

Village of Walden
Planning Board Meeting
December 5, 2016

Chairman:	Stan Plato	Present
Members:	Jay Wilkins	Present
	Lisa Dore	Present
	Jason Trafton	Absent
	Zac Pearson	Present
Alternate:	Larry Kraus	Present
	Lisa Wade-Sebring	Absent
Building Inspector:	Dean Stickle	Present
Village Attorney:	Robert Dickover	Present
Village Engineer:	John Queenan	Present
Secretary:	Tara Bliss	Present

Chairman Plato - Called the meeting to order at 7:30pm.

1. **APPROVAL OF MINUTES:** None

2. **BOARD BUSINESS**

A. **PUBLIC HEARINGS:** None

B. **FORMAL APPLICATIONS:**

B.1 26 Walker Street, Two Lot Subdivision

No one in attendance at this time.

B.2 29 Overlook Terrace, AT&T Emergency Generator

Justin David of MD7, LLC explained on behalf of the applicant they are looking to put a generator that is 10ft by 4ft pad with 40 total square feet and is 8 feet tall total. Will only be run in case we have a hurricane again and we are out of power. Has 210 gallons of fuel capacity and is run on diesel. Gets run 30 minutes once per week for testing a total of 2 hours per month. 3 other generators are there from other carriers and he would imagine this one would go on at the same time. Pretty low as far as noise goes and we would run it during the day at whatever time was most convenient on your end.

Member Wilkins is ok with it as long as it is run during the day.

Mr. David explained there has been a federal directive to push carriers to put generators in. Just started after Hurricane Sandy.

Engineer Queenan looked at the plans and the short form EAF which both have some housekeeping issues to clean up. Biggest concern would be that the Board may want to have the applicant take up potential screening of the units or fencing, unsure if the existing fence would cover the proposed generator.

Building Inspector Stickle stated there is an 8 foot high fence with privacy slat screening which is existing there now.

Engineer Queenan had questions about noise level as well. Additionally the property line is not shown and it looks like it will be in the existing fenced in area.

Chairman Plato asked the applicant to provide the nearest property line information and the decibel level to be added.

Village of Walden
Planning Board Meeting
December 5, 2016

Attorney Dickover explained that this is a special exception use that is permitted which requires site plans. Presumably the prior site plan approval from some time in the past that Dean is going to get us but he hasn't seen it yet. Perhaps this plan can be part of the prior plan or super imposed on the existing plans as an amendment. Would need to update the Bulk table if it's different now with this use than it was then.

Mr. David stated that Cingular Wireless is AT&T so it shouldn't be hard to get the site plans from the past or to get the original mylars, shouldn't be an issue.

Attorney Dickover added that it needs to be 50ft from the property line and the fence has to have a screening on it which is why the Engineer is asking for that information. This is subject to County Planning approval which will need to be sent to the County. It will be an unlisted item. The Public Hearing can be waived for site plans of this nature. Neighbors are going to be concerned so you can determine whether you want one or not. We would need to do SEQRA before a Public Hearing is scheduled.

Alternate Member Kraus asked why not use propane.

Mr. David replied that it takes up more room and is less evasive over all. He requested the Board consider waiving the Public Hearing as he is from San Diego. They haven't settled on a type of enclosure and he's sure AT&T would be willing to get the higher sound barrier enclosure if the Board suggested.

Chairman Plato asked Dean to research what type of enclosure is there then if it's the same at the last one we would likely waive the Public Hearing.

Member Dore stated he would need to get that information for them and they would consider waiving the Public Hearing but we can't make that determination with the information. If it's similar to what is already there we may not need the Public Hearing.

Attorney Dickover stated that either way he has to come back after we get the response back from the County and they get 30 days to comment so the Board can't grant an approval this evening.

Member Wilkins made a motion to declare the Village of Walden Planning Board as lead agency and to type the project as an unlisted action for the 29 Overlook Terrace, AT&T Emergency Generator. Seconded by Alternate Member Kraus. All ayes. Motion Carried.

