

**VILLAGE OF MONROE
PLANNING BOARD
MEETING MINTUES**

**TUESDAY September 27, 2022
7:00 P.M.**

DRAFT

Present: Chairman Boucher, Members Allen, Hafenecker, Karlich, Kelly, Umberto, Iannucci
Attorney Cassidy, Engineer Barber, Traffic Consultant Connell

Late: Member Kelly

Chairman Boucher opened the meeting at 7:00 p.m. with the Pledge of Allegiance.

On a motion from Member Allen and seconded by Member Hafenecker it was unanimously resolved: **to open the meeting.**

208 Business Center:

Chairman Boucher stated he was not at the last Board meeting on September 12, 2022. Chairman Boucher asked if Board Attorney Cassidy could explain about the vote that was taken at the last meeting and why we are discussing it again.

Board Attorney Cassidy stated at the last meeting there was a lengthy discussion and at the end of the discussion there was a vote. However due the limited number of Board members, the vote was split three to two. After the meeting the applicant's attorney stated it is a seven-member board and a majority of the full Board is needed. The majority vote requires four votes either for or against. Therefore, the applicant requested to be heard before the full board.

Board Attorney Cassidy stated the Board has been asked by the Village Board to make a recommendation to the Village Board on if this project should give a wavier during the moratorium.

Board Attorney Cassidy stated the application materials were available for the Board members to view on the Board's OneDrive. The applicants Attorney, Traffic Consultants and Engineer were all present for the Board to ask questions to. The Board needs to decide if this project is in position, and meets the criteria, for moving forward during the moratorium. The Village Board will make the final determination if this project will get a wavier or not. The Board is here to answer the narrow question of what the Board would like to recommend, to the Village Board, either for or against the wavier.

Chairman Boucher stated he has been on the Board from the beginning of this project in late 2018. He stated over the years the applicant has invested a lot of time and effort into this project. During that time the Board has had a great relationship with the applicant. The applicant has stayed within all the Village codes and complied with all the Boards requests. The Board has no other project before it, that are this far along in the process. This project has been going

on for four years and the applicant has spent a considerable amount of time and money on this project. While they have gone through a great deal of the process, they still have a great deal still to do. It is my belief that our Board's role is to help the Village Board in any capacity we can. Changes to the zoning and code changes are not changed by this Board. This Board makes sure the applicant operates within these codes.

I understand looking at this from the applicant's point of view to be this far along and being stopped is frustrating. Looking at where the project currently is, I believe that the Zoning District, for this project, will not change after the moratorium is done.

When this project started no one liked this project as the area where it is going is open space. This project will change that. People came and moved into the Village for the open space, and the charm of not having big buildings. Some of those things are going to change. The building codes may change for that district but that is not up to this Board, that is up to the Village Board.

The next question is what best helps the community and the Village. Had I been at the last meeting, I would have voted to recommendation the waiver from the moratorium. Because, in my opinion, there is not legitimate reason to stop it. If this was a brand-new application it would not be able to move forward due to the moratorium. Delaying this project will cause a hardship and will cause bad faith between the Village and the applicant. One of the issues in the Village is the traffic problems with Route 208 and North Main Street, which is already in failure. This project will be a major contributor to resolving those issues which is an asset to the Village. This project must address the traffic issues before they can build anything. Our job is to help the Village Board decide if this project should move forward or not. Looking at all the steps the applicant has taken, and everything this Board has done with the applicant in the last four years, shows this project it well down the road. Most projects before the Board before the moratorium are in the concept stages.

The applicant brought their team of consultants and we have our consultants here to answer any questions the Board may have. This is not the time to discuss what was already done. The question before this Board, It is a very narrow question, and it is what will this Board recommend to the Village Board on how to proceed.

Chairman Boucher opened up the discussion to the Board and asked if anyone on the Board has any questions for the consultants.

Member Umberto stated that two weeks ago the Board had an exhausting discussion on this project Member Umberto stated he felt it is unfair that Chairman Boucher to state how he would have voted. Chairman Boucher asked why he felt that was unfair. Member Umberto stated because it could influence people on the Board. Member Umberto stated the applicant's lawyer, Mr. Gottlieb, heard all the Boards discussion. Member Umberto state that in the last four years the schedule for this project has not advanced as quickly as he thinks it should have. Member Umberto feels they have had time to get the DEIS approved and the traffic study should have been done. This is a development project and these are the developer's risks. A moratorium is currently in place. The Village Board has decided to review and update the comprehensive plan. We are now four months into a six-month process so the plan is almost done. Will the moratorium need to be extended? There is a good possibility. But, again that is the developer's risk. They can get all their questions done and they can keep working. Member Umberto does not feel this Board should not make a recommendation for the wavier. The Village Board can still say no to the wavier. When the applicant went to the Village Board the first time they

punted, and it came to this Board for a recommendation. Two weeks ago, this Board made that decision. The result was three to two that this board does not recommend the waiver. While they maybe a good applicant they still have a lot of hurdles to get through. Two months or five months will not make a difference in the applicant's schedule, but abide by the rules of the Village of Monroe and that is what is important.

