

Village of Walden
Planning Board Meeting
October 18, 2017

Chairman:	Stan Plato	Present (late arrival)
Members:	Jay Wilkins	Present
	Lisa Dore	Present
	Jason Trafton	Absent
	Zac Pearson	Present
	Larry Kraus	Absent
Alternate:		
Building Inspector:	Dean Stickles	Present
Village Attorney:	Robert Dickover	Present
Village Engineer:	John Queenan	Present
Secretary:	Tara Bliss	Present

Acting Chairman Wilkins - Called the meeting to order at 7:03pm.

Member Dore made a motion to enter into attorney client session to receive legal counsel. Seconded by Member Pearson. All ayes. Motion carried.

Chairman Plato arrived.

Member Pearson made a motion to reconvene the regular meeting of the Planning Board. Seconded by Member Dore. All ayes. Motion carried.

1. **APPROVAL OF MINUTES:** None

2. **BOARD BUSINESS**

A. **PUBLIC HEARINGS:** None

B. **FORMAL APPLICATIONS:**

B.1 12 Edmunds Lane, Site Plan Amendment

Applicant was not present.

B.2 132 N. Montgomery Street, Walden Glen, Site Plan

Applicant was not present.

B.3 Overlook at Kidd Farm, Applicants Update

Jerry Jacobowitz, owner of Overlook at Kidd Farm, explained he had 3 things he wanted to cover tonight including the Developer's Agreement and the comments for the 3 items that need input and then your position is to review and then report to the Board of Trustees. Those 3 things he'd like to discuss to get an idea of where the Board is. The Village Board approved Local Law 9 last night and the result is we don't have to revise the site plan from the one that you have approved. Approval is until 12/31/17 and we will need an extension and he doesn't want to wait until the last minute so he can get a letter to Dean and can review at the November. The third thing is that we are not inventing the wheel here. Winding Brook Development went through the process some 30 years ago. After we finish the Developers Agreement and have conditional final approval then we have to put it in a book that goes to the NYS Attorney General Bureau of Securities because we will have an HOA and even though the HOA is not for profit they still have to file under the Martin Law. It is extensive documents telling the potential buyers what they need to know about the project. It is a disclosure requirement imposed by the state highlighting the risks of the property/project. The Village reviews and approves this document so he is giving you a heads up. Vested rights meaning the owner has the right to continue the plan for a period of time. State law is 3 years but can be longer based on your decision and the Developers Agreement will reflect that. It means that for 3 years the project is protected against a change in zoning. At the end of 3 years a change could be made in the zoning could be contrary to what the plans are which doesn't sound fair so the courts say if you have put money in the ground and have invested in the municipality the court will grant vested

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rights. No one will start a project that will take 5 years knowing they will have to come back in 3 years and go to court. There is a whole series of things that have to happen at the same time and some of those are way out. So the developer is always going to have more money beyond the section they are working on because of the approvals. His opinion is there will be vested rights but if the Village Board at the time says no then the rug could get pulled out from under the project. We feel that 5 years is rational because 204 units divided by 5 is 40 a year or 3 a month which is a reasonable marketing plan. The second item is the completion date and the language concerning the completion date is limited in time to 3 years and based on your requirement for each section you won't be able to finish in 3 years. So we are starting out knowing we can't get finished in 3 years which is not practical and has same consequences for both the lender and builder. They can come back for an extension but who will be here then so that is a risk that a lender and potential builder that he doesn't feel they will take. Last item is a technical legal issue with the provision that says any expense incurred including legal expenses necessary to administer the approval are entitled to a lien against property. That means a claim against property there of record known to the world and anyone who lends or buys property is on notice that there can be a lien for those items. It is not the end of the world but what if that lien is ahead of a mortgage; that is a tough sell. There is no dollar limit and it could end up being any number and the mortgage lender thinks he starts out with a first mortgage but they are not first because taxes are ahead of them by state law. Lenders are not going to be happy to risk this knowing there is a problem. They don't object to the lien but it can't be prior to a mortgage or a contract. The Village has a way to deal with it in an administrative matter through the Building Department so the likelihood that someone wouldn't be paid wouldn't really happen.

Chairman Plato agrees and just doesn't see how it's any different if there is a tax lien. He feels it is prudent.

Mr. Jacobowitz said it is as good as a tax lien. A builder doesn't build the house now the buyer's down payment is at risk because the Village would come in ahead of him. Let's say the bill arises between the building permit and C.O. Many things can come up in construction when trying to implement plans. For the Engineer there is a 5% fund put up to cover those expenses so the likelihood of that is minimized by that money in the account but the other expenses and legal expenses, if any, is what we are talking about. Buyer would want to be sure they get that back if the house doesn't get built. Lien should be subordinate to the vendee's lien for down payment. You have a level of protection and the administration can make sure it gets paid.

