt. Mr. Devitt said it is something the Village created. Chrm. Conero asked, but it is on your land? Whose responsibility is the culvert? Ms. Kalisky asked, culvert? The 15 inch culvert under River Street to the natural drainage channel? It is the Village's culvert under River Street. There is a natural drainage channel there, I don't know when it actually started into that designated wetland. Chrm. Conero confirmed on the northern property line. Mr. Devitt said it was really created by the Village, it was never a natural drainage swale. If you drive down there, there's a large tree that, because of that water, is toppled over from the roots, so at one time it might have been natural but adding the culverts to it, just compounded that. Chrm. Conero asked how the run off from this dwelling (indicates on site plan), going towards...it's going down, this property, Beegle, is up above this area? Mr. Winglovitz shows where Mr. Beegle's line is, and the neighboring property, the ditch line between their property and Mr. Devitt's. Mr. Jinks said Mr. Beegle's property is lower than the property at number 2 which is lower than the Boylan property. Mr. Beegle says he's at the base of the hill where the hill starts to level off before the next dip down River Street.

Chrm. Conero asked Atty. Dowd if the culvert comes in and discharges out and it just naturally has been flowing that way for years. Who's responsible for that, the proper flows of water from a culvert? Atty. Dowd said the natural flow of water is down from Boylan, Devitt, Beegle and Jinks. That's the normal flow. He's understanding that the culvert, or the pipe underneath River Street, adds to that flow. Mr. Winglovitz asked how old it was-when it was put in. Mr. Devitt said not long ago. Mr. Jinks said probably less than 10 years, when they put the grade in, put the pipe underneath and across. Atty. Dowd asked if the water came from the opposite side of River. Mr. Devitt said yes, towards us. They took water from the opposite side of the street and brought it over on our property. Ms. Kalisky said she will speak with DPW. She does not recall that going in within the past 10 years. Mr. Jinks said it flooded in front of Schmidt's house and then they put the grade and culvert in to mitigate in front of the house, as well as the adjacent property. Atty. Dowd said if the Village is funneling its water through the ditch, its one issue. The other issue is Mr. Devitt is going to be creating more impervious surface with the house and with the driveway. That is a potential for more water flowing toward the north. There might be a couple of things going on here, one would be that you might be contributing to the additional flow with the impervious surface and has caused issue with the Village; where the water is going, as you say, underneath River and through your property. I think there are a couple of issues here that we should talk about. I think you have to look at how much extra water you are potentially creating, impervious surface into that ditch and whether that ditch has to be altered and whether the Village has to do anything...divert the water down River Street to where it should be going. I know there have been other issues down River Street. I know I have worked in the past with other easements, other issues with culverts and I think, Mario's property, Sharp's property. So, again, it's an old Village, there are a lot of issues the way the water flows. There might be a combination...Dawn should talk to Buddy and see what we can figure out...a way to alleviate...but I understand what Chris and Gary are saying; maybe some improvements to that ditch, maybe some improvements

