

MINUTES of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, June 26, 2019, at 7:30 pm.

ATTENDANCE: Chrm. Conero, Mbr. Crowley, Mbr. Steed, Mbr. Romano, Mbr. Meyer, Atty. Kevin Dowd, Dawn DeSantis of Lanc & Tully, Zachary Szabo of Engineering Properties, Todd Zwigard

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

ADJOURNED PUBLIC HEARING

RE: LOOSESTRIFE FIELDS – PHASE II – 204-1-2.22

There is no representation for Loosestrife Fields.

A MOTION was made to REOPEN THE PUBLIC HEARING FOR LOOSESTRIFE FIELDS – PHASE II – 204-1-2.22 by Chrm. Conero, seconded by Mbr. Steed and carried 5 Ayes 0 Nays.

Chrm. Conero says they have a letter from our Building Inspector/Fire Code Inspector basically it has quite a few problems with the layout of Loosestrife Fields – Phase II and if you went through it, you’d see where he cites the sections that are not compliant with the NYS Fire Code. They haven’t had any discussions/alternate plans to look at. Atty. Dowd said there have been no submittals since this letter, dated June 12th, in which he also said he spoke with her on May 6th. The 22nd was adjourned. There has been no communication. Chrm. Conero said there are major concerns with the layout of this...there has been issue after issue with it. We never would have went to public hearing with it. Atty. Dowd said this is the 2nd time we went to public hearing with this application, the first one was last year sometime. Ms. DeSantis said March of 2018. Atty. Dowd said at that public hearing that’s when we first heard there were issues with the bridge and the fire department and weight of the trucks. It has now been more than 15 months and on our 2nd public hearing and we still have issues with fire codes and building codes. Mbr. Romano asked if they are supposed to make a decision. Atty. Dowd said they have choices, here. If they close the public hearing and do nothing, the 62 day clock starts running. This plan is obviously not ready for approval and hasn’t been since it was submitted. Which goes back to August 2016, per Ms. DeSantis. Atty. Dowd said as much as he’d like to say that they are in a position to do something, they should close the public hearing and deny the application and make them resubmit. He doesn’t like to do that, this Board has never done that; you expedite things. When the applicants are not providing the answers that you need to expedite the application. He doesn’t know why no one is here tonight. The public hearing was adjourned to tonight, they obviously received the letter from the Building Inspector, they spoke with him two months ago before the last meeting in May. Again, it’s been a struggle. You’re only supposed to keep public hearings open...there’s no public...they would’ve had their comment periods and now you need to have results. The comment period was from emergency services, how can you approve a plan that doesn’t meet State and Fire Code? Mbr. Romano asked if they deny it do they have to start from scratch. Atty. Dowd said absolutely. The application for you, does not answer the questions, you don’t have answers that you’ve been waiting two years on. He feels they are on firm legal ground. He cannot imagine being challenged in court; that a judge would say you haven’t met fire code and how can a Board approve a site plan where people will be living and it doesn’t have fire protection. Mbr. Romano said the change is substantial enough where the SEQRA process will completely change. Atty. Dowd said they way these fire lanes have to be drawn, it’ll effect the parking; they can’t combine without obstructing fire lanes, the bridge, we still don’t know what the standing weight

of the bridge would be if we had a loaded tanker truck on it. We don't know a lot of answers to questions of what happens. This letter from our Building Inspector holds weight alone. This application is amazing because we've never had this happen before. We have always expedited, and I've always urged you to expedite, and yet you have to have adjourned public hearings to get answers but this has been going on for two years. And there's no one here.

A MOTION was made to CLOSE THE PUBLIC HEARING FOR LOOSESTRIFE FIELDS – PHASE II – 204-1-2.22 AT 7:36PM by Chrm. Conero, seconded by Mbr. Steed and carried 5 Ayes 0 Nays.

A MOTION was made to DENY SITE PLAN APPROVAL FOR LOOSESTRIFE FIELDS PHASE II – 204-1-2.22 AS FIRE SAFETY CODE ISSUES HAVE NOT BEEN MET BY THE APPLICANT FOR THE PAST TWO YEARS AND TWO PUBLIC HEARINGS, AND WITH NO REPRESENTATION AT THE ADJOURNED PUBLIC HEARING, AT 7:38PM by Mbr. Romano, seconded by Chrm. Conero and carried 5 Ayes 0 Nays.

OLD BUSINESS:

RE: City Winery 204-1-1

Todd Zwigard, architect, is representing City Winery.

Chrm. Conero said one of the conditions of final approval was to have the landscaping design done so they submitted a plan but the screening wasn't adequate enough so we are now looking at the 2nd plan.