Member Wilkins commented that when a buyer signs a contract, it says in the contract that it will be built within x number of days.

Mr. Jacobowitz replied yes and that will all be in there. Really looking at if something goes askew. Any number of things can intervene in the deal and the buyer wants to know his money is protected.

Member Wilkins commented that you could also have another lien if say a supplier or contractor is not paid.

Mr. Jacobowitz replied yes, if not paid but those are not superior to the bank and the vendee's lien. In a pecking order they are not in the top, the buyer would be at the top to get their money back.

Chairman Plato stated that the Village has to be protected so we want to take that 1st position and it is prudent to do.

Attorney Dickover commented that the language says that it is the unpaid obligations that are liens so if all obligations are paid there would be no lien to worry about.

Mr. Jacobowitz is concerned in the situation where it doesn't go to closing. If the builder defaults.

Attorney Dickover replied if he defaults the liens are critical to the Village.

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Mr. Jacobowitz replied yes but it is also critical for the lender and the buyer and you are putting both of them in the position where there is an unknown amount ahead of them.

Attorney Dickover asked how they could jump in priority if the builder defaults.

Mr. Jacobowitz explained the offering plan must recite all this. The bank lending money will be on notice and know it.

Attorney Dickover said they could attend to it at the construction financing waiver of lien at the closing.

Mr. Jacobowitz replied that is assuming it is all going to run smoothly. The buyer puts money into escrow are covered/protected. Say the Village has a bill that is not covered by the performance bond, that bill will be a lien in addition to filing everything else that gets filed and the issue is who is first the vendee or the Village. It came after the vendee's lien so normally first in time is first in right. We are going to have that situation where the vendee is not going to know what lien there can be and risking that it can be ahead of them. There is nothing wrong with the lien but problem going first as its public record in the offering plan in the approvals you have.

Attorney Dickover stated that his concern then is that the lender and/or buyer will be losing priority as they have knowledge of a possible unpaid lien. Lender concern is addressed by the waiver of lien or letter that would pay it. Vendee's lien would be protected by an escrow which protects the vendee for the value of the down payment. They may no longer have a prior lien with respect to the premise but they are protected by the escrow deposit unless the money would be released to the builder in the offering plan.

Mr. Jacobowitz said it is possible that it could be in there. The number we are talking about is not a big number he does not anticipate big legal expenses it's the other expenses and he doesn't know what that is. You have a cash deposit for engineering, a performance bond for the improvements, and attorney fees are not covered in that, ok want to cover that. Other expenses leaves it left open to the unknown.

Attorney Dickover confirmed that he would concede that the payment of all unpaid obligations are paid and that this would be added to the Building Inspectors check list before permits and C.O.s are issued.

Mr. Jacobowitz replied sure.

Attorney Dickover replied that seems to him that might be acceptable not normally in the check list but if you are willing to concede that be a condition to the issuance that it may resolve the issue.

Mr. Jacobowitz said he had a meeting with the Trustees and he used the 5 year explanation to try to provide a timetable we will try to keep to. So if we can have a 5 year, which is a fair number.

Chairman Plato confirmed that it is for protection from zoning.

Member Wilkins stated he can come back in 3 years and get an extension.

Mr. Jacobowitz replied yea but who will be here then. They don't have to grant said extension and they would be at their mercy with all the money in the ground of whoever is the powers that be in the Village at the time. It took 6 months to adopt a local law. You have all these protective devices. Plan has been worked on for years and is a good plan so why are we going to say it is no good after 3 years.

Member Dore stated that her concern is that the 1st phase is the commercial building which alone can stand by itself. It doesn't give you any incentive to keep moving on and then we are stuck with an unfinished plan.

Mr. Jacobowitz said that section 1 from Route 208 is not just commercial, it includes 24 units of housing in that section. He is 99% sure because that is the perfect spot for the models.

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Member Dore said that it stands on its own it is not until you start more sections before we see improvements.

Chairman Plato asked what the downside to the Village is.

Attorney Dickover replied a significant zoning change that may not allow this to occur and the developer not having the benefit of the money and time put in. The same issue with the completed year just worded differently. Code requires completion within 36 months both are based on state code and Village code.

Mr. Jacobowitz does not feel that 66 units can be done in 1 year in Walden with today's market.

Attorney Dickover feels that 5 years is not out of line.

Member Dore said that if they just do phase 1 you don't have vested rights. No vested rights and let it expire if you don't start section 2 then we are left with an unfinished project. Once you break ground in phase 2 you have it but she doesn't see the difference between 3-5 years.

Chairman Plato doesn't see a disadvantage to the Village going to 5 years vs. 3 years.

Member Dore added that we would have no water line, no clubhouse, and no road to Coldenham.

Mr. Jacobowitz said that once the model are up you become a captive of your own success. You already have a sequential of the sections. May very well be the one on Coldenham Road, wherever that is we have to put the water line in and stretched out within a short time.

