

**PROCEEDINGS OF A SPECIAL MEETING
OF THE VILLAGE BOARD OF TRUSTEES
April 18, 2012 – 9:00 AM**

Present

Mayor:

Robert C. Corby

Trustees:

Lorie Boehlert

Trip Pierson

Tim Galli

Paula Sherwood

Paul Zachman

APRB Chairperson:

George Wallace

PZBA Representative:

Art Ientilucci

SEQR Process Advisor:

Environmental Engineer Consultant:

Paul Lytle

Recording Secretary:

Anne Hartsig

CALL TO ORDER

Mayor Corby made a motion, seconded by Trustee Boehlert to call the meeting to order at 9:00 AM.

Vote: Corby – yes, Sherwood – yes, Galli – yes, Pierson – yes, Boehlert – yes. **Motion carried.**

PURPOSE

Mr. Ientilucci explained that the development project proposed for 75 Monroe Avenue is a Type 1 Action under the State Environmental Quality Review. Type 1 Actions necessitate the establishment of a Lead Agency and a coordinated SERQ review. The Village Board of Trustees, as Lead Agency for the SEQR review of this project, has the responsibility to make a determination of significance of the impacts to the environment as a result of the project. It has been nearly 18 months since the designation of the Board as Lead Agency. Given this time, and the project changes that have been made the Board wanted to review the current plans with other involved and interested agencies and to afford them the opportunity to make comment if they should so choose. As such, the Board of Trustees is holding this meeting to share data, obtain comments, answer questions from representatives of Interested and Involved Agencies, and to initiate the review and completion of the Part II and Part III Environmental Assessment Form regarding the proposed development.

In the interest of conducting a complete and thorough review of the issues and potential impacts of the project, Mr. Ientilucci explained that the Board of Trustees mailed invitations to this meeting on March 16th to a list of sixteen Involved and Interested Agencies. He said written comments were requested if attendance was not possible. It was noted that no written comments were received.

PRESENTATION OF THE CURRENT PROJECT BY THE PROJECT SPONSOR

Christopher DiMarzo spoke on behalf of the project sponsor, Pittsford Canalside Properties LLC. Mr. DiMarzo said he first met with Mayor Corby regarding this project in February of 2005. At that time, it was his intent to take a contaminated site and fix it. That intent has not changed. Although it has taken a number of years to get to this point, plans have been developed for a good project and it is time to move forward.

Mr. DiMarzo presented various concept drawings beginning with a photo of the original site. It included the old Monoco building. He said many changes have been made to the site plan as a

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result of requests from the various Village boards. Currently the plans consist of seven individual canal/industrial style multi-family housing units with garages, parking, a swimming pool and a restaurant.

INVOLVED AGENCY COMMENTS TO LEAD AGENCY

Kevin Kearns, NYS Canal Corporation: Mr. Kearns commented that he had not yet received a conceptual drawing. He asked the following questions:

Question: Will there be a Home Owners Association at the proposed development? **Answer:** Mr. DiMarzo said there will not be. He said Pittsford Canalside Properties will assume the duties of a home owners association.

Question: Will there be vendors such as canoe and/or kayak rentals? **Answer:** Mr. DiMarzo replied that there will be a restaurant but no vendors.

Question: Will there be any revenue generated on Canal Corporation property? **Answer:** Mr. DiMarzo answered no.

Question: Will there be any utilities on Canal Corporation property? **Answer:** Mr. DiMarzo said there would not be any utilities that cross the property. However, there will be a tie-in to the electric service. Also, stormwater will discharge into the canal but that will require a DEC permit.

Question: Will there be any docks closer than 100' to the Monroe Avenue Bridge? **Answer:** Mr. DiMarzo replied that there would not be.

Mr. Ientilucci asked Mr. Kearns if he had any recommendations in terms of the significance of determination. Mr. Kearns replied that he does not have any recommendations at this time. He repeated that he had not seen the current site plan until now.