Ms. DeSantis said the landscaping plan has been revised, actually adding evergreen type for screening and appropriate numbers and spacing to provide actual buffer screening. The only question they had was the variant of the arborvitae. The generic arborvitae has different variations. They all have different growth rates and width. Chrm. Conero asked how high they grow. Ms. DeSantis said it depends on the variant. Mbr. Crowley asked if they were deer resistant. Ms. DeSantis said they are proposing deer fence around the entire site which would help. You may want to consider something more deer resistant. The deer fence was not part of the site plan, it is typically included in the site plan. They did copy Engineering Properties for comment. It does show two types of deer fence; one is along the historic property which is a very attractive fence. Chrm. Conero asked if this would be all around the property. Ms. DeSantis said yes. Chrm. Conero asked about the gate. Ms. DeSantis said they don't know anything about the gate; it's not detailed; is it a swing gate, a slider gate? It should be detailed. What is it for? Is it going to be closed? Is it going to be locked? Is the emergency services going to have access to the site at all hours? Does the Planning Board/Village have a copy of the Nationwide Permit for wetlands? Hopefully they aren't doing any work anywhere near it until we have a copy of the permit. The fence that they are running through the wetland, because it wasn't on the site plan, where we're questioning, was it included in or does that permit need to be modified to address the fence? Atty. Dowd said he remembered that the markers would be up for boundaries. We don't even know what the fence looks like. Ms. DeSantis said detail sheets were provided. Chrm. Conero said there are two different types, type b and type a. Ms. DeSantis said type b is typical mesh web deer fence. She indicates on plan. Atty. Dowd said these are historic properties so this fence should be approved by not just this Board but the AHRB. Ms. DeSantis said they discussed going to AHRB. Atty. Dowd said we are only seeing this for the first time, what these fences look like. Chrm. Conero asked if they need a setback for the fence. Atty. Dowd said he doesn't have

any idea. We need to know. It is important that the AHRB see it and what it actually looks like. It should have been on the original plan and if they want an amendment to the plan, they should come here and ask for it appropriately. We can put conditions on it as per AHRB. Chrm. Conero questioned the fence keeping the deer out. Atty. Dowd said he supposes but the question of the locked gate for emergency services...

Mr. Zwigard asked if he could speak. This is his project. He submitted the arborvitae, which is Negra. All the specs are there; they had a landscape architect advise them on it. This grows 20-30ft maximum height. This will create a very effective, green wall and they will be doing a double wall on each side of the parking lot to the lawn area where one of the main concerns about sound is. Given the rise in elevation and the berm they are creating, between the great lawn and the parking, there is actually a 2nd berm along here (indicates on plan), between two berms and double rows of 20-30ft high arborvitae, they are making a tremendous barrier between them and the houses. Mbr. Meyer asked what height they would be when first planted. Mr. Zwigard said 6-8ft. The trees will be on the inside of all the fences.

The fencing; there are two types. He will have to submit at a follow up meeting as he couldn't print it. The prism 3D fence, which is the nice fence they are proposing all along Patchett Way that manufacturer also makes the gate. The gate matches the fence system exactly. It's the same material, just a hinged version (swing gate). They make up to 12ft wide panels so they will be doing a double gate at the entrance of the facility and the 2nd is where the fence crosses the secondary parking lot. Those two gates will be made with the prism 3D fence system. He'll bring photographs of what both fences look like, he doesn't have them tonight. These fences will not be locked, it is only for deer protection so you will always be able to enter the facility and will be in the open position during business hours. Mbr. Romano asked why not an automatic gate? Mr. Zwigard said there is no need for a motor. Motors can fail; they want to keep it simple. It is very important to have deer protection. The young vines are a deer favorite. The fence in the wetlands area was not in the Nationwide Permit, it is something that came up after the fact. They are in the process of making an amendment to the permit. He will submit the ACOE and a copy of the original permit. The deer fence through the wetlands is a minimally visible fence that is 7ft high to be an effective barrier. A lot of deer can jump over 6ft. so we're going for 7ft. The front fence is also 7ft and agrees that it is an attractive fence. A lot of this wetland area is wooded so he doesn't believe the fences will be seen at all. They're designed to blend in; it's an open type mesh. They will get approval for that. He will submit it to the Board.

Atty. Dowd said you will need to get the fences approved by the AHRB.

Mr. Zwigard said he didn't know that but he needs to go to them for the sign and paint colors. He'll add that to the approval.