Chairman Plato asked if we could require that in the first 3 years you had to do 2 sections.

Mr. Jacobowitz replied that he doesn't want to agree to that but if we had to we would do the smallest section we could find in the whole section for the second part otherwise would be outrunning the market.

Member Pearson said but then the water main is in the second section.

Mr. Jacobowitz said you get the water line but you don't have to finish the second section.

Chairman Plato said the concern is getting the full project done in 3 years but sounds not feasible. If they do 1 section and nothing else but locked the whole area up for 5 years. If they do the water main in 3 years they would be more apt to do 5 years otherwise its 3. It sounds reasonable to him. That gives you your 5 years and we get our water main.

Mr. Jacobowitz is not a good idea if we never go past the first section.

Chairman Plato agreed, not for you true but the whole project is probably not a good idea if you don't do anything beyond section 1.

Mr. Jacobowitz asked if water main is done in 3 years they get vested rights and completion.

The Board confirmed.

Mr. Jacobowitz said ok. He understands and is optimistic it will be fine. He asked if we could get this done tonight so it can go to the Village Board.

Attorney Dickover has one other thing we both may have missed. We had drafted that the cost of the Village inspection fees would be paid at 5% of the cost of improvements being inspected and you asked it read at rates not to exceed the same as charged by the Engineer. Not sure that was resolved.

Engineer Queenan stated that typically you can do it 2 ways. One is to post 5% of the phase you are constructing based on costs, we haven't gotten those costs yet so we don't know the amount. Or you could deposit a certain amount of money into an account and when it gets down to a certain amount you replenish. But again, we don't have those numbers yet.

Mr. Jacobowitz said he wasn't aware it was a choice.

Engineer Queenan replied that it wasn't we put 5% you came back and said you were going to do the cost estimates.

Mr. Jacobowitz asked if the 5% goes over do you get it back.

Engineer Queenan replied it can go both ways.

Mr. Jacobowitz replied that he would do the 5% and refund what is not needed to be used. The builder has an inducement to do the right job.

Attorney Dickover said we would leave it a fee equal to 5% escrow and drawn against and if balance remitted by section. These are relatively simple changes. We can do this and draft this and then pass onto Village Board for their review if the Board is comfortable with it.

Member Pearson made a motion to approve the Developer's Agreement for Overlook at Kidd Farm with the proposed and agreed upon changes. Seconded by Member Wilkins. All Ayes. Motion carried.

Mr. Jacobowitz thanked the Board.

B.4 Architectural Review, 110 West Main Street, Exterior Painting

Chester LeBaron, property owner, spoke about the colors they would like to use to paint the building.

William Stay stated he would be doing the work. They plan to replace the front trim, they are not changing it just putting new up. It will be Pool Party, 79 BG for the Building and Clipper Ship Blue, 04-BB for the trim color, both were taken from the Benjamin Moore historical colors.

Member Wilkins made a motion to approve the Exterior Painting for 110 West Main Street as presented. Seconded by Member Pearson. All ayes. Motion carried.

B.5 Architectural Review, 41 Main Street, Exterior Sign(s) and Painting

Jennie Leonard owner of Kamala Yoga Studio explained that she picked out 3 colors for the front exterior painting from the Benjamin Moore historical colors. Monterey White, HC-27, Yarmouth Blue, HC-150, and Whipple Blue, HC-152. She presented the rendering of the window sign and the proposed painting area.

Building Inspector Stickles confirmed that the signage does meet Village code.

Member Dore made a motion to approve the window sign and exterior painting for 41 Main Street as presented. Seconded by Member Wilkins. All ayes. Motion carried.

B.6 Architectural Review, 78 Oak Street, Exterior Sign (Thruway Home Centers, Inc.)

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Les Concors owner of the Thruway Shopping Plaza explained the hardware store is going from a True Value to an Ace Hardware. The back ground will be black, Ace will be in red letters, and Thruway Hardware will be in white letters. They are looking to replace one sign and add a second sign with their standard brands such as craftsman tools etc. underneath it which is approximately 8 inches tall by 96 inches long. The sign would be the same material as the current sign.

Building Inspector Stickles explained he didn't know if the brand sign actually fits the Village sign code.

Attorney Dickover will look into the brand sign underneath and get back to him.

Member Dore approved the Exterior sign for 78 Oak Street for Thruway Home Centers, Inc. Seconded by Member Wilkins. All ayes. Motion carried.

C. DISCUSSION ITEMS: None

D. INFORMATION ITEMS: None

E. CORRESPONDENCE: None

3. COMMUNICATIONS: None

4. EXECUTIVE SESSION: None

5. MEETING ADJOURNED at 8:54 pm.

RESPECTFULLY SUBMITTED
Tara Bliss, Village Clerk
Planning Board Secretary