B.3 Overlook at Kidd Farm, Subdivision/Site Plan

Jerry Jacobowitz, principal Overlook at Kidd Farm, sent a list of items for the Board to consider as well as a list of approvals that have been obtained between preliminary and now. Present approval is until the end of the year and would like it extended to September 30, 2017 because they need to go to Attorney General for their review and that process is unclear how long it will take there but for sure it's not going to happen in less than 3-5 months.

Chairman Plato commented that we hope you don't need it but would December 31st be better.

Mr. Jacobowitz thanked the Board for their generosity and added that hopefully they won't need it but he would be most appreciative.

Member Wilkins made a motion to extend the approval for the Overlook at Kidd Farm, Subdivision/Site Plan until December 31, 2017. Seconded by Member Dore. All ayes. Motion carried.

Village of Walden
Planning Board Meeting
December 5, 2016

Mr. Jacobowitz stated that the Developers Agreement between the property owner and the Village is needed to make sure various items are covered in the approvals granted. Your attorney had worked on one but they haven't seen it yet but would like to get a draft by December 19th so we can start working on it to get it in shape. It's a matter for you to ask your counsel to prepare and draft.

Mr. Dickover confirmed it's an agreement between the developer and the applicant outlining items for public improvements; sidewalks, water lines, sewer lines, curbing, etc. It outlines the manner in which those items would be built out by the developer including the bonding and maintenance and lays out a roadmap for having those things installed. He drafted one over a year ago and sat in limbo until today and he sent it to Mr. Queenan and Village Manager and the Village Attorney has seen it. It's a good start on it so far and should likely get a draft prepared for the applicant by the 21st. The difficult aspect is the phase planning that this Board had adopted in resolution form a number of months ago.

Chairman Plato would like everyone's input before it goes anywhere else.

Mr. Jacobowitz feels that the idea is that everything we've been working on will be in one place. He feels they should have input before you put it into stone and get everyone involved. He continued that they were approached by Trustees who said they don't want to have the 20% affordable component in the law they want it 10% and we said thank you. We didn't ask for it but it makes sense and more sustainable. Then it went to the Board and he doesn't know what happened there other than someone identified it as something that he wanted which was the kiss of death and it got squashed. Would require a local law change which is done by the Board of Trustees and they would refer to the Planning Board for your review of these Zoning Changes. He is asking the Planning Board to give a letter to the Board that the Planning Board would not be opposed to the reduction in housing affordability local law.

The Board agreed unanimously and Chairman Plato asked the Building Inspector to write a memo to the Village Board stating that they would not be opposed to the change in the 10% affordability change.

Mr. Jacobowitz stated the next items is that he has asked 4 times for street names and he needs to get maps so he's going to pick his own names just to get moving along. He knows the rules so he will pick some innocuous names. He's tired of waiting so he'll come up with names and let you folks change them. The next item on his list is the review of bond estimates. Our engineer will do a take-off from the plans and will assign numbers to them and project them out to cost what they anticipate to do the work. They add an inspection fee and contingency fees which are percentages. Your decision will be based on what your engineer tells you but we have to generate quantities first and then negotiate after that. Some sections are going to be front loaded with cost because of the nature of the plan which will skew the numbers a little bit. If you could authorize the Engineer to participate in that, that would be great.

The Board agreed unanimously.

Mr. Jacobowitz stated they have the list of approvals over time since they got preliminary approval and at the bottom it shows where they are heading where they give conditional final approval and approve the bonding amount and recommend the Developers Agreement. Then the Village Board would approve the Developers Agreement and the bond to execute it. There are a few items they won't issue permits for until the bond and proof of insurance are included for both NYS DOT for NYS Route 208 and Orange County DPW for Coldenham Road. We have an unofficial letter until they get the original report in Albany. That's been waiting until they get their fees. He didn't want to mislead so that's why he double asterisked this on this list. The second item he wants to go back to which is the water line. Mr. Jacobowitz showed the water line on a map from Coldenham Road which comes to Edmunds Lane and goes down Edmunds Lane and then Sherman Avenue. You do not have that same kind of loop on Route 208; it is dead ended there. By putting in a water line from Coldenham through the property to Route 208 you create that good condition to 208 which is already created on the other side; a loop line. Water comes from 2 directions so that if there is a break in the line someplace it doesn't stop the water as it can

