

**MINUTES** of the Village of Montgomery Planning Board meeting held in the Village of Montgomery Court Room, 133 Clinton Street, on Wednesday, August 23, 2023, at 7:30 pm.

**ATTENDANCE:** Chrm. Conero, Mbr. Romano, Mbr. Steed, Mbr. Meyer (Absent), Mbr. Frisbie, Vlg. Atty. Joseph McKay, Vlg. Eng. Scott Sicina of Lanc & Tully, Jay Samuelson and James Martinez of Engineering & Surveying Properties, Vincent Satriano, Trustee Randi Picarello

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

### **ADJOURNED PUBLIC HEARING**

**RE: BUTLER CONSTRUCTION – DUNN ROAD – 213-3-5 (28-1-13.22)**

**A MOTION was made to OPEN THE ADJOURNED PUBLIC HEARING FOR BUTLER CONSTRUCTION – 213-3-5 AT 7:31 PM by Mbr. Romano, seconded by Mbr. Steed and carried 4 Ayes 0 Nays.**

Jay Samuelson and James Martinez are representing the applicant.

**Chrm. Conero** asked, you are in receipt of their engineer's report?

**Mr. Martinez** replied, there are no outstanding storm water comments, very minor things regarding site distance, they will get them added to the plans. There was a PDF error, but he'll make sure that it is all filled out in the submission. Updated plans, OC Planning, they've got their comments, FAA signed off (that was attached), still waiting on comments from the architect; he knows there were a couple of issues on landscaping...and the neighboring property line, they were hoping to have the landscaping comments addressed all at the same time to put that to rest.

**Chrm. Conero** said, you're waiting on your architect for the building and landscaping?

**Mr. Martinez** said no, the Village's architect's comments. They were submitted to Elise.

**Mbr. Romano** asked if they had anything from the fire department yet?

**Mr. Martinez** said they had correspondence that said they didn't have an issue with the site plan.

**Chrm. Conero** said they need to follow up with that. He asked Scott for follow up with Elise on the design review and the landscaping.

**Scott Sicina** said, per correspondence with Debbie Delgado from the Village and she said the Montgomery Fire Department Chief Quinn did not have any issues with the project.

**Mr. Martinez** agreed; Debbie had a phone call with him and relayed the information to them via email, but they can try to get a letter stating such.

**Ms. Murphy** said she will follow up with Debbie.

**Chrm. Conero** said they will wait for the letter.

**Mr. Samuelson** said he doesn't know if they will get one, that's why Debbie reached out.

**Chrm. Conero** asked Atty. McKay what they do in this case; do they need an official letter or say that a Village employee spoke with the chief on the phone, and he verbally gave an agreement on that?

**Atty. McKay** said they should have something in the record but for a minor thing...they should probably have something for the record from the fire department; it's not a reason to continue the public hearing.

**Mr. Samuelson** said they will reach out to them.

**Chrm. Conero** asked Scott, his comments were #1 site distance for the trucks and cars; and Matt, you're going to provide that?

**Mr. Martinez** replied, yes, those were passenger car site distances that were on there. But they will do it for the combined.

**Scott Sicina** said he made the comment because it's pretty close on the combined unit trucks but there are different height eye measurements; he wanted to make sure they had them. He's sure they'll be able to see almost clearly to the intersection. He doesn't want to anticipate it to be a problem, he just wants to have it crossed off the list.

**Chrm. Conero** asked, the notice of intent has several unanswered questions?

**Scott Sicina** said, yes, there's a form that gets submitted to the DEC that they will review prior to issuance of a stormwater SPEDES permit and it's a very generic form typically it doesn't need to be filled out until everything is settled, so it's not that big of a deal that it hasn't been completed in its entirety. It just needs to be done before the final submission is done.

**Chrm. Conero** asked, the plantings along the adjacent residential property, that's part of the landscaping?

**Mr. Martinez** replied, yes, they were hoping to get some sort of review comments back but (inaudible) then they can incorporate that and get those addressed, as well.

**Chrm. Conero** said, okay. You need a special exception use, non-nuisance industry. The Planning Board will need to determine whether the general standards for 122-47 of the Village of Montgomery Code have been met.

**Scott Sicina** said, that's just to keep in mind that that will have to happen. It's basically that it conforms with the area and that it's not going to be a disturbance to the public. There's a couple of items in there that he thinks would be wise for the Planning Board to review and make sure they are in agreement with that.

**Chrm. Conero** asked, the special exception?

**Scott Sicina** replied, correct.

**Chrm. Conero** asked if anyone on the Board had any questions/comments before opening to the public?

**Atty. McKay** asked if they addressed the County's comments, yet? The binding ones?

**Chrm. Conero** said, for the record, they did get comments from the County. One of them was the FAA approval and that the Village should coordinate with the County Airport to ensure that the proposed project will not negatively impact the airport or the site adjacent to the airport. They are concerned about the height of the proposed plantings, the height of the proposed lights, the types of lighting used, any potential with glare from the proposed lighting.