Mr. Zwigard said they have a verbal approval from John O'Brien at the Self Storage. They have been in touch with him, he has verbally approved the sign, he has seen the design. It will be on his land. The idea is to have a sign on 17K. They have submitted a sign, it is consistent with other City Winery signs across the country and consistent with the branding. John said he has no problem with the sign, he has no problem with it being on his property. We are getting a letter from him. Once he gets the letter, he will submit it with his other follow ups. They just have to work out with him how the lighting will be. There is power but it's on his service. They will either have to pay him for the use of power but they do want to light the sign. It is not a lit sign but the want to light it with ground light, which is consistent with other signs.

Mbr. Romano asked where the sign would be, not in the center. Mr. Zwigard said no, it is 50ft away from his sign, set back the same distance as his. Mbr. Romano asked if John would keep the lawn mowed. Mr. Zwigard said yes. Chrm. Conero asked if there is a law that said you cannot have a sign on another property. Atty. Dowd said the code does not allow off premises signs. Your premises are up the road so even with his permission, you can't have a sign on John O'Brien's property. Mr. Zwigard said but if Mr. O'Brien...so you're saying we can't have a sign up? Atty. Dowd said what we allow, we have on the street sign posts...Mr. Zwigard said they have precedent, there is a Montgomery Mills sign on 17K that's been there for 100years. Atty. Dowd said you're not going to have the same sign up, are you? Mr. Zwigard said no. Atty. Dowd said that sign is preexisting, nonconforming, your sign will not be. It will not be allowed. Mr. Zwigard asked if there is a variance process that they can seek. Atty. Dowd said yes. Chrm. Conero asked if they would go to the Village Board to change that. But you can have an off premises sign with a variance? Atty. Dowd said the way our code works is you're allowed monument signs, on premises signs, on the building signs, anything else is prohibited unless you get a variance. The problem is, the ZBA may do a variance for City Winery then they create a precedent that if somebody else comes in, and says I want a sign on 17K and my property is on Rt. 211. That's going to be a problem with the sign. On the signpost downtown in the Village, we can allow identification signs on the signposts/street signs. Mr. Zwigard said they will pursue a variance, it is important to his client to have presence on 17K. Chrm. Conero asked if other businesses on Factory Street wanted a sign on 17k, they could get a variance and have a bunch of signs with a bunch of variances. Mbr. Romano asked if they remembered approving a pylon. Something about a pylon, it was never built for all the businesses. They proposed and started to put footings in for it but never built it. It was the site for Montgomery Storage and they were going to put a sign...Ms. DeSantis said but the sign was for his business on his property. He already has another building on it. Chrm. Conero said if you go to the ZBA and get a variance, then the ZBA is going to have to figure out where the next sign will have to go. Atty. Dowd said this a PDD. And it was not part of the approval by the Village Board but they approved the PDD, for signage and off premises signs. The Village Board, under PDD law can; I wonder if they look at it, would be signage, when they approved it, they didn't have the opportunity to do that. You can go before the Village Board. He will have to speak to their attorney about this. Possibly go back to the Village Board and get permission to do that. If the Village Board has control over the PDD, they could approve signage. He thinks they would have thought the signage would be on premises, but it's so far removed from the public thoroughfare that given the fact that you spoke with John O'Brien, they would approve it. Mr. Zwigard said the sign is 14'6" high 10' wide. Atty. Dowd asked where the sign would be. Mr. Zwigard said it would be on the corner of 17K. Atty. Dowd said you have to make sure it's not in the DOT right of way. Ms. DeSantis said it isn't. Atty. Dowd said you cannot obstruct the view for people turning onto Rte. 17K. Mr. Zwigard said that is why they are set back off the road. Chrm. Conero asked what if the property is developed and the sign is in the way? Atty. Dowd said that would be up to property owner. He asked Mr. Zwigard to have his attorney call him. Because that sign would be across from another historic property, Water Works and Patchett House, SHPO will need to be notified. The sign may exceed regulation; not only placement but also the size. Does our Master Plan have any guidance on signs? Or the size of signs/square footage of the sign? Mr. Zwigard asked what the code says the sign size should be. Atty. Dowd said 40sq ft. Chrm. Conero asked if it went to ZBA, what it would be. Atty. Dowd said both area and use variance.

Atty. Dowd brought up a few issues that the DPW Superintendent was concerned about at the site regarding water main breaks (without the water being shut off first) and the use of the wrong size/type pipe. Mr. Zwigard assured the Atty. and the Board that they would not be doing or using any materials that are not allowed or up to code.

Ms. DeSantis also mentioned that there is no burning in the Village. Mr. Zwigard said that wasn't their understanding but it has been corrected. Chrm. Conero asked what they were burning. Mr. Zwigard said they were burning brush/wood. He will also look into it. Ms. DeSantis said the code and rules of the Village are all online and he can view them anytime.

