

**PROCEEDINGS OF AN EMERGENCY MEETING OF THE VILLAGE BOARD OF TRUSTEES**  
**August 18, 2015—2:30 PM**

**Present**

**Mayor:**

Robert C. Corby

**Trustees:**

Lili Lanphear

Frank Galusha

Alysa Plummer

Margaret Caraberis

**Recording Secretary:**

Dorothea M. Ciccarelli

**CALL TO ORDER**

**Motion** Mayor Corby and seconded by Trustee Lanphear called the meeting to order at 2:44 PM.

**NORTHFIELD COMMONS**

Scott Harter reported to the Board that the paving and striping project for Northfield Common had begun. He stated that unfortunately, the property owners have gone beyond standard mill and pave for the project as was agreed upon. He reviewed past history related to the project regarding the previous restriping and site plan issues. Mr. Harter informed the Board that the applicant had an approved new parking and loading plan, but had provided an insufficient site plan. He stated that the fire department and Kelly Cline both requested that the Village approve the parking and striping plan, which was approved under the condition that Northfield Common return with a full site plan. Mr. Harter stated that they did file plans, but that these were not approved because they were not complete. He stated that the most recent plan filed was in March 2015, and that there is still no complete site plan.

Mr. Turner stated that the owners of Northfield Common then approached Mrs. Cline requesting to repave before restriping, and that they stated that paving does not require a building permit but does require supervision of the actual paving itself and approval from the Building Inspector or the Village Engineer. He further stated that Mr. Harter worked with Northfield Common in developing a paving plan, and that built into this plan was a letter from the owner's attorney indicating that they understood that the site plan had not been approved, and as such, paving fell under the owner's own risk. Mr. Turner stated that the owners applied for an appeal with the PZBA for Mrs. Cline's decision that the Village Engineer must sign off on any plans. Mrs. Cline and Mr. Harter did come and sign off on the plans. He stated that Mrs. Cline asked the owners when they anticipated repaving, to which they indicated that repaving would begin approximately August 17, 2015. Mr. Turner stated that a tree was removed, and it became clear that they were boxing out instead of repaving and putting in an underground conduit. He stated that they were then found ripping out the foundation in noncompliance with the storm water plan.

Mr. Turner stated that rather than conforming to the approved repaving plan, the owners are reconstructing the parking lot, which requires a site plan review. He stated that the appropriate measure would be a stop-work order, with the requirements that they provide a full site plan as soon as possible. He stated that during that process, the Planning Board will hold an appropriate escrow account to fund Mr. Harter's work and so that construction can be monitored. He stated that the Board of Trustees has no remitting authority in this issue, but they can decide whether or not to issue the stop-work order. Trustee Plummer inquired as to the consequences of issuing the stop-work order, and Mr. Turner replied that issuing the stop-work order would cause a continuation of the public safety issue, specifically, of preventing the fire truck access. Mr. Harter added that ameliorating this issue was, he thought, the driving reason behind the work he and Mrs. Cline completed to create a repaving plan. Mr. Harter referred to correspondence from June 24, 30, and 31, and July 1, 2015, which discussed the removal of the asphalt only to the first subbase

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and submitting plans to the Village prior to beginning work. Mr. Harter stated that this was signed and dated by the owners. Mayor Corby stated that the construction puts the Village at risk because there is a publicly-maintained parking area, and the construction area was not cordoned off in any way. Mr. Harter stated that the property had been torn up quite a bit.

Mayor Corby inquired as to the reasons to issue or not issue the stop-work order, and Mr. Turner explained that not issuing the order would lead to a permanent resolution of the fire truck access issue, but that the Village would lose their leverage in ensuring that Northfield Common finish their site plan. He stated that the Village would then only have three mechanisms to push for the site plan: refusal to issue special permits, fines, and a Supreme Court proceeding, the latter two of which are costly resolutions. Mayor Corby inquired about obligations under SWWP, and Mr. Harter stated that if the Village files a SWWP, Northfield Common will be obligated to submit any plans regarding drainage or erosion. He stated that if they ignore a SWWP, the DEC would be contacted and construction would have to cease. Mr. Harter discussed the extent of the construction, which went beyond what was agreed upon.

Mayor Corby stated that one disadvantage to issuing a stop-work order was that the parking lot would be in disarray for an extended period of time, hurting local businesses, and asked if there was any way to avoid that. Mr. Turner replied that a bond could be issued, but it would be significant. Mayor Corby stated that instituting a sub-base could serve as a temporary solution to this problem. Mr. Harter stated that pre-construction meeting criteria had not been met. Trustee Plummer asked what would happen if the DEC issued a stop-work order. Mr. Harter stated that he wasn't sure of the specifics beyond the stop of work, but that he has a contact at the DEC who would know. Mayor Corby spoke about the limited drainage at the site, and asked if the responsibility for drainage is different if they do go down to the soil. Mr. Harter stated they were responsible for sediment control. The Board discussed the consequences of the box out on standards of elevation. Mr. Harter referenced an agreement with the contractor that indicated they will note any deviations from submitted plans should they occur after paving, but stated that in this case, the Village lacks the original plans for comparison.

Mayor Corby asked what the procedure would be if a stop-work order was issued, under the assumption that a line of credit was obtained and a sub-base was installed. Mr. Harter recommended returning to John Limbeck's compliance letter from March 2015. The Board discussed Northfield Common's appeal of the decision that Mr. Harter must sign off on paving plans, and the owners' request that this appeal not be heard until October. Mayor Corby asked what deficiencies Mr. Harter would want fulfilled as a condition of a potential stop-work order. Mr. Harter stated that he would want the site to be paved such that it is drivable, and Mr. Turner added that striping this pavement would resolve the public safety issue. The Board discussed that striping could occur either on pavement or gravel. They continued to discuss remediation for the tree that was cut down.

