

**PROCEEDINGS OF A SPECIAL MEETING
OF THE
VILLAGE BOARD OF TRUSTEES
May 31, 2011 – 7:00 PM**

Present

Trustees: Paula Sherwood
Tim Galli
Trip Pierson
Lorie Boehlert
Attorney: Karl S. Essler, Esq.
Absent: Mayor Robert Corby
Recording Secretary: Anne Hartsig

Deputy Mayor Tim Galli called the meeting to order at 7:00 PM.

The Village Clerk read aloud the first paragraph of legal notice below. She stated that the notice was published in the Brighton-Pittsford Post on May 26, 2011 and that the proposed local law has been available for public review in the Village Office during regular business hours since that date.

***PLEASE TAKE NOTICE** that a public hearing will be held before the Village of Pittsford Board of Trustees on May 31, 2011 at 7:00 P.M. at 21 North Main Street, Pittsford, New York , to consider the adoption of proposed Local Law No. 5 of 2011, entitled “Local Law No. 5 of 2011 of the Village of Pittsford, New York Imposing a Moratorium on the Review of Applications to Develop or Construct any Improvements in the R-5 District under the Village Code, the complete text of which is as follows:*

Section 1. Title

This Local Law shall be referred to as the “Local Law Imposing a Ninety-Day Moratorium on the Review of Applications to Develop or Construct any Improvements in the R-5 District under the Village Code.”

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Village of Pittsford to regulate and control land use and to protect the health, safety and welfare of its residents, the Village Board of the Village of Pittsford hereby declares a ninety (90) day moratorium on the governmental review, approval of permits, construction and enlargement of any applications related to development in the Village’s R-5 Zoning District as defined in Section 210-19 of the Village of Pittsford Code, in the Village of Pittsford, and amends such Section to provide for such moratorium.

The Village of Pittsford has recently been made aware of substantial potential discrepancies between the specific development criteria for the R-5 Zoning District and the stated intentions of that District to ensure that development within the R-5 District is compatible with the Village’s distinctive aesthetic and visual character and compatible with the Village’s historic features, materials, scale, and traditional residential character. The Village also perceives that the current development standards in the R-5 Zoning District may be incompatible with the goals of the Village’s Comprehensive Plan to ensure that development must be carefully designed to enhance rather than detract from the Village’s existing character and that new construction must reflect the historic patterns of land use, pedestrian movement, building orientation, site design, and activity of the Village. Although the type of development permitted in the R-5 Zoning District may play an important role in the development of housing stock in the Village, lack of adequate planning to determine the most appropriate development guidelines for such housing could

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create a negative impact on the orderly development of the Village, thereby impacting the health, safety and welfare of residents.

The Village Board of the Village of Pittsford therefore desires to address, in a careful manner, the approval of permits, construction standards and enlargement of all development within the R-5 Zoning District, rather than on an ad hoc basis, and to adopt zoning and land use regulations to properly regulate the development within the R-5 District.

Section 3. Scope of Controls

A. *During the effective period of this Local Law:*

1. *The Village Board of the Village of Pittsford shall not grant any approvals that would allow the construction, addition or enlargement of proposed construction within the R-5 Zoning District.*
2. *The Village of Pittsford Planning Board shall not grant any preliminary or final approval to a subdivision plat, site plan, special use permit or other permit that would allow the construction, addition or enlargement of proposed construction within the R-5 Zoning District.*
3. *The Village of Pittsford Zoning Board of Appeals shall not grant any variance or other permit for any use that would result in the construction, addition or enlargement of proposed construction within the R-5 Zoning District.*
4. *The Village Architectural Preservation and Review Board shall not make any approval or recommendation regarding any proposed development within the R-5 Zoning District.*
5. *The Building Inspector/Code Enforcement Officer of the Village of Pittsford shall not issue any permit that would result in the construction, addition or enlargement of development within the R-5 Zoning District.*

B. *The Village Board of the Village of Pittsford reserves the right to direct the Village of Pittsford Building Inspector/Code Enforcement Officer to revoke or rescind any building permits or certificates of occupancy issued in violation of this Local Law.*

Section 4. No Consideration of New Applications

No new application for construction affected by this Local Law or for approvals for a site plan, subdivision, variance, special use permit or other permits shall be considered by any board officer or agency of the Village of Pittsford while the moratorium imposed by this Local Law is in effect. This moratorium shall apply to applications filed before the effective date of this Local Law.