Chrm. Conero thanked Mr. Zwigard for the clarification.

RE: Noorlander Lot Line Change – 206-7-9 & 206-7-11

Mr. Szabo is representing the applicant. They changed the rear lot line for lot 1 to follow the fence more and we added a common access easement in favor of lot 2 over lot 1.

Atty. Dowd said he met with the engineers in their offices after the last meeting and there were issues that came up and they discussed the fence and walkway that is in the right of way on Sears Street. They spoke about the fences that cross the lines, off-street parking for lot 2. They are putting most of the land onto lot 1 but that will take away the parking for lot 2. In the wintertime, they need to have the parking spaces off-street. He is working with the attorney to come up with cross-easements that will allow lot 2 to have parking where the paved area is; the two spaces they are required to have. If they remove those it will be non-conforming and regardless of what the lot may have looked like previous to the Noorlander's ownership, once they created it they can't now take it away and take away essential parking. There is going to be a cross-easement there. He spoke with Buddy and he told him that the fence and the patio on the Sears Street side, even though they are in the right of way can be maintained with a proper encroachment agreement between the Village and the Noorlander's that would require them to take it down when and if we need to do something in the right of way. The attorney is working on that. I know there is an issue with the fence that's going to stay between two properties and he believes it will have a maintenance agreement of some sort that will say that property #1 will maintain this part of the fence and property #2 will maintain this part of the fence. He believes it addresses the code issues provided we get all these documents. It will be part of the condition of any kind of approval. Nothing has been drafted yet. Chrm. Conero asked if they have ever done an easement on a fence or property. Atty. Dowd said they've encroachment agreements all over the Village for opening signs for the Village streets, existing steps that are in the right of way that date back centuries when the Village was built. Ms. DeSantis said the fence was built in 2005 and was not preexisting. Atty. Dowd said he understands but we have allowed things like that to stand provided the owners understand that there comes a time where they might need it for road expansion or drainage; that the fence will have to come down, we will have to give them notice, they will have to take it down so we can do the work. This will take away some of the issues from the last meeting and original site plan. He tried to explain to the engineers and they let the applicant know, and I had a conversation with the attorney today, that...the plans for this property may be but they are creating potential title issues and difficulty when they want to sell that corner lot with cross-easements and encroachments, they can do that if they want. Mbr. Romano said if she were interested in the house on the corner (lot 2) she wouldn't be very happy having an encroachment from the Village and would want her own parking. Each lot should be self-sustaining. Atty. Dowd said it could be if they change the lot line configurations of the parking on the corner lot so they didn't need that extra space. Mbr. Crowley said they will have move their cars around, though, because it's not a double-lane driveway. Atty. Dowd said as long as there spaces for two cars to park, that's what's required by the Village. We do have one car garages in driveways...Mbr. Crowley said but not between two different properties. Atty. Dowd said this will be a specific easement that the internal property (lot 1) will allow the corner property (lot 2) to park two cars; that they are going it but will have the right to park two cars. Each lot has to

have space for two off-street parking spaces. They are trying to preserve that. Originally, the way they were originally proposed it, they weren't preserving it. This is what happens with easements. Legally, provided they get everything straightened out here this will pass...unless you have other comments or concerns about it. It has to go to County Planning because it is on Rte. 211.

Ms. DeSantis asked if they have to approach the Village Board with an easement...? Atty. Dowd said yes. The Village Board has to approve the encroachment. The plans are sufficient and the plans can be sent to County Planning and put this on for next month. It is a resubdivision but essentially is a lot line change and we can waive a public hearing. This is also in the Historic District so it needs to be sent to SHPO; it is a land use approval, they are changing lot lines.

A MOTION was made to WAIVE THE PUBLIC HEARING FOR NOORLANDER LOT LINE CHANGE – 206-7-9 & 206-7-11 by Chrm. Conero, seconded by Mbr. Steed and carried 5 Ayes 0 Nays.

Atty. Dowd said they could wait until the next meeting to do SEQRA.

RE: MINUTES:

A MOTION was made to APPROVE THE MEETING MINUTES OF MAY 22, 2019 by Mbr. Meyer, seconded by Mbr. Romano and carried 5 Ayes 0 Nays.

RE: ADJOURNMENT:

A MOTION was made to ADJOURN THE MEETING AT 8:24 pm by Mbr. Romano, seconded by Chrm. Conero and carried 5 Ayes 0 Nays.

Tina Murphy, Deputy Village Clerk