

**VILLAGE OF PITTSFORD**  
**PLANNING AND ZONING BOARD OF APPEALS**  
Regular Meeting – December 14, 2015 at 7:00 PM

**PRESENT:**

Chairperson: Justin Vlietstra  
Members: Jo Anne Shannon  
Jeffrey Bove  
Susan Lhota  
Heather Erwin

Special Counsel: Mindy Zoghlin  
PZBA Liaison: Peggy Brizee  
Recording Sec: Linda Habeeb

Chairperson Vlietstra made a ***motion***, seconded by Member Lhota, to call the meeting to order at 7:05 pm.

**Vote: Vote: Shannon - yes; Lhota – yes; Vlietstra – yes; Erwin – yes; Bove - yes. Motion carried.**

**Conflict of Interest Disclosure:**

Chairperson Vlietstra asked if any Board Members or staff had a conflict of interest or had accepted gifts associated with any of the meeting agenda items. Chairperson Vlietstra and Member Bove disclosed that since they had publicly expressed opinions about the 75 Monroe Avenue project, they will recuse themselves from the discussion for that portion of the meeting, due to the appearance of having a bias regarding the project.

**Pittsford Canalside Properties LLC, 75 Monroe Avenue**

**Present:** Chris DiMarzo, Bryan Powers, Mark IV; Peter Vars, BME Associates; Frank Pavia, Harris Beach

**Discussion:** Member Lhota stated that she will be Acting Chairperson for the 75 Monroe Avenue portion of the meeting. She stated that the discussion will address Pittsford Canalside Properties' request for: (1) an acknowledgment that condition #3 of final site plan approval has been satisfied, and (2) a two-year time extension to satisfy Condition #20 of final site plan approval. She stated that she also wanted to ask whether there are any disclosures that anyone would like to make regarding this project, to assure disclosure of any conflicts of interest, potential conflicts of interest, or any circumstances where there might be the appearance of impropriety. No one had any disclosures to make.

She stated that at a Special Meeting on November 11, 2014, the Planning Board granted PCP's application for final site plan approval for the project at 75 Monroe Avenue, subject to 22 conditions. Condition #3 noted that PCP's site remediation activities interrupted the pre-existing flow of stormwater from the properties to the east of the site, across the site, and into the canal, and required PCP to develop and implement a plan to restore stormwater flow from the CSX property to the canal. On October 19, 2015, Peter Vars submitted a letter to the PZBA requesting

acknowledgment that the storm sewer had been inspected in the field by the Village Engineer, who found that the as-built storm sewer is functional and has satisfactorily completed the onsite drainage improvements, as required by Condition #3 of the PZBA's November 11, 2014 resolution. On November 13, 2015, Mr. DiMarzo submitted a letter to the Board in which he reiterated that the storm sewer was inspected by the Village Engineer, who found that the as-built storm sewer is functional and has satisfactorily restored the drainage through the property between the CSX railroad and the Erie Canal, as required by Condition #3 of the PZBA's November 11, 2014 resolution, and as confirmed by the correspondence of Peter Vars, dated October 19, 2015, as filed with the PZBA.

Member Lhota stated that after receipt of these letters, the PZBA asked Village Engineer, Scott Harter, to render an opinion as to whether those two statements were, in fact, correct. The Village Engineer responded by letter, dated December 10, 2015, in which he stated that the stormwater pipe is in conformance with the approved design. He further stated that the currently observed flow is far less than the pre-existing flow of stormwater originating from the properties southeast of the site, crossing the site, and discharging into the canal. She asked the recording secretary to enter this letter into the public record.

She stated that since this is not a public hearing, the Board ordinarily would not invite comments from the public, but the Board would like to give PCP an opportunity to make a brief oral comment, if they choose to do so at this time.

Counsel for PCP, Frank Pavia, stated that, with respect to the November 13<sup>th</sup> letter submitted by PCP, they are essentially requesting a 24-month extension of the final site plan approval that will expire on December 31, 2015. He explained that the reason it will expire is that PCP has not received a building permit for the project because a Certificate of Approval from the APRB has not been granted, and the denial of the Certificate of Approval is the subject of litigation that is currently before the New York Supreme Court. He stated that because PCP cannot obtain that approval, and other approvals for the project, PCP is not in a position to receive the approvals necessary to move forward.

Mr. Pavia stated that with respect to Condition #3 of the final site plan approval, PCP is prepared to review that analysis with the Board. PCP's interpretation of the situation with respect to stormwater is that the pipe has been installed according to the specifications that were reviewed and approved by the Village Engineer. Before that was done, and when the pipe was discovered by PCP during the remediation effort, as overseen by the New York State Department of Environmental Conservation (NYSDEC), there was only a trickle of water coming from the pipe. PCP submits that the stormwater was coming through the railroad bed from the Village Green stormwater system. He further stated that PCP indicated to the PZBA at the time of final site plan approval that the installation of the pipe was not going to fix the problem that exists on Village Green property.