Section 5. Term

The moratorium imposed by this Local Law shall be in effect for a period of ninety (90) days from the effective date of this Local Law.

Section 6. Penalties

Any person, firm or corporation that shall construct, place an addition on, or enlarge any structure or improvement in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. *Such penalties as may otherwise be provided by applicable Code provisions, rules and*

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regulations of the Village of Pittsford for violations; and

- B. *Injunctive relief in favor of the Village of Pittsford to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction that may have taken place in violation of this Local Law.*

Section 7. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 8. Hardship

- A. *Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Village Board of the Village of Pittsford in writing for a variation from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.*

- B. *Procedure. Upon submission of a written application to the Village of Pittsford Clerk by the property owner seeking a variation of this Local Law, the Village Board shall, within thirty (30) days of receipt of said application schedule a Public Hearing on said application upon five (5) days written notice in the official newspaper of the Village of Pittsford. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Village Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Village Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Village Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.*

- C. *In reviewing an application for a variation under a claim of unnecessary hardship, the Village Board shall consider the following criteria:*

(1) The extent to which the applicant has, prior to the effective date of this law, received a development permit for the proposed development, such as site plan or subdivision approval, variances, Department of Environmental Conservation permits or similar permits;

(2) The extent to which the proposed development would cause significant environmental degradation, adversely impact adjacent natural resource areas, adversely impact the delivery of public services, cause the loss of agricultural land and the effect of the proposed development on the health, safety and general welfare of the citizens of the Village of Pittsford;

(3) Whether the moratorium will expose the applicant to substantial monetary liability to third persons, or would leave the applicant completely unable, after a thorough review of alternative solutions, to earn a reasonable return on the property; and

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(4) The extent to which the actions of the applicant were undertaken in good faith belief that the proposed development would not lead to significant environmental degradation, adverse impact on public services or undue adverse impacts on adjacent natural resource areas.

Section 9. Effective Date

This Local Law shall take effect immediately upon its adoption by the Village Board of the Village of Pittsford.

PLEASE TAKE FURTHER NOTICE that a special meeting of the Village Board of Trustees shall be convened immediately following conclusion of the Public Hearing, and the Village Board of Trustees shall consider the adoption of the proposed Local Law No. 5 of 2011 during such meeting.

Dated: May 17, 2011

Deputy Mayor Galli stated that the purpose of the public hearing was to gather input on a proposal for a ninety day moratorium on the review of applications to develop or construct any improvements in the R-5 district of the village. Because of potential discrepancies between the development criteria in the R-5 zoning district, and the intent of the Code to ensure that the development within the district is compatible with the village's aesthetic and visual character, and compatible with the village's Comprehensive Plan, this moratorium, as proposed, would give the Village Board time to evaluate the current Code.

Deputy Mayor Galli said that this is important to the Village Board because the R-5 zoning district comprises about 7.4 acres at 75 Monroe Avenue, and almost 23 acres across the Canal, all undeveloped, consisting of about 11 acres owned by the Town of Pittsford and about 11 acres owned by the Village. He said these acres are all part of the R-5 zoning district and all of these properties are close to or at the Canal waterfront and close to residential neighborhoods. He said the Board of Trustees wants to make sure for the long term that the Village has addressed future development appropriately.

Trustee Pierson stated that he is aware that a lot of time and energy has been put into the 75 Monroe Avenue project. Further, he stated that the 75 Monroe Avenue project will be affected by this moratorium, if it is enacted. However, because the R-5 district is larger than this project alone, he said the Board has to do what they feel is in the best interest of the village. Trustee Pierson said that when they compared the Code for the R-5 district to the Comprehensive Plan, the LWRP, and the Erie Canal Corridor Study, Board members felt a proposed moratorium was the right thing to do. Trustee Pierson said it would have been preferable if the Board had come to this conclusion prior to this time. However, just because they did not, it doesn't mean it is not the right thing to do today.

