

Conklin Planning Board – Monthly Meeting – December 18, 2017

MEMBERS PRESENT: James Hauss, Chairman, Dan Smith, Lyle Fassett, Chris Ostrowsky

ABSENT: Sharon Platt

ALSO PRESENT: William Graves, Attorney – Coughlin & Gerhart
Bill Dumian – Town Supervisor
Mary Plonski, Code Office
Renee Hauss, Secretary
Bill Farley, Town Board Liaison

VISITORS: Joe Tuzze, Jr.
Joe Tuzze, Sr.
Jade Ebeling
Stephen Schilling
Alan Pope – Attorney
William Osborne, Sr.
William Osborne, Jr.
Ellen Osborne
David Wagstaff
Chris Kehoe
Judy Kelly
Tom Kelly

7:00 PM Chairman Hauss called the meeting to order.

Agenda Item #1 Presentation by Allan Pope plans for expanding JVA Delcing

Alan Pope, attorney representing JVA Delcing, presented to the board their plans to modify the original Site Plan. The modifications are centered on new entrance/egress routes onto Hardie Road. The present plan created issues for local residents so the town and JVA investigated alternate solutions to address the issues being realized. Brady Begeal identified an alternative route based on a highway law that allows anyone that has private property to make an application through the local courts to establish a private driveway. It is similar to a private person's emanate domain instead of a government's emanate domain. Alan Pope started working with Brady Begeal on the application process for the emanate domain with assistance from Town Supervisor Bill Dumian. A hearing date was set in January to present proof, in front of a Judge and Jury, the need of a private taking for a driveway that goes across a land lock piece of property which if owned by Thomacy Inc. out of New York City. It will also go across ZMK and VanDeusen property out to Progress Parkway. Once papers were filed and served on the Thomacy property, an easement was worked out that involves the Tuzze's and the Thomacy property along with ZMK and VanDeusen property. The agreement is 99% complete with a modification request by Thomacy. All easements should be in place in a week or two which will allow the construction of the roadway across all named properties onto Progress Parkway. This action will allow JVA Delcing to come back to the Planning Board with a revised Site Plan potentially increasing the amount of truck traffic presently using Hardie Road. Progress Parkway empties out on the Corporate Park which already has 24/7 truck traffic. JVA Delcing will have to go through a revised SEQR since heavy truck traffic will be exiting a different way along with a revised Site Plan showing ingress and egress.

Attorney William Graves clarified that he and the Planning Board have not made any recommendations but have only been observing the process to make sure that the process is preserving the town's interest. Mr. Pope also specifically pointed out that Brady Begeal and Town Supervisor Bill Dumian's involvement were only that of representing the town with no involvement in the negotiations with the property owners. Mr. Pope stated that he is trying to have things formally presented to the Planning Board in January but February would be easier as there is anxiousness to get this issue addressed.

Chairman Hauss asked Mr. Pope if he knew when he would be filing the 239 as the Planning Board could not make any decisions until comments are received back by the county. It could take the county up to 30 days to respond which is a gating factor in the process. Chairman Hauss stated that the Planning Board would be looking at this as an addendum to

the originally approved site plan. All of the same rules will apply which will include Planning Board's review of the modified site plan and whether or not the Planning Board recommends a public hearing needs to be held. Alan stated that he thinks he could have a formal application to the town by the second week of January which would then go out to the county. County comments would not be back in time for the January 22nd meeting but maybe he could do an informal presentation for January's meeting.

Attorney Graves reiterated that the January 22nd meeting would be a site plan application and the 239 review would have been submitted to the county prior to this meeting. The comments from the county should be received back by the February meeting. Chairman Hauss stated that the January meeting would be a preliminary review of the site plan as submitted without the ability for the Planning Board to make any decisions until the county's response is received. This will enable the Planning Board to make a decision in January whether or not a public hearing will be needed for the February meeting. Chairman Hauss also stated that until this new site plan is approved, JVA Delcing needs to be operating under the originally approved site plan. Attorney Alan Pope agreed and stated that yes JVA Delcing would be operating under the currently approved site plan. Chairman Hauss commented "right answer."