Village of Walden
Planning Board Meeting
December 5, 2016

go the other direction to the property. Same for volume and pressure. There are 4 businesses here along this line the biggest one is American Lumber which is on the West side of 208 and they have a sprinkler system there and without saying too much about it they need better pressure and volume because their fire insurance rates are dependent on adequate pressure and supply to protect their business. He wanted someone from there to attend to speak on their behalf but they could not attend tonight. They would directly benefit from this water line substantially to protect their business as well as the other properties which Rev. Van Houten can attest to as he works there and that is his job. Then there is Guardian Storage & the Mechanic business owned by Dimartino as well as Spence Engineering on Coldenham who have similar needs as well. Specifications when they were built was 1,200 gallons per minute at 30 PSI is what they needed to satisfy the fire underwriters at that time. They say they could benefit from this as well with better pressure. He's discussed with the Walden Fire Department and they support the installation of this line and have all sent written approvals in support of this line as have all the others he's mentioned did as well. This is a 10" water line which was approved in the beginning and is designed to do what he said it would do. They don't need it for their project at all. We could have gotten away with an 8" line but we all agreed for a 10" line. There is a program available to get funding for that line if it would benefit nonresidential users and would support affordable housing. It costs the Village nothing as the local share would be paid by the property owner and maintenance of jobs and the economic benefits would come from the improved service to the commercial buildings all around the project. They asked the Village Board to authorize the approval of the application to be submitted to New York State for this grant to pay for part of this water line. Part of the water line would be paid for by the property as the local share and will charge the Village nothing. The lines would belong to the Village and would be built to the specifications of the Village Engineer. So this request hasn't gone anywhere and he doesn't know why other than the escrow issue to the Planning Board that was going on here. No one ever answered him on why it stopped. We plan to go back to the Board because it makes sense. This project stands on its own regardless if the project gets completed or not; especially if we get a grant to pay for it, it benefits everyone, the Village gets a great benefit out of it.

Member Wilkins asked if the water line would be built before the residential phase is built and if they get the grant would they put the entire line in.

Mr. Jacobowitz replied yes, whether or not we ever build anything else. There is a section in the grant that says it can be a not for profit but the state is going to ask what the Village's stand point is and it will end up being part of the Village's infrastructure so it makes sense for them to have a part in it.

Member Dore stated she feels it could be more of a benefit to the Village if the water line is done in phase 1, not phase 2.

Mr. Jacobowitz asked them to recommend to the Board that they approve this grant as they should jump at the chance to have a free water line improvement.

Member Wilkins stated they can't approve this; he needs to go back to the Village Board for that kind of approval.

Mr. Jacobowitz said that he plans on it; he is just looking for the Board's recommendation in favor of the grant submission to the Board of Trustees. There is a lot of money in this deal for all involved including the Village in tax revenue, parkland fees, building department fees, etc. Not just the developer benefits from this, he's already rich, right. Everyone's counted his money already. It's important that the Board understands what he's asking should the Village Board ask for your input. The final thing he wants to talk about tonight is that at the last meeting he was not present at but he was told there was a vote that the escrow had to be paid and that was it, take it or leave it.

Chairman Plato stated it wasn't quite like that.

Mr. Jacobowitz said he understands the game, it is not new to him.

Village of Walden
Planning Board Meeting
December 5, 2016

Chairman Plato replied it is not a game at all.

Mr. Jacobowitz continued that he is personally offended by this.

Chairman Plato replied that he is offended by his letter to the Planning Board insinuating that the Board thought you weren't going to pay. We didn't say anything of the sort.

Mr. Jacobowitz he can understand what he said but he asked the Village Clerk to give him escrow account information on anything that has come before this Board in the last 5 years.

Chairman Plato asked who has put up a project this size in the last 5 years.

Mr. Jacobowitz replied that is a good question; Thruway Market. The Village paid \$55,000 to the Engineer and Attorney and they had no escrow and we have paid you \$28,110.44. They have double of what we have with no escrow agreement. For you to take the position that we are somehow bound to an escrow agreement; why didn't the Thruway project have the same escrow?