Trustee Boehlert stated that the Board wants to clarify discrepancies or "holes" in the code regarding such things as height and lot coverage. The code currently talks about "stories" rather than foot heights, and it does not address lot coverage as do all other parts of the code. Not having these types of things spelled out makes it difficult for developers or any of the Village Boards to be able to come to the meaning of what can be put into these places and what can not.

A motion was made by Deputy Mayor Galli, seconded by Trustee Sherwood to open the public hearing.

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

Deputy Mayor Galli noted that this meeting was for the Board to listen to questions regarding the potential moratorium. He asked that people limit their comments to five minutes. Trustee Sherwood kept track of the time.

The Clerk stated that two emails were received, one from James Conti and one from Peter Brizee. Board members were given copies of the letters.

The following comments were heard:

Frank Hagelberg, Attorney for Pittsford Canalside Properties LLC

Mr. Hagelberg displayed a photo of the 75 Monroe Avenue property as it looks today. He then submitted a letter that expresses the developer's opposition to the proposed moratorium and asked that it become part of the record. The letter stated three grounds upon which the opposition was based.

1. Mr. Hagelberg said the notice for this meeting was insufficient and that 10 days notice is required.
2. Mr. Hagelberg said there are insufficient legal grounds for the imposition of a moratorium.
3. The matters sought to be addressed by the proposed moratorium are already provided for in the R-5 zoning code. §210-19.2 authorizes the Board of Trustees to review the standards for a special permit. The PZBA has the authority to examine the site plan. The APRB has authority to examine the aesthetics and the compatibility of the project with this historic village.

Mr. Hagelberg said a moratorium would delay the project and could make the project financially unfeasible.

Attorney Karl Essler

Mr. Essler responded that the meeting notice was published under the requirements of the Municipal Home Rule Law, not the Town, Law, as this moratorium affects the Zoning Code, which was adopted under the Municipal Home Rule Law. The notice requirement for publication under the Municipal Home Rule Law is 5 days, not the 10 days required under the Town Law and the Village met that requirement.

Don Riley, Vice President of Marketing & Development

Mr. Riley introduced other members of the development team for this project. He made the following points:

- The developer withdrew the retail portion of the plan so that the businesses of village merchants would not be affected by the project.
- The plans have been revised and reshaped by the developer five times at the suggestion of village consultants and board members.
- The architectural style found on Schoen Place was used to develop the architecture of the project.
- It would be a breach of faith and trust for the Board to pass a moratorium. The right thing to do would be to allow the project to move forward. Notice of the proposed moratorium was devastating to the developer, since they have done everything to please the Village boards.
- Mr. Riley beseeched the Board not to throw away the hard work of the APRB and the PZBA and not to throw away the project. The developer has employees who need to work. A ninety day delay is too long a period of time.

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- Another public meeting for the purpose of showing the progress of the plan was requested.

Chris DiMarzo, Pittsford Canalside Properties and manager of Westport Crossing (the 75 Monroe Avenue project):

Mr. DiMarzo expressed the following:

- It is difficult not to take this proposed moratorium personally because it is his project that will suffer as a result.
- Height and lot coverage are already taken care of in the code.
- He asked for an explanation of what the Board believes the discrepancies in the R-5 code are.
- He asked if the real reason for the moratorium had to do with the size of the project and/or the rental basis of the project.
- The developer and the Village Boards have come a long way with the plans.
- If the project is forced to scale down too much, it won't be a feasible project for the developer.

Anthony DiMarzo, President of Mark IV Enterprises, 301 Exchange Blvd.

Mr. Dimarzo expressed the following:

- He is attending this meeting because he is not being treated fairly.
- His company has never proceeded this far into a development process only to have backs turned upon them.
- The company's financing record and reputation is of a high caliber.
- The development will rid the site of environmental contamination left by Monoco Oil and will develop sewers as part of the project.
- It is time to get to the table and work out the details.