**Mr. Samuelson** said they have the signoff from the FAA, which has been copied to the Village. He will reach out to Ed Magryta and get a letter from him, at the County Airport. He can't see him objecting to it if the FAA has signed off on it.

The other comments, the height of shrubs and everything else are less than the building and the light poles are less than the building; they are all downward facing, dark sky friendly lights so they will not have any glare effect on the planes. They will put a response in writing to that in the next submission.

**Chrm. Conero** said, alright. And then #6; he's not sure what they are really talking about. The historic properties? The Miller House? Because it's not really near that. Again, they're not binding comments. We're going to make sure there is a vegetative buffer along the existing houses there, next to that and that will be covered in the landscaping plan.

And then the sight distances.

**Scott Sicina** said, in response to that comment about the County Airport, they had Zafir do something similar and they sent something on the County letterhead, basically saying they were in agreement with the project.

**Mr. Samuelson** said he's pretty sure he's got a similar one for the Food Bank from them, too.

**Chrm. Conero** asked the attorney if he had any comments.

**Atty. McKay** said he didn't know if they got this, they were waiting on comments from the Village Architect?

**Chrm. Conero** said, yes. That was something they probably should have sent out to her from the last meeting.

**Atty. McKay** asked, that's still pending?

**Chrm. Conero** replied, yes. We'll send it out, Tina? The site plans to the architect?

**Ms. Murphy** asked if Debbie had sent them.

**Chrm. Conero** said he didn't remember.

**Scott Sicina** said, from his meeting notes (from last month), Planning Board to refer plans to Village Architect for review of building and landscaping.

**Mr. Samuelson** said they submitted building plans to them in June.

**Ms. Murphy** said she would check with Debbie and if they weren't sent, she would forward them.

**Chrm. Conero** said to send the site plan and architectural.

**Mr. Samuelson** said they submitted them in June but could get her another copy.

**Chrm. Conero** asked, there's no landscaping plan on that?

**Mr. Samuelson** said it's in their plan set.

**Ms. Murphy** said, if it's on the thumb drive, then she has it.

**Mr. Samuelson** replied, yes.

**Chrm. Conero** opened the public hearing to the public. If there are any comments, give name/address for the record.

No one offered comment.

**Chrm. Conero** asked the attorney if they should close the public hearing?

**Atty. McKay** said they need the letter from the architect, a letter from Orange County Airport, and a letter from the fire department. The Board should keep it open, open even for written responses.

**Chrm. Conero** said, they'll just leave it open. They are just waiting on the landscaping design review from Elise, they're waiting for the fire department letter and the other comments that Lanc & Tully had issued.

**Mr. Samuelson** said, and the letter from the County Airport.

**A MOTION was made to ADJOURN THE PUBLIC HEARING FOR BUTLER CONSTRUCTION – 213-3-5 TO SEPTEMBER 27, 2023, AT 7:30 PM OR THERAFTER, AT 7:43 PM by Chrm. Conero, seconded by Mbr. Romano and carried 4 Ayes 0 Nays.**

**Mr. Samuelson** asked if they would be in a position to do a neg dec at the September meeting if everything is in position, or at least have it prepared for that month?

**A MOTION was made to AUTHORIZE ATTORNEY JOSEPH MCKAY TO DRAFT A NEGATIVE DECLARTION FOR BUTLER CONSTRUCTION – 213-3-5 FOR THE SEPTEMBER MEETING AT 7:43 PM by Chrm. Conero, seconded by Mbr. Frisbie and carried 4 Ayes 0 Nays.**

## **OLD BUSINESS**

### **RE: PATHWAY PLACE MANAGEMENT, LLC 203-1-1**

**Chrm. Conero** asked the Attorney to discuss what they have as far as resolutions and what they need to vote on tonight.

**Atty. McKay** said, a little background:

They issued a negative declaration. Max was there at the last meeting; they issued a negative declaration and preliminary subdivision approval. There were some comments that they went through at the meeting and went through them with the Board, so he finalized the language after the meeting. He did send it to Max and Taylor. The only issue that is remaining; the text of the resolution is correct. The neg dec doesn't need to be signed but the chairman can sign the preliminary subdivision approval resolution. Pathway is here tonight for final conditional site plan approval. Again, he spoke with Max and Taylor. He also sent a draft to Jay, he reviewed it and he asked him to take out some of their standard provisions that really didn't apply to this application, so he did that.