of getting some of the water from the Village away from, or contributing to the problem. Maybe it's a way of getting it through into the Village property; the only problem with going to the Village property is that it's a well site down there, I think. Mr. Devitt said no, the Jake well is further down. This is the park trail. Mr. Devitt said there is a drainage ditch that actually crosses 211 at Mike's Deli, on this (indicates on site plan). Where the village is, here, could be brought back all the way to that ditch and back onto Village property...Chrm. Conero said this could be abandoned completely if they divert the water down the street to where it's got to go. Atty. Dowd said yes, the Village water, but the natural flow of the water from the Boylan property all the way down to your property and that potentially has to be taken care of, also. Mr. Devitt said whatever the engineers and DPW think makes the most sense. Atty. Dowd said we have a month, we can't do anything tonight and we are waiting on the County Planning Department. We can call the public hearing open and have the conversation we need to have and see what we have to do, if anything, and come back. Mr. Devitt said they certainly recognize that there's an issue there, it's been there for a while and you can see it by some of the trees. He'd like to remedy the issue. Atty. Dowd said the ZBA talked about the Boylan property. The only way the Boylan property gets water is if your driveway is extremely high or the water just backs up onto the Boylan property all the way back from your property, all the way across to his property to the Boylan property. That's the only way it's going to get uphill. Mr. Jinks would like to suggest the possibility of putting a 2nd grate in at the corner of the property so that any water that comes down the street, or that may runoff from property #2, will go into the grate on his side of the street and with the enhanced drainage, whether it's piping or expanded ditch, then that water will also drain, as well as the water coming from across the street. We should have two grates. What happens is it just collects in front of Gary's and once it's backed up on Gary's, it starts collecting in front of his house. Chrm. Conero asked Ms. Kalisky if she would speak with Buddy. She said if you look at the existing topography, you'll see there is a natural swale line, not proposed from Joyner's aluminum shed on the Beegle piece, contour 370. That's a natural swale line that's there. Mr. Winglovitz has mentioned the path of drainage line going through. Then you have contour 368, once again, existing natural swale line, but if that area there feeds into the designated wetland are flagged as well, you can barely make out the 366 contour down at the far end. This area is relatively flat once you get to the back. Mr. Jinks said in order to take care of the silt that comes from across the street, they (the Village) come in with a backhoe and they dug out that ditch, to clear out the silt. You get a large pooling and that's what undermined that big tree root ball. Atty. Dowd asked if that was on the natural drainage flow on Mr. Devitt's property. Mr. Devitt said yes. Atty. Dowd asked, so the Village has been on your property digging out silt? Mr. Jinks said yes, the back tires from the backhoe were on his property (Mr. Devitt) and they used the backhoe to dig that silt out. Atty. Dowd asked, at the front of the property, the street line? Mr. Jinks said yes. Mr. Beegle confirmed that years ago, he'd seen them go back down the ditch/drain and go all the way back to try to widen it out to get the water to flow. Ms. Kalisky asked, on the property? Mr. Beegle said yes, on the drain property. They were there with shovels to try to widen it out. He hasn't seen it recently. Ms. Kalisky said I would hope not it's a designated wetland and a lot of people would get in trouble for that. Chrm. Conero confirmed that Ms. Kalisky will work with DPW and come with a proposed solution for this drainage issue between the aluminum shed and the street line. The other way is still naturally flowing from that aluminum shed back.

Ryan McGuire – 80 River Street – He wants to add to what they are saying. He would like to see something happen with the lot, it definitely needs some treatment and thinks a house would be perfect here but the drainage does come down from 211. There's a low point right in this area (indicates on site plan) and it starts coming back up and there's a ridgeline back here, so this all follows back through this property here, and back toward the Villages drainage swale. There's a little field right near this driveway that someone has put in, probably the village that connects back to this catch basin, so there's a lot of real low drainage issues right here and that does come

across; it comes back to this swale and eventually makes its way back there. There's clearly something going on, someone should look at that. River Street wasn't designed for drainage, you could tell that from day 1. Just the way it's laid out, there's no curbs, catch basins are very small and everything seems to be lateral. It comes across and goes back to this swale. The catch basins further down the street are not sized adequately to handle further drainage-might be a couple of acres that comes up this way, coming down into here. If anything were to be put on this street, down this way, he recommends that it go all the way down to a large culvert by Mario's property-right down to the river because it will not be able to make its way back through these 15 inch pipes. Atty. Dowd confirmed his address. He is further down River Street, past Mr. Jinks at the next low point. Mr. McGuire recommended that someone look at this and perhaps put in a new catch basin over here (indicates on site plan) and then a swale along the property line or something so they can get it back to the wetlands. Also, that maybe the house be set in line with the existing houses on either side-not too far back or too far forward.

Kelly Naughton – Representing the Boylan's. She wanted to make sure this Board has a condition similar to the ZBA to prevent the drainage from backing up or pooling due to the construction of the driveway. Other than that, there are no other problems with the subdivision. Atty. Dowd said the conditions of the ZBA are on the subdivision map and will become part of those conditions. She said she didn't see who was going to suggest the mitigation. Atty. Dowd said the other attorney from her office worked it out with the applicant's attorney and Mr. Devitt has agreed that after the driveway is in, if there's a backup of water or drainage issues on the Boylan property, that he, at his own expense will fix it. Chrm. Conero said that is a condition of the approval.