Town Supervisor Bill Dumian stated that so everyone is clear, properties are secured and the roadway will be built weather permitting assuming the amended site plan is approved. Bill also spoke to the residents on Hardie Road to make them aware that we are in the winter months and it could be spring before this project is complete. Alan Pope assured Bill that the properties are secured for this project to go forward. Alan also stated that because of the weather, the clearing of the land and construction cannot start at this time because of safety issues. If construction were to start in April it may be close to summer before the project is complete.

Chairman Hauss stated that he knows that this has been a sensitive subject in the past. The only thing that the Planning Board can do is to make a commitment that this will be reviewed taking into consideration all concerns that have been talked about in the past and to make sure that this project is good for everybody on both sides as well as the rest of the town.

Ellen Osborne asked that when the new road opens up what will that do to Hardie Road. Will you be shutting down the Hardie Road access or will both roads be used? Alan stated that this process has not been reviewed yet but he does not think that they will completely shut down the use of Hardie Road. The plan is to have the heavy truck traffic going out the Progress Parkway exit.

Chris Kehoe of Hardie Road stated that he sees this as an expansion of truck traffic. Originally it was supposed to be 6-12 trucks per day then grew to 40-50 trucks per day without approval. 15 trucks per day turned into 40 trucks per day right from the start and if this is prorated this may result in about 200 trucks per day. Chris then asked who is going to control the hours of operation. Trucks have been in here at 3:00 a.m. and run until 11:00 p.m. at night. Chris did some research and there are laws that protect people who live across from businesses like this. These businesses are supposed to have reasonable hours of operation because the people who live across the street from these businesses have the right to peace and quiet at some point during the day. So at this point, this business is running almost 20 hours per day. Now in the summer when the trucks are not in and out of there all the time, there are still machines running until 8-9:00 p.m. at night. So how is this going to be addressed by anybody?

Chairman Hauss responded that he did not know how to answer that in its entirety. The Planning Board needs to see what the new plan is and then after that it's a matter of enforcing the new plan. Chris asked who is responsible for enforcing the plan and Chairman Hauss stated that the town is responsible for making sure that the business is operating to the approved plan. Chris then asked who do we turn to when the business does not do what they say they are going to do. What is the next step?

Town Supervisor Bill Dumian responded that once the new revised site plan is in place and approved, the town will make sure that whatever is requested and approved is exactly what happens with the operation. Chris stated that the residents have lived with this operation for 5 years and now this business is asking for more. Bill stated that he understands the concerns and that he has been working very hard to make sure that new plans get put in place and that the new plans are followed. The town has asked the business owner for new plans and the business owner is going to provide the town with new plans. Chris just wanted to point out that with this request of a new road, the residents could see that this is going to be one big circle with a large increase of truck traffic. Chris looked to Alan Pope for answers and Alan's response was that he was not here for a debate, but that the business owner was present to explain to the Planning Board the changes that are being requested to the existing approved site plan. Town Supervisor Bill Dumian intervened the discussion between Chris and Alan and stated that tonight needs to be a constructive meeting. Bill understands everyone's concerns but stated that he unfortunately sits in a position where not only does he have to have concern for the residents but also

for the business owners. Again, the town has asked the business owners for a new site plan and the business owners are providing this to the town. This has been in the works for long time but I have also made sure that working with the business owner we will have a site plan in place that will reflect the true scope of the operation. Once the new approved site plan is in place the town will make sure that the new approved site plan is followed per the modification.