CLOSE INVOLVED AGENCY PORTION OF THE MEETING

There being no other representatives from Involved or Interested Agencies wishing to ask questions or share comments, the Involved Agency portion of the meeting was closed.

LEAD AGENCY REVIEW OF PART II AND III EAF

Mr. Ientilucci distributed a matrix for reference purposes. The matrix reflected various impact thresholds and an extensive list of documents, research, studies, reports and recommendations that have been reviewed by the Board of Trustees, other involved agencies and Village consultants demonstrating a thorough examination of documents and aiding them in their decision making.

Paul Lytle, Environmental Engineer liaison for the Village regarding the DEC and Department of Health, presented a summary Environmental Update on 75 Monroe Avenue as of April 17, 2012. He said the summary was obtained by reviewing the environmental remediation documents and investigation effort that the applicant has completed at the site. These documents were available to the public in the library. Mr. Lytle said that the applicant is participating in the NYS Brownfield Program, a voluntary clean-up program. The program is coordinated by the DEC in Albany and in Avon. There are three different tax incentives that the applicant can utilize if they meet the DEC's guidelines. He noted that the DEC is very stringent and regimented about making sure Brownfield program applicants provide complete clean-ups. Mr. Lytle said he has had two discussions with the DEC. He has not, however, contacted the applicant's environmental consultant firm, Labella Associates.

Mr. Lytle noted that the summary he presented is purely from paperwork completed by the applicant and their consultant. He said the site formerly housed six tanks which collectively

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totaled 13 million gallons of oil. He explained that the site was extensively used since the 1920's. There was a significant fuel oil spill in 1999 that the EPA responded to. They spent \$980,000 on remediation so a good portion of the gross contamination that existed on the site has been remediated.

Mr. Lytle said the following:

- The building is currently unsecured and dangerous. Mayor Corby added that the site is a code enforcement issue.
- There are seven steps in the Brownfield Program which must be completed within a specific time period. The developer is currently at the fourth step which is the Remedial Work Plan step. The work must be complete by the end of 2014 to utilize one of three potential credits. The credits are reimbursement for the cost of the remediation, tax credits for a capital investment, and potential reduction of state taxes. A Certificate of Completion must be obtained to be eligible for any of these credits. The certificate is the seventh and final step.
- The remedial Investigation Report identified seven environmental areas of concern at this site. Mr. Lytle's report lists the seven areas.
- An "Interim" Remedial Measure (IRM) was proposed by the applicant. It has not been initiated yet because the applicant proposed some modifications to the plan. The plan modifications were rejected by the DEC, a common occurrence. Bryan Powers, the interface between Labella Associates and the applicant, explained the analytical checking process that takes place and the reasons the DEC rejected the plan. The DEC asked for more stringent testing. The focus was on the seven areas of concern.
- The IRM is scheduled to begin in May of 2013.
- The Department of Health has been involved in the remediation to insure that the intended use matches the extent of the clean-up that they are requiring.

Mr. Lytle said in order for him to better describe the path forward for remediation at this site, and in order for the Lead Agency to be more aware of what the steps will be in the remediation process and in order for the Lead Agency to have confidence that the right amount of remediation will be completed, he would benefit from talking to Labella Associates and from talking directly to Bryan Powers. This would allow him to be in a better position to explain to the Lead Agency as a 3rd party that what they are doing is effective, timely and complete. Further, it would allow him to better reflect that the applicant is committed to doing a total clean-up of the site. The time this meeting should occur is now. Mr. DiMarzo offered to have a representative from Labella Associates explain the remediation directly to the Board members. Mayor Corby said that Mr. Lytle should also be in attendance if this meeting occurs.

Mr. Lytle said the Board can feel confident that remediation requirements will hold the applicant to following through with a total clean-up. Mr. Ientilucci said to keep in mind that the DEC requirements regarding remediation are basically, in and of themselves, exempt from SEQR. He said remediation is something that will happen parallel to the SEQR process. He said that the Board needs to understand the process of remediation for purposes of the determination of significance

Frank Hagelberg, Attorney for Pittsford Canalside Properties LLC, asked how much more the Board would need to know regarding what the remediation efforts will be in order to reach a determination of significance. He said the Board already knows that efforts are underway, and that the DEC rules and the Canal Corporation regulations will have to be followed. He said there

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will be conditions of any special permit that is issued and he said before any construction can start, all DEC and Canal Corporation matters would have to be fully resolved.