Chairman Plato replied that he agreed to that escrow agreement.

Mr. Jacobowitz agreed that is true, but why didn't you as the same thing for the Thruway project.

Member Wilkins stated that they are not talking about the same thing. You are not comparing apples to apples. This is a housing development and is a big project. You agreed to it for day one.

Mr. Jacobowitz stated that he will live with the escrow agreement but you don't live with the escrow agreement. The Board is in breach of the agreement, read it and you will see that you did not do anything in the agreement you were supposed to do. How many vouchers have you approved from your Engineer or Attorney; none. He is not looking for a fight but he is offended by this and not looking for a headline in the newspaper.

Chairman Plato asked why he was grandstanding.

Mr. Jacobowitz stated because he is offended that you have stated that they must toe the line on an escrow agreement and one else does. Not a single applicant has come here has had an escrow. The Board can require it; it's in your law, but you didn't do that. If you say it's because our project is a big project we've only had \$28,000 in consultant fees and the Thruway project had \$55,000 for which you had no escrow.

Chairman Plato stated there is a big difference in the projects, one is an ongoing business which is established there, and it's not the same.

Mr. Jacobowitz replied, so what. Businesses don't go bankrupt? The fact that it's a supermarket no developer went bankrupt. He wants this escrow thing resolved somehow and you didn't allow him the chance to discuss it; you never told him you were discussing it.

Chairman Plato stated that at the last meeting he attended they went outside and talked about the escrow issue and you said you would clear it up next week and you didn't do it.

Mr. Jacobowitz asked didn't do what.

Chairman Plato replied that he said he'd take care of it next week and he didn't do it; so how good was your word on that.

Village of Walden
Planning Board Meeting
December 5, 2016

Mr. Jacobowitz said he did take care of it; he asked the Village Clerk for the information and it took 4 weeks to get the information.

Chairman Plato said he didn't contact him and say he's going against what he said because he found this information; you didn't do it.

Mr. Jacobowitz agreed, he should have done that. It still stands that you have 2 standards here and one standard is for me to jump through hoops and you don't make anyone else jump through hoops and I resent it.

Chairman Plato stated he totally disagrees.

Mr. Jacobowitz stated that he apologized if he offended anyone; he apologizes for anything he may have said to offend anyone but he is offended by the way that this whole thing has been conducted and sticking it down his throat. Not letting him come to the meeting; the Village Board won't meet with him; and some guy from Warwick comes in that you never heard of and ran up \$55,000 worth of bills and do nothing about it. He doesn't think that's fair. Everyone can go home and think about it or forget about it, whatever you want to do it, but he had to say something because he doesn't think it is right. And as far as the agreement goes, is that going to be there until his grandchildren die? You are in breach of it. He wants the agreement terminated, you haven't done one thing you are supposed to do as a Board; read it; he's not making it up. This isn't how to make friends and influence people he acknowledges that but you have to appreciate that he is really upset about it because he's wasted 4 months here that we will never get back all over money for which there is not real risk.

Chairman Plato stated over a minimal amount of money considering what the project is worth. Don't complain about the 4 months the ball was in your court.

Mr. Jacobowitz stated \$55,000 and you don't require an escrow but for me you require one, it's just not right, sorry if you think it is but it's not. He will be back many times with a smile, hopefully you will have a smile. This is not an easy project to do, it's harder than the Thruway shopping center and he knows because he did that before, that was his project. He knows that this one is a hell of a lot more challenging but the risk is no greater because you are not protecting yourself against people you don't know and you are protecting yourself from someone you do know. Have a good holiday, good health in New Year; he'll be back to see you again and hopefully move forward.

C. DISCUSSION ITEMS: None

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

2. COMMUNICATIONS: None

3. EXECUTIVE SESSION: None

4. MEETING ADJOURNED at 8:56 pm.

RESPECTFULLY SUBMITTED
December 5, 2016
Tara Bliss, Village Clerk
Planning Board Secretary