Trustee Galusha reviewed the process of issuing a stop-work order, obtaining a letter of credit, paving the lot, and having the owners bring in a site plan for review by the Board. Mr. Harter stated that they would need an engineer's estimate to obtain a line of credit. Mr. Turner stated that the exact qualifications should be determined by Mr. Harter, and that the stop-work order itself will say that the owners are not compliant with the approved plans and the proposed start date. Mr. Turner added that they are not compliant with 210-80.3 of the Code, which states that to construct a parking lot, you need a site plan. The Board discussed issues of enforcement.

Mr. Turner recommended issuing a bond stating that the owners must work with the Village Engineer, and asked Mr. Harter to estimate his fees for the work towards bonding the striping so that an escrow account can be set aside. Trustee Galusha added that this needed to be done

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within a specified period of time, otherwise the Village should call the letter of credit and have the work done. The Board discussed anticipated progress of the owners' construction plan. Mr. Turner stated that he did not recommend delaying a potential work order. The Board discussed various methods of responding to the noncompliant construction. Mr. Turner asked how the Village could operate on private property in the event that the owners refused to return to compliance, and Mr. Harter stated that he believed there was an ordinance in municipal law that allowed this work in the event of a default. Mr. Turner stated that this could also be included in a letter of credit. He recommended issuing a stop-work order stating that a bond is needed in a certain amount to be determined, which will ensure what Mr. Harter recommends in terms of stabilization and striping, and that they need to submit as soon as possible a finalized site plan, and that a second bond in an appropriate amount needs to be posted to guarantee this plan, and that an escrow account needs to be deposited to pay for Mr. Harter's fees and the fees of other experts.

Trustee Galusha reiterated a need for promptness in order to protect local businesses who could be harmed by an ongoing project. Mr. Harter stated that the surface was drivable and stable in its current condition, but inquired as to the process if the owners refuse to honor the work order. Mr. Turner stated that this potentially put tenants at risk. Trustee Plummer stated that she did not expect this to be a motivator for the owners. Mr. Turner spoke on the importance of adhering to the code, which mandates a site plan. Mr. Harter discussed the option of giving the owners the option to return to compliance without a stop-work order, with the communicated knowledge that such an order would be issued if the owners failed to comply with Mr. Harter's requirements. Mr. Turner clarified that this was not a parking lot reconstruction, and that the Village cannot repave. The Board continued weighing potential reactions.

Mr. Turner stated that they would issue a bond for stabilization, create an escrow account, and obtain a letter of credit. He stated that Mr. Harter should submit a memo indicating that he has informed the owners of the required steps towards compliance, that he should look into merchants who could complete the work, and that he should get an accurate visual representation of the building. Trustee Plummer inquired as to a time frame for the owners to respond to these requests, and Mr. Harter stated that the promise of a stop-work order, without necessarily a specific time frame, should inspire quick response. He stated that he thought the Village should hear back within 24 hours as to whether or not the proposal was acceptable to them. Mr. Harter estimated that it would take the owners one to two days to obtain the appropriate letter of credit. Mr. Turner stated that he would begin work on the stop-work order, such that it would be ready in the event it was needed. Mr. Harter stated that from the time a stop-work order would be issued to the time for a striping and stabilizing letter of credit would be approximately 24 hours. He estimated \$100,000 as the appropriate amount for the bond, and estimated 2-3% of the cost additionally for his fees and other contingencies. He stated that the cost for landscaping and lighting, excluding paving costs, was an estimated \$150,000, bringing the total to approximately \$250,000. Mr. Turner stated that he would add to the bond that a site plan be included, per John Limbeck's March 2015 letter. Mr. Harter added that the dumpster on site also needs to be enclosed, per a 2013 email with Mr. Limbeck.

## **EXECUTIVE SESSION**

**Motion Trustee Plummer, seconded by Trustee Lanphear** to enter executive session.

**Vote:** Corby – yes, Lanphear– yes, Galusha – yes, Plummer – yes, Caraberis– yes. **Motion carried.**

**Motion Mayor Corby, seconded by Trustee Galusha** to leave executive session.

**Vote:** Corby – yes, Lanphear– yes, Galusha – yes, Plummer – yes, Caraberis– yes. **Motion carried.**

## **NORTHFIELD COMMON**

Mr. Turner reported that he had drafted a stop-work order and that it does not provide any indication on how it will be lifted. He stated that he thought the order should state that it would be lifted by making suitable arrangements for compliance. Mayor Corby and Trustee Plummer stated that they would take the time to discuss what was happening with tenants, so that they were informed of the proceedings.

**Motion Trustee Caraberis, and seconded by Trustee Galusha**, to acknowledge that the issue of a stop-work order has been fully discussed, to allow Village Engineer Scott Harter to make initial contact with the property owner, and to allow the signing of a stop-work order in the event that property owners do not cooperate.

**Vote:** Corby – yes, Lanphear– yes, Galusha – yes, Plummer – yes, Caraberis– yes. **Motion carried.**

## **ADJOURNMENT**

**Motion Trustee Caraberis, and seconded by Trustee Plummer**, to adjourn the meeting at 4:22 PM.

**Vote:** Lanphear– yes, Galusha – yes, Plummer – yes, Caraberis– yes. **Motion carried.**

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Dorothea M. Ciccarelli, Recording Secretary