**Jay Samuelson** said he did not have any changes to the final conditional.

**Atty. McKay** said, so the last draft, the final conditional, the language has been agreed to, so here is the issue, it concerns the recreation fees. The Planning Board has the power to determine whether a fee gets set, the fee is set by the Village Board. The issue becomes, the Village Board's current fee schedule only has parkland fees for major subdivisions. This is a minor subdivision. So, since this Board does not set the fee, the final resolution says, "The fee has to be determined by the Village Board." The Village Board can do one of two things: they can look at their current fee schedule and say, "that's correct, we never intended to have rec fees for minor subdivisions or the Village Board can look at it and say, "there was an omission and there should be." But this is not the legislative body, this Board does not have the power to do that. So, that issue is going to be kicked to the Village Board.

**Mr. Samuelson** said it is written that way that it's up to the Village Board to determine that.

**Atty. McKay** said, correct.

**Mr. Samuelson** said he is okay with that.

**Atty. McKay** said, it doesn't go into the detail that he just said but the idea is the Village Board determines it...

**Mr. Samuelson** said they take care of it with the Village Board.

**Vincent Satriano** said, in terms of the language about a minor subdivision, it's only written for a major subdivision.

**Mr. Samuelson** said he will have that conversation with the Village Board.

**Atty. McKay** said there is some language that leads up to fees per unit, but again, not for a minor subdivision. That's a separate issue.

There is another section of the parkland fee code provision that talks about a credit because one of the issues that they discussed is whether there should be a credit based upon the access, but the language, and this Board would determine whether or not to get a credit as opposed to determining; they could determine a credit. But the text is very specific, and it talks about credits if there is some construction of recreational facilities on the lot. So, that doesn't apply here.

**Mr. Satriano** said, there's no fee...

**Mr. Samuelson** said they would discuss it out of the Village.

**Atty. McKay** said they all agree what the problem is.

**Mr. Samuelson** said, yes.

**Atty. McKay** said, this is the final conditional, if they want to look through it you'll see what's outlined in red is Jay's comments that he incorporated, and again, his comment was to eliminate certain standard conditions, such as trap fees, certain agreements, financing involving which don't apply. He deleted those and for the record, Jay said he was okay with the resolution as drafted.

**Chrm. Conero** said, so the parts that were read are the things that were changed when you got it in your email today. You had time to review it, the things that are red, he asked Joe to delineate what was changed to make it easier to go through it.

**Jay Samuelson** said, the synopsis was some of the conditions were very similar as the subdivision, so instead of being redundant they just referred back to the subdivision approval and then the grease trap, the stormwater management agreements, bonds, SWIPP's, so they just took it out; taking out things that were not applicable.

**A MOTION was made to APPROVE THE FINAL CONDITIONAL SITE PLAN FOR PATHWAY PLACE MANAGEMENT, LLC 203-1-1 AT 7:52 PM by Chrm. Conero, seconded by Mbr. Frisbie and carried 3 Ayes 0 Nays, 1 recused (Mbr. Steed).**

**Mr. Samuelson** added to the record that they had gone to the Village Board and did receive approval from them.

**Atty. McKay** said that he would follow up. He had prepared a draft resolution for the Village Board to adopt, which they did adopt, the problem is, they left the draft watermark in it and there's a footer that says "draft." He's working with Monse to correct that. It's really the Village's minutes that are their actual record. There isn't anything that's normally signed or stamped, it's their minutes, so she's working on the minutes and they should be adopted at the next meeting. If you need something, he's sure you can get a certified copy of the minutes.

**Mr. Samuelson** said they are okay with it. And one thing on the preliminary subdivision approval that you're going to sign, and he doesn't think it's going to change the signature page, but the header of it says, "6 lot" residential, can they change it to say, "6 unit" instead of "6 lot?" It's a 2-lot subdivision, not a 6 lot. He doesn't think it will affect anything that he's signing, it just replaces the first page.

**Atty. McKay** said, okay.

**Chrm. Conero** asked, they okay with the subdivision resolution?

**Atty. McKay** replied, yes.

**Chrm. Conero** said as soon as you send it to Tina, he will sign it.

**Atty. McKay** said the next step is final subdivision.

**Mr. Samuelson** said he thought the final was part of tonight and he understands that the letter that was submitted just said final subdivision. They had preliminary knowing that they'd be coming back for final subdivision, it's just that the resolution was never prepared.

**Atty. McKay** said he would take care of that. In the preliminary approval, there are notes that need to be on the plat...

**Mr. Samuelson** said those could be conditions of the final subdivision approval. He has to satisfy them before they are signed, anyway. The conditions of the preliminary and the final are really changing the wording on the top.

**Atty. McKay** asked Scott if there was anything that he needed.

**Scott Sicina** said, the notes that were: no further subdivision, he asked that the meets and bounds for the easements were shown on the map, there was one other but nothing that was significant.