Paul Lytle, E&L Solutions

Mr. Lytle stated that he was hired by the Village to facilitate the process among and between the Village boards and to facilitate the environmental issues associated with the site. He stated that he is still works for the Village and that there has been no collaboration with the applicant regarding the points he would like to make. He expressed the following:

- He is concerned about the delay a moratorium would cause, increasing problems with the environmental remediation of this site. The majority of the contamination is in the top levels of the soil. The greater amount of time that passes before remediation takes place, the greater the chance of contamination to the canal.
- He is concerned about someone being hurt on that site as it is now. There is access from the canal and from the railroad. It is difficult to restrain access to the site. It is an accident waiting to happen.

Dave Crowe, 138 Caversham Woods

Mr. Crowe expressed the following:

- He has no connections with Mark IV.
- In his opinion, this is a terrific project.
- In his opinion, Mark IV develops quality projects. Another developer could do this project but it would not be as well done.
- The property is a horrible eyesore as it is now.
- He asked the Board to put their trust in the Village planning and zoning process and let the project proceed.

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- He is not in favor of a delay.

Ken Green, 57 Sunset Blvd., owner of Brueggers

Mr. Green expressed the following:

- He is confused by the proposed moratorium that is happening three years into the project.
- The truth is not being told. This smells like a bait and switch.
- He is concerned about the lack of the Mayor's presence at this meeting.
- If what he is hearing is true, he is embarrassed.

Janet Reynolds, 35 Church Street, Pittsford village

Ms. Reynolds expressed the following:

- She is pleased with the quality of the developer but wants the village to stay the village.
- She went to Fairport to look at that project developed by Mark IV and thought that it fit Fairport village.
- She realizes that there has been lots of hard work on the proposals by the developer and the members of the three Village boards.
- She has deep concerns about how this project will affect the village in terms of owners vs. renters, the number of people residing in the village, and the mixed community the village now has vs. the more mature population that she has heard will be the focus of this project.
- The character of the village is very important to the residents of the village.

Wally Morse, 12 Sutherland Street, Pittsford village

Mr. Morse expressed the following:

- He knows the DiMarzos and many of the people on the different Village Boards.
- There are plenty of safeguards within the code.
- The feedback he has heard is that there is no way there should be a moratorium. The project should continue.
- The new plan makes sense and is a good plan.
- He is opposed to the proposed moratorium.

Mike Morse, Morse Company

Mr. Morse expressed the following:

- He attests to the high ethical behavior of Mark IV.
- He asked the Board members to ask themselves how they would feel if they were playing a game, the referee blew the whistle, and the rules of the game were suddenly changed.
- It is the responsibility of elected officials to be transparent. It doesn't appear that this is the case here. It appears that the laws are being used as weapons.
- He hopes the Dimarzos won't pick up and leave the project.

Karl Essler Esq., Attorney for the Village of Pittsford

Mr. Essler said that the threat and possible intention of legal action suggests that the Board enter executive session prior to closing the public hearing.

Frank S. Hagelberg, Attorney for Mark IV

Mr. Hagelberg said it is not Mark IV's preference to litigate. Rather there is a strong desire to approach the issues to find solutions. He said Mark IV wants to build in a way that best meets the needs of the village. He said if given a choice, his client would like to see the moratorium deferred and a meeting held with the Trustees to show and discuss the progress to date. This would be a more constructive approach. His client wants to work with the Trustees.

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Executive Session

A **motion** was made by **Deputy Mayor Galli, seconded by Trustee Pierson**, to enter executive session to discuss a matter of potential litigation.

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

Having taken no action, a **motion** was made by **Deputy Mayor Galli, seconded by Trustee Sherwood**, to reconvene the regular session of this meeting.

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

Motion to Close the Public Hearing

There being no one further wishing to speak for or against this proposed local law, a **motion** was made by **Deputy Mayor Galli, seconded by Trustee Sherwood** to close the public hearing.

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

Motion to Table the Vote

A **motion** was made by **Trustee Pierson, seconded by Trustee Sherwood**, to table the vote on the proposed moratorium tonight and take the developer up on the offer of holding a public workshop meeting in the interest of open and honest dialog.

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

Adjournment

A **motion** was made by **Deputy Mayor Galli, seconded by Trustee Pierson**, to adjourn this meeting at 8:45 PM.

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

Anne Z. Hartsig, Recording Secretary