In reply, Mr. Ientilucci stated that the Lead Agency must be comfortable. They are the ones to decide how much information they need to make a determination. He said the purpose of SEQR is to ensure that environmental aspects of the project are considered along with other considerations. He said the question of significance is ultimately a policy decision determined by the rule of reason. The duty of the lead agency is to identify significant adverse environmental impacts, take a hard look at those impacts, and make a reasonable written elaboration of its reasoning in concluding that the proposed action may cause, or will not cause, significant adverse environmental impacts. He said the Board should have a written record of the rationale that led them to a significance determination.

Mr. Ientilucci said that when the Board is reviewing Part II & III of the EAF, they should consider the record and demonstrate a rational basis and use common sense, while keeping in mind the magnitude of importance of the impact.

In moving forward, there are two choices. The first choice is to determine a negative declaration. This determination means that no significant adverse impact has been found. This declaration does not automatically give approval to the project but it allows for the various Village boards to legally move forward with the decision making that falls within their purview. A negative declaration does not legally bind the Boards to approve the project. The Boards don't lose the ability to condition various approvals on certain things. For example, there could be conditions that come to light as a result of public discussion at the required public hearings. Mr. Ientilucci continued by saying that the Trustees technically have the ability to disapprove the project if they make a SEQR determination of no significant impact (a negative declaration). However, he cautioned them not to end up with contradictory findings. The issue with Special Permits and Site Plan Reviews is that the standards for those approvals are very similar to and typically parallel the impact criteria for SEQR. It is much easier to deny an application after a negative declaration for processes such as use variance or area variances, based on hardship criteria or numerical standards. He noted for informational purposes that negative declarations can be amended if there are major project changes after its issuance, but that does not happen often. He said the chances of that happening in this case are not probable.

The second choice is a positive declaration which means that it is determined that the project may have a significant adverse environmental impact. The result of a positive declaration is that everything stops. Preparation and drafting of an Environmental Impact Statement, acceptance, public review, and the public comment period regarding this draft EIS typically can take 4-6 months.

Mr. Ientilucci noted, Part 617 of SEQR says once an Agency has an application in hand and is designated lead agency it needs to make a determination within 20 days (15 days under Pittsford Code). This rarely happens because more information is often required and project changes often occur. However, time frames should not be totally ignored or disregarded. The time frame for making a significance determination should be reasonable and the review done without administrative and procedural delay. In this case the Board has embarked on a careful, lengthy review of the project and has required a substantial amount of information, studies, reports, and project changes. Typically, in proceeding in this manner, it is more difficult later in a project review to reach the conclusion that an Environmental Impact St level of review is necessary.

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Mr. Ientilucci said the one option the Board does not have in terms of decision making is to issue a conditioned negative declaration. He said that is not a legal option for a Type I Action.

Mayor Corby said the next important task at hand was to review the Part II questions on a logical basis and where appropriate, identify areas where more information may be needed to answer the question. He clarified that the final decision is a yes or no. He said conditions, if the Board has any, will be reserved for the special permit.

Mr. Ientilucci said regarding mitigation, the regulations refer to practicable mitigating measures and solutions that are based on the rule of reason in the judgment of the Board. Considerations as to what is reasonable can include the project sponsor's costs, goals, purpose and intent.

The Board reviewed Part II, answering and discussing each of the questions. Mr. Ientilucci will write draft responses for Part III based on the comments of Board members. He will distribute the draft electronically on or before May 5th. Following that distribution, the next step will be a Board meeting on May 11th with Mr. Ientilucci to review the Part III responses.

ADJOURNMENT

There being no further business, Mayor Corby adjourned the meeting at 10:50 AM.

Anne Z. Hartsig, Recording Secretary