**Atty. McKay** said nothing has changed.

**Mr. Samuelson** said if they could vote on it and you prepare it, there isn't going to be anything different in it other than changing the words preliminary to final on the top of it because everything else still applies; they haven't submitted anything new. It's just a matter of getting that additional final resolution done.

**Scott Sicina** said, you had two notes on the plan: no further subdivisions subject to properties allowed and plans for the proposed retaining wall signed and sealed by a New York State licensed engineer shall be submitted to the Village Building Department for review and approval prior to construction and the request for the meets and bounds.

**Mr. Samuelson** said the meets and bounds on the easement for the parking...

**Scott Sicina** replied, yes. And the 4<sup>th</sup> one he asked if that had been reviewed by the attorney which at this point... (inaudible)

**Atty. McKay** said, if those are going to be the same conditions, he is comfortable with the Board taking action if they want to and direct him to prepare the resolution. He knows it's a little backwards, they don't usually do that.

**Chrm. Conero** said, yes, he doesn't think it's changed significantly and he's ready to sign it.

**Mr. Samuelson** said he will give the changes to Scott and Joe to confirm that they made them. When they say it's okay, he'll bring copies for Kevin to sign.



**A MOTION was made to APPROVE THE FINAL SUBDIVISION FOR PATHWAY PLACE, MANAGEMENT, LLC 203-1-1, SUBJECT TO THE FOLLOWING CONDITIONS OF THE VILLAGE ENGINEER BE ADDED TO THE FINAL SITE PLANS: NO FURTHER SUBDIVIDING THE PROPERTY, PLANS FOR PROPOSED RETAINING WALL BE SIGNED BY NYS LICENSED ENGINEER AND THOSE PLANS BE BROUGHT TO VILLAGE BUILDING DEPARTMENT FOR REVIEW PRIOR TO CONSTRUCTION, MEETS AND BOUNDS ADDED TO SITE PLAN AND EASEMENT FOR THE PARKING AND REVIEWED BY THE VILLAGE ATTORNEY AT 7:58 PM by Mbr. Frisbie, seconded by Chrm. Conero and carried 3 Ayes 0 Nays.**

**RE: 77 CLINTON STREET – 202-3-7.2**

**Chrm. Conero** asked where they left off with this.

**Mr. Samuelson** said they have everything, that Joe has a resolution for a conditional final site plan for them.

**Atty. McKay** asked Mr. Samuelson if he had a chance to...

**Mr. Samuelson** said he planned to do it on his phone, but he was late, there was one or two of the things that probably don't apply again but he'll agree that they need to satisfy the... (too many people speaking at the same time.)

**Atty. McKay** said this resolution is almost identical to the preliminary site plan approval. There is one provision in here which concerns the park and rec fees, that's on page 4. This does result in the creation of 3 additional dwelling units under the site plan regs, there would be fees for that. He did include language that says, "Note, the Planning Board may, in its discretion, provide a credit of up to 50% of the fees upon the condition that the recreational facilities serving exclusively of the dwelling units be constructed on the site. That has to come out. He put that in for information purposes because it came up with the Pathway application, this way we can see it; that sentence does apply. He will take that note out but he put that so they specifically discuss that.

He did take out the construction inspection agreement language, bonding language.

**Mr. Samuelson** said you can do the same with the stormwater agreement. That can come out, as well, 3A on page 5.

**Atty. McKay** said, okay.

**Chrm. Conero** said, the first page says a site plan approval 0.166 is crossed out and says 166-acre lot.

**Mr. Samuelson** said he thinks the point is still in there.

**Chrm. Conero** said, it's in the crossed-out amount.

**Mr. Samuelson** said the only real condition was #6 which is the access easement over 88 Charles, which he thinks they have one party that signed. They are still working on the rest to sign it. They're working on getting every party to sign the easement. It's just a modification of what was already there. There is no reason why they wouldn't sign it, it's a matter of coordinating the signatures of it.

**Atty. McKay** has no concerns other than the changes he mentioned previously.

**Scott Sicina** hasn't had technical comments in months.

**A MOTION was made to AUTHORIZE THE ATTORNEY MCKAY TO MAKE APPROVED CHANGES TO THE CONDITIONAL FINAL SITE PLAN APPROVAL FOR 77 CLINTON STREET – 202-3-7.2 AT 8:06 PM by Chrm. Conero, seconded by Mbr. Steed and carried 4 Ayes 0 Nays.**

**RE: MINUTES**

**A MOTION was made TO APPROVE THE MEETING MINUTES OF JULY 26, 2023, AT 8:06 PM by Mbr. Romano, seconded by Mbr. Steed and carried 4 Ayes 0 Nays.**

**RE: ADJOURNMENT**

**A MOTION was made TO ADJOURN THE MEETING AT 8:07 PM by Mbr. Romano, seconded by Mbr. Frisbie and carried 4 Ayes 0 Nays.**

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Tina Murphy, Deputy Village Clerk