William Osborne Sr. presented to Town Supervisor Bill Dumian the amount of truck traffic that has been occurring. Mr. Osborne state that Tuzze does anything he wants to do and does it anytime he wants to do it regardless of what the approved site plan states. Mr. Osborne feels that an approved site plan does not mean diddly s**t to Tuzze. Again Bill stated that he would agree with Mr. Osborne except that he has one problem with this statement and has to play devil's advocate. The town has been living with this situation since Bill took over as Town Supervisor. This situation was created a long time ago. The town has requested the business owner to provide a revised site plan and the business owner is now providing a modified site plan. Tonight's meeting needs to be very constructive in working towards a modified site plan.

Mr. Osborne stated that in the meantime, truck traffic is not supposed to begin before 7:30 a.m. and the truck traffic is supposed to cease by 4:00 p.m. Saturday morning there were 10 trucks in front of Mr. Osborne's home. If Tuzze says anything different, he is lying. Bill Dumian stated that unfortunately this meeting is not for individuals to argue. Mr. Dumian invited everyone to the meeting so that everyone could understand that new plans were going to be put in place. This invitation did not have to happen. This was not a public notification issue. Bill wanted everyone to come to the meeting to hear firsthand what was being planned. Mr. Osborne stated that in the meantime, why not make the business owner operate to what is on paper and do what they are supposed to be doing. Tuzze should be operating during the hours that are approved and with the number of trucks that are approved. The business should not be running at all hours running 40 trucks in and 40 trucks out. Bill Dumian stated to Mr. Osborne that there is a plan and the town and business owner are moving forward. The town is focusing on the new plan and is not looking back. The town is taking the approach that they are going to work with the business owner to make sure that this situation gets corrected and resolved. Again, the town asked the business owner for a modified site plan and the business owner is providing it to the town.

Chris Kehoe asked that when the business owner proposes the road and comes in with the new site plan will it be put in writing the hours of operation and how many trucks will be in and out or will the business continue to do what they want to do regardless of the new site plan. Bill Dumian stated that the new site plan will have hours of operation and the number of trucks that will be operating. The business owner, Mr. Tuzze, has been told that once the new site plan is approved the business needs to operate according to the new approved site plan. Bill stated that the expansion of the business is not a bad thing. Chris agreed but wanted to make sure that residents know that the business will be required to operate according to the approved site plan. The town wants to make sure that everything is not taken into a negative direction, but in to a positive direction. Chris just wants to make sure that there are reasonable hours and a reasonable amount of noise that the residents have to live with.

Chairman Hauss stated that Bill cannot speak for the Planning Board. Chairman Hauss stated that with every site plan reviewed and approved by the board contains ingress, egress which includes truck traffic, hours of operation, number of employees. This is the minimum requirement for a site plan. Whether or not the Planning Board has controls and thresholds established, like the board did with Dick's, are things that the board reviews and determines the need to mitigate. Chris stated that he understood, but the residents have been hearing for five years that the site plan was approved for one thing and the business owner was operating on a different scale. Chairman Hauss stated that the board understands, but asked the question to Chris "Who has been the biggest advocate for you to have a voice in this forum to voice your opinions, your feelings, and your disgruntlement with this? The Planning Board has given you a voice on this even though the Planning Board has no power of enforcement. Planning Board wanted to make this fair and equitable." Chairman Hauss then asked Chris to give the Planning Board a chance to come up with a plan, Chris interrupted and Chairman Hauss stated "let me finish now. You have had the floor for five years." Chairman Hauss stated to Chris that he needs to give the Planning Board a chance to make this situation right. It needs to be fair and equitable between the town constituents and the businesses here. It needs to be something that is enforceable, that is not subjective so that we can move forward. The Planning Board cannot take back anything that has been done in the past. If you, Chris, want to stay in the past then we will not be able to move forward." Chairman Hauss asked that Chris give everyone a chance. Both Chris Kehoe and William Osborne Sr. left the meeting in anger. Bill Dumian made one last statement saying that he needed to do his job and the business owners need to do their job to make this situation right. Moving forward whatever is in place will be the new plan. Bill wanted everyone to hear the new plan so that all can move forward.