Chris Nickerson – 140 Union Street – He asked how long that condition would be open for. Atty. Dowd said that runs with the land. Any conditions that the ZBA puts on runs with the land in perpetuity. And if this Board puts conditions on, as far as drainage issues, they run with the land, also. It's not just one year. If the problem persists, Mr. Devitt has an obligation to remedy it at his own cost.

He has other questions. He lives at 140 and is trying to figure that out (at site plan). Mr. Devitt indicates where his location is at the site plan. He just purchased his house in December. He is wondering what the setback is. Chrm. Conero said you have a 15ft setback from your property line back and a 15ft side yard. Mr. Nickerson asked, so you're looking at someone's back yard, is what you are proposing? Mr. Winglovitz replied yes. You're backyard to their backyard. Mr. Nickerson said he hears a lot of "wetlands." He'd worked for an engineering company in MA for 15 years. What he's noticed over the years of working with these type of plans, where there's natural water occurrences of wetlands, flows, is that there's always a problem in the future. It's always "push it through," "let's get them built," "we'll worry about it later." You can't worry about water later. There's always water here (he indicates on site plan) and he's only been here a few months. There's always water pooling up here. You don't see it going one way or the other, it's just always pooling up in this area. Are these houses being built on grade or are they raising the yards? Mr. Winglovitz said they would be a couple feet above the existing grade. Mr. Nickerson said, so from here, from the back of the house, how far a pitch are you pushing this back yard toward my property? Mr. Winglovitz said the water will all go to the front, or to the north. Mr. Nickerson said if you are not building on grade, you are raising it. Mr. Winglovitz said the building itself. Mr. Nickerson said there will be a pitch in the yard. Mr. Winglovitz said there needs to be a pitch by code away from the building. Mr. Nickerson said you will be pushing water back towards him. Mr. Winglovitz said you are 100 feet from that so the water will go around the house toward the front. Mr. Nickerson asked what is going to make that water go around? Mr. Winglovitz said the drainage swales, grade. Mr. Nickerson asked what that is tying into because

you have a lot of water pooling so which way does it flow? You'll have water pool up and push up all the way around the house. Chrm. Conero asked about the topo-which way it flows. Mr. Winglovitz said if the house is built up, around the house this is going to flow to the north, out to the west and up to the north. That is part of this swale here (indicates on site plan). Mr. Nickerson asked, if where it's all flat and sunken in this area, how is the water supposed to get pushed that way? Mr. Winglovitz said through this swale (indicates on site plan); so you're about 2 feet higher than this property. Mr. Nickerson asked what type of house? Single family? Single story? Double story? Sq. Ft of the house? Atty. Dowd said it going to be a single family home. Mr. Nickerson said a single family home could go from a single story ranch to a colonial to three stories, practically. Chrm. Conero said there a no three stories here. Mr. Winglovitz said it's up to the purchaser of the property; what's allowed by code is what they're allowed to do. Mr. Nickerson asked, we have all these natural wetlands here, I see you've got the driveway coming in, where is that stream, everybody's talking about all that drainage, is coming through here (indicates on site plan)? Chrm. Conero said it is up on the north side of the property line and we're going to work with DPW to find a solution for that. Mr. Nickerson asked if the plans were readily available if he wanted a copy and who does he see about it. Atty. Dowd said absolutely, that you see the Village Clerk. Mr. Nickerson said the reason he bought the house was that it had beautiful land behind them, now he gets a letter saying that his beautiful back yard...what is his obligation...who here, is everyone here for this or is there somebody here that...Mbr. Romano said it's not a matter of who's for it or who's against it, everybody has a right to build on their land. Maybe they can leave some of the trees...maybe they can do something. Mr. Nickerson said it's too wet...his biggest concern is that...he's seen it happen...I know there's water coming this way off the driveway, what's my concern of these people buying this house and now this water is coming into my back yard. It's pretty flat here; I've walked the land. It holds water all in this area (indicates on site plan). If these people are buying this land they're disturbing the earth, they're going to raise it, even if it's a couple of feet; they say they're going pitch it but this water is going to be held here now. Mr. Devitt suggested dropping the grade of the house and keep the pitch going more towards the property. Chrm. Conero said when people buy a house they might bring in top soil and bring it up and it causes problems for people on the property. He suggests if that happens here, that when the house is being built, that the BI come out and look at these things and find that the flow is toward the west and north to the wetlands. It's more of a building code/building issue rather than a planning issue. Mr. Nickerson said water will go where it wants to go, you can control it to a certain point. You get a lot of rain, snow, you've got pitches. Chrm. Conero said you have a two foot difference between you and the property. Mr. Nickerson said yes, and then they raise it up. Mr. Winglovitz said they will show positive drainage so it's clear on the plan that the builder is required to provide positive drainage around the house and away from the property. Mr. Devitt said the trees they put between the Boylan and the other lot, they can certainly do the same thing on the backside of the lot. Just to provide some screening. Mr. Nickerson said he already sees everything as it is, his concern is that these people are going to build a house and there's going to be water coming into his backyard, everything is so wet back there. What is his legal liability for someone coming in disturbing the earth, disturbing the natural flow of water and it's coming back to his property? If his backyard starts pooling up who does he come after? These people or the people who sold it to them? He's seen it. Chrm. Conero said your property is higher. Mr. Winglovitz reiterated they will add drainage to make sure. Mr. Nickerson said he is not for this. It's disturbing the wetlands and wildlife that comes through this area. Needless to say, the people that walk this bike path, seeing new houses, it's going to disturb it. The land is back there for a reason, to collect the water and distribute it to where it needs to go and once you start digging it up, putting in footings, putting in a basement, doing all that, everybody is going to start having problems.