Ms. Zoghlin asked Mr. Pavia whether PCP is no longer requesting an acknowledgment that it is compliant with Condition #3 or that they will be providing engineering reports related to that issue. Mr. Pavia stated that they are requesting an acknowledgment that they have complied with Condition #3, as it was stated by the Planning Board, but that it is PCP's position that they have met Condition #3 of final site plan approval, but are committed to working with the Board and Village Engineer to find the real source of the problem. Ms. Zoghlin stated that one of the concerns the Board has is that the communication from PCP states that the Village Engineer made representations to PCP about compliance with the requirement that the stormwater be restored to

the pre-existing condition, as well the requirement that the storm sewer system be constructed with the approved design. She further stated that there seems to be some dispute as to what the Village Engineer said. Mr. Pavia stated that PCP believes that they have met both the condition with respect to the construction of the pipe and the issue about returning the stormwater to the pre-existing water flow. There was a trickle of water entering the old pipe, and there is the same amount of water entering the new pipe. The flooding is not an issue that can be addressed by the installation of the pipe; it's an issue that has to be addressed with Village Green.

Ms. Zoghlin stated that the Board is unsure as to whether the applicants are claiming that the pre-existing flow through the pipe was a trickle, or that the cause of the trickle is a condition that is outside PCP's control, or both. Mr. Pavia stated that there was a trickle before construction of the pipe, and there is currently a trickle coming through the pipe.

Peter Vars, of BME Associates, stated that the crux of Condition #3 is acknowledging that during the remediation activities, there was an interruption of the drainage path across the property, and PCP was required to address that. PCP was required to establish a working conveyance system through the property that had to be approved by the Village Engineer, the New York Department of Environmental Conservation, and the Corps of Engineers. The plan had to be completed by a certain date. Village Engineer, Scott Harter, indicated that the stormwater pipe is in conformance with the approved design. Mr. Vars explained that when referring to re-establishing a pre-existing flow of stormwater, it is not the same as water flowing from a tap; it is a function of many elements, for example, the season, rainfall, humidity, etc. The flow is a function of what is occurring on any given day.

Member Lhota stated that board members are interested in finding a quantitative way that they can determine whether the stormwater flow is appropriate.

Bryan Powers, from Mark IV, stated that his first involvement with this project began in December, 2012, which was the first time that heavy equipment was brought to the site. The DEC observed all activities at the site, and Mr. Powers stated that he was heavily involved in this process, along with the installation of the storm sewer. He questioned the Village Engineer's lack of data to back up his assertion that he has observed a greater flow. He stated that Mr. Harter was not heavily involved in the remediation or the installation of the storm sewer, other than occasional visits to the site to review the progress. At the end of the project, all the manholes were opened up for Mr. Harter to evaluate. He stated that Mr. Harter did not comment that there was a reduced flow at the time of this inspection. He was satisfied with the construction of the storm sewer, and he could observe that water was running through it, but the quantity of water was never mentioned.

Mr. Powers presented photographs of the pipe for the Board to review. He stated that the pictures are a chronological series of photos of the pipe. He explained that the pipe is clogged on the Village Green side of the pipe, and that there is a pond of water on that side of the pipe that sits there continually. He stated that the intent was not to base this on the actual volume of flow through the pipe. The intent was to build a new storm sewer system through the 75 Monroe Avenue site, because they had interrupted the system through the remediation process.

Member Lhota thanked the applicants for their comments, and stated that the Board needs to further investigate the Village Engineer's comments that the current flow is less than the pre-existing flow. Board members expressed an interest in gathering factual information to review before making a determination about this issue.

Mr. Vars stated that when the Village Engineer approved the design, one of the key things he had to do was review the analysis provided by PCP of the upstream contributing area using engineering principles that estimate the value of run-off that has to be conveyed. There are some facts that resulted in the Village Engineer's approving the plan to be constructed. Mr. Pavia stated that PCP built and installed a pipe per the specifications that the Village required. The PZBA and the Village Engineer have required that the stormwater be restored to its pre-existing flow. Mr. DiMarzo pointed out that no one ever conducted a pre-existing flow calculation survey.

Member Lhota questioned the reason that PCP did not conduct the pre-existing flow survey, since it was a condition of site plan approval. Mr. Vars stated that this was done; PCP estimated what the pre-development flow would be, based on engineering standards. Ms. Zoghlin explained that one of the questions that the board has is when the initial pipe that went straight through CSX to the canal was replaced with a conveyance system that included two ninety-degree turns, how does this board know that the blockage is under the railroad tracks or in the ponding area and not in one of the two ninety-degree turns. Mr. Vars stated that the as-built survey PCP provided, and the onsite inspection conducted by Mr. Harter, are PCP's ways of certifying that the storm sewer system, as installed, is free and clear.