Stephen Schilling asked if he could speak for a moment. Steve stated that he and his wife live at the end of Progress Parkway. Mr. Pope you stated earlier that Progress Parkway comes out onto the corporate park. It does not. It comes out on Powers Road and there are residents all around there. Progress Parkway is not a two lane road. It is a very

narrow road. My family and the immediate families in the vicinity all have children. Not only does our family use it for going down to the park but so do many other families on Powers Road walk along there to go to the park. The other thing to speak of is that I know when other businesses came into the Industrial Parkway the agreement was that these businesses were not to use the Powers Road exit off the Industrial Park to get back on the highway. But the businesses do use Powers Road exit. How is this road going to handle the increase in truck traffic to what truck traffic there already is? How much more dust and noise are we going to have. Stephen has lived there for 10 years and has already endured noise from the businesses that are currently operating in the area. Property behind Stephen's property is zoned light industrial and currently UPS uses the road a lot. All other property on Progress Parkway and Powers Road is zoned residential, so you will have trucks driving through a residential area to get to the highway. Has there been a traffic study done for the truck traffic in this area? Mr. Schilling wanted to correct Mr. Pope's statement that Progress Road connects to the Industrial Parkway and it does not. Progress Road connects to a residential area on Powers Road. There have been problems with the families on Hardie Road. Now you are going to have problems with families that have children so Stephen feels this is going to open up a whole new can of worms. It has been proven that operations like this in areas where there are families is at higher rate of respiratory disease. You see signs all over Conklin that this is a great place to live but it seems to me that Conklin is a great place for business. I would like the board to take these issues into consideration. Chairman Hauss stated that once the board receives the modified site plan it will be open for residents to review and the board will go through the review with residents. It is the Planning Board's job to take into account all local laws and requirements along with the feedback and comments from the town. It also requires a commitment from the businesses to live up to the commitments that they are making by the plans and to abide by them. This will be a partnership that has to go both ways or this will not work again. The board looks forward to working with Bill and the rest of the town to make this a workable situation. Chairman Hauss directed his comment to Mr. Tuzze. We have had this discussion in the past and we will have it in the future. The board needs to see you make the commitment to come up with a viable plan that enables JVA Delcing to expand the business and we agree on the terms, then these will be the terms. Alan Pope and Mr. Tuzze stated "we agree." Let it be known that, on the record, the business owner agreed to operate the business according to the approved plan. Bill Dumian stated that there has been a substantial increase in truck traffic on Route 7. This used to be an agricultural town but now there are very few farms left. But since the Industrial Park was built in the 80's this is no longer primarily an agricultural town. The scope of our town has changed based on what we need to do as a town. It is unfortunate but everywhere where this is residential there is commercial. Chairman Hauss stated that he has lived here for 30 years and has seen many changes. The reason why Mr. Hauss is on the Planning Board is because of a personal commitment to the town that the growth that has happened around him and its effect would never happen again the way it did. Mr. Hauss has been on the Planning Board for ten years and thinks that the Planning Board has done an excellent job establishing viable site plans. The board has found reasonable balances as long as everyone follows the rules.

William Osborne Jr. stated that when the new plan is submitted and accepted there needs to be a way to enforce the plan. If the business owner goes away from that plan, the town needs the ability to shut down the business until the business agrees to operate their business to the approved plan. This has not happened in the last five years. There has been no enforcement of the approved plan. If there is no way for the town to enforce the approved plan this will happen all over again.

Chairman Hauss stated that the goal is to come up with a plan that all can work with.

Chris Ostrowsky motioned to approve October 16, 2017 meeting minutes and **Lyle Fassett second**. All present board members approved.

Chris Ostrowsky motioned to adjourn meeting **Lyle Fassett second**. All present board members approved. Meeting Closed 7:40 p.m.

Next Planning Board Meeting is scheduled for Monday, January 22, 2018 at 7:00 PM.

Respectfully Submitted, Renee Hauss