Mr. Jinks said last year when they discussed prior subdivision of the property, Mr. Devitt said the roof rate and drainage going to the downspouts, he was specifically going to channel that to the rear of the property. Are you still planning to do same here and not let it be the natural swale, by French drain or whatever is necessary for both houses to have a separate channel and not rely on just the swale of the land. Mr. Devitt confirmed his plans.

Chrm. Conero asked the attorney if they should leave the public hearing open. Atty. Dowd said they had to wait for the County Planning response, leave the meeting open for discussion on drainage and see what comes up.

Mr. Jinks asked if there is still a water problem on the property line, after these homes are built includes the villages drain to that property, is it going to be Marc's responsibility, or the home owner's responsibility or is it the village's responsibility to mitigate the problem? Atty. Dowd said they'll be able to better answer that next month after they speak with DPW and see what the situation is. It sounds like it might potentially be joint responsibility here, that the village's street, apparently there is some overflow going on the property that's also on your properties, there's also a possibility that adding another house will add to some additional flow because of impervious surface. Somehow, we have to address the issues of the drainage and if we all work together and try to do that, hopefully the excess problem will go away. You're talking about a 100 year storm-not sure anybody can design something for a 100 year storm, that's not going to stop anybody from getting puddles and a backup of water, but every kind of rain in the summertime, we're trying to stop that. I know what Marc is saying, I know what you're saying about what's going on in the street, and I know there's been issues on River Street before, so let's see what DPW says about what they think they can do; possibly funnel it to the wetlands or to the other Village park property (wetlands). There might be other ways of handling this. Ms. Kalisky said water has been flowing in this direction forever. Atty. Dowd said there is also the underground culvert. Ms. Kalisky said she will find out when that was done...Atty. Dowd and what attributes to the problem and see how to alleviate it, if it's our obligation and if we have to alleviate it.

A MOTION was made to **ADJOURN THE PUBLIC HEARING FOR THE TWO LOT SUBDIVISION ON RIVER STREET TO APRIL 26, 2017, AT 7:30 PM** by Chrm. Conero and seconded by Mbr. Weeden and carried 4 Ayes 0 Nays.

RE: MINUTES

A MOTION was made to **ACCEPT THE MINUTES OF FEBRUARY 22ND, 2017**, by Mbr. Weeden and seconded by Mbr. Steed and carried 4 Ayes 0 Nays.

RE: ADJOURNMENT:

A MOTION was made to **ADOURN THE MEETING AT 8:10 pm** by Chrm. Conero and was seconded by Mbr. Romano and carried 4 Ayes 0 Nays.

Tina Murphy
Deputy Village Clerk