Member Lhota stated that the board needs to confer with the Village Engineer in order to find out what facts his evaluation is based on. Mr. Pavia stated that PCP would be willing to participate in a workshop meeting with the Board and Mr. Harter. He further stated that PCP is requesting the Board to extend the site plan approval for 24 months. Mr. Vars requested that PCP's Engineer and the Village Engineer meet to discuss this issue.

**Motion:** Member Lhota made a motion, seconded by Member Erwin, to table the applicant's request for an acknowledgment that Condition #3 of final site plan approval has been satisfied.

**Vote:** Shannon - yes; Lhota - yes; Erwin - yes. **Motion carried. This decision was filed in the Office of the Village Clerk on December 14, 2015.**

Member Lhota stated that Condition #20 reads "In the event that no building permit has been issued for this project by December 31, 2015, this final site plan approval shall expire." She further stated that in the November 13, 2015 letter, PCP requested the board to extend the time to obtain building permits to December 31, 2017. PCP notes that extending the site plan approval is justified because delays have been caused by circumstances outside their control. A copy of this letter is on file. She noted that this is the third request for an extension that the Board has received from PCP since August, and both previous requests were granted.

She stated that since this is not a public hearing, the Board ordinarily would not invite comments from the public, but the Board would like to give PCP an opportunity to make a brief oral comment, if they choose to do so at this time. Mr. Pavia reiterated that they are proposing a collaborative effort between PCP and the Village to resolve these issues. Member Lhota also noted that Conditions 7, 8, and 9, which relate to easements, are also outstanding, but notwithstanding that issue, the Board does not see any substantial changes in circumstances that would require it to deny an extension.

**Motion:** Member Lhota made a motion, seconded by Member Erwin, to grant PCP's request to extend the time until December 31, 2016 to satisfy Condition #20 of the final site plan approval.

**Vote: Shannon - yes; Lhota – yes; Erwin – yes. Motion carried. This decision was filed in the Office of the Village Clerk on December 14, 2015.**

**Liaison Report:**

Trustee Caraberis stated that she is giving the report at this meeting in place of the Board Liaison, Lili Lanphear.

- Chairperson Vlietstra asked for an update on Northfield Common. Trustee Caraberis stated that the owners have filled in the potholes and paved over where the tree was. The main issue is the removal of the ticket station, which was the only item that had any contributing value to the historic lumberyard. She stated that the Trustees want to work with the PZBA to investigate ways to resolve this issue. Chairperson Vlietstra said that the Planning Board currently does not have a complete site plan application and cannot review their plans until the application is complete. He explained that the applicants need to submit a check for the escrow account to pay for consultants, and the Village needs to hire a building inspector to review the site plan for completeness. Ms. Zoghlin stated that the Board is considering the activities that happened at the site last year as preliminary site plan approval. She further stated that if asphalt has been placed over areas that should have remained, it would not comply with the requirements.
- Trustee Caraberis stated that the Village is in the process of hiring a new Building Inspector/Code Enforcement Officer, who has a great deal of experience with these types of matters.
- Trustee Caraberis reported that the Trustees are working on revising the Village Sign Code, and changing the zoning of N. Main Street to be more residential. Additional changes to permit more Bed and Breakfasts are being considered.

Board members requested that a report from the Trustees be a regular part of the meetings. It was also suggested that a member of the PZBA attend the Trustee meeting each month.

**Member Items:**

The Board discussed proposals from John Dunkle for engineering services. The Board agreed it makes sense to use him as needed, particularly for larger projects where conflicts of interest with developers may arise. Mr. Dunkle does not reside in the area or work with local developers so conflicts of interest will not be a concern.

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Shannon, to authorize using John Dunkle as a consultant to the Planning Board and Zoning Board of Appeals, as needed.

**Vote: Vlietstra – yes; Lhota – yes; Erwin – yes; Shannon – yes; Bove – yes. Motion carried.**

**Motion:** Member Lhota made a motion, seconded by Member Erwin, to authorize using John Dunkle as a consultant to the Planning Board for the 75 Monroe Avenue project.

**Vote: Vlietstra – abstain; Lhota – yes; Erwin – yes; Shannon – yes; Bove – abstain. Motion carried.**

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to authorize using John Dunkle as a consultant to the Planning Board for 50 State St.

**Vote:** Vlietstra – yes; Lhota – yes; Erwin – yes; Shannon – yes; Bove – yes. *Motion carried.*

**Minutes:**

**Motion:** Chairperson Vlietstra made a motion, seconded by Member Lhota, to approve the November 16, 2015 minutes, as amended.

**Vote:** Vlietstra – yes; Lhota – yes; Erwin – yes; Shannon – yes; Bove – yes. *Motion carried.*

**Adjournment:** There being no further business, Chairperson Vlietstra adjourned the meeting at 9:30 pm.

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Linda Habeeb, Recording Secretary