Chairman Boucher stated he does not feel it matters if he makes his position known upfront as people make their positions known as they speak. Member Umberto's opinion is known as he spoke. Member Umberto stated his position was known two weeks ago when he voted.

Chairman Boucher stated that the vote from two weeks ago did not count. Member Umberto stated the Board Attorney did not know that at the time. If the Board had known, we would have discussed it further and not voted. Chairman Boucher stated those are all "what ifs" and we could spend hours discussing them but this is the situation we are in now. Chairman Boucher stated he respects the letter of the law but he does not want to get stuck on it. He stated he believes in the heart of the law. The Village Board enacted a moratorium to review the comprehensive plan. The Village Board enacted the moratorium so they could take a look at the applications pouring in and take the time to review how they fit in the comprehensive plan. The applicant has things they need to do. Member Umberto stated they still have hurdles to get over and they have a lot they have to get in.

Chairman Boucher stated that anyone who is four years into a project, would be frustrated by being stopped. While Member Umberto feels the project could have gone faster, Chairman Boucher is not sure how Member Umberto could have gotten that information as Chairman Boucher does not have that information.

Chairman Boucher stated If they took extra time on something, that is going to happen to any project. The letter of the law is everyone is under the moratorium, that everyone must abide by it. This applicant has been working with the Board for four years. They have been doing everything the Board asks them to do, that is a good applicant. The letter of the law stops them. It stops good project and bad projects alike. But, the heart of the law says there are exceptions, applicants can go to the Village Board and say we understand there is a moratorium, but these are the reasons why we believe our project should be allowed a waiver. Member Umberto feels they did not state valid reasons two weeks ago. The applicant knows that area very well, the Board knows the area very well, we all know that area is not going to change. There may be further set-backs, but he doubts that.

Chairman Boucher stated Member Umberto has no idea when the moratorium will be done. To say they are almost done is not accurate. Member Umberto stated he did not say it was almost done he said it may go for an extension. Chairman Boucher state the moratorium could go for more than one extension, it could go for two or more. No one knows. Chairman Boucher stated to base anything on when the moratorium will or won't be over is a shot in the dark. Member Umberto stated that is what he calls developer's risk. Chairman Boucher stated yes, but for a project that has been going on for four years, it is frustrating and yes, there are still a lot of hurdles to get over. No one knows how long the moratorium will last a year maybe two. We all know this project is moving forward so to delay it, just for the sake of delay, because the letter of the law says we can, is not right. That is where you listen to the heart of the law and say we can understand the mitigating circumstances and a waiver maybe in order for that particular project. Member Kelly stated Mr. Gottlieb presented that his client may very well suffer some monetary consequences, which is true of every applicant in front of the Board, due to the

moratorium. Member Kelly is not sure this project meets the criteria for a waiver as he is still not sure there is a monetary hardship. A monetary hardship is faced by every applicant that is stopped due to the moratorium. Member Kelly understands the traffic impact to the Village. Chairman Boucher stated the Board can ask the applicant what the hardships might be.

Mr. Gottlieb, Attorney for the applicant, spoke in regards to the applicant's hardships. Mr. Gottlieb stated that when they were present two weeks ago, they heard the Board's concerns. One of the items Mr. Gottlieb wanted to express to the Board is yes, there is a certain level of risk but no developer walks into a municipality thinking that after four years of working on a project they are going to be shut down by a moratorium and potentially a zoning change. The project has been going for four years, not because the applicant didn't try to move forward and he is not sure how Member Umberto knows that as he is new to this Board. Those of you on the Board for a number of years, know the applicant has been working with this Board. It took two plus years to get a positive SEQRA declaration. The law says if that a SEQRA determination is to be made, it should be made as soon as possible. If the positive SEQRA declaration would have been made early on, the DEIS would have been done earlier, shovels would have been in the ground and we would not be here at this point in time. That not the case. The applicant has willingly worked back and forth with the Board.

There were a number of changes that were made for the type of action this was. The list of things goes on for what happened in those four years. These things were done with the cooperation of the applicant with the Board to try to address any issues the Board had. While there is a risk to the developer, most applicants would not still be around after a four years process. The risk here is that it extending the timeline even further is going to cost the applicant more; as inflation, cost increases in building materials, and building materials supply chain issues will increase in cost. The risk is that the project goes away that would have irreparable monetary loss for applicant. Over \$561,000 has been expended by the applicant. This does not include the monies spent to the traffic mitigation plans and studies. Under this moratorium the only thing the applicant can do to recover their investment it renovates the two-existing house on the property which would bring a return of around \$700,000, which is not a reasonable return. If the applicant flipped the property without project approvals it would get around \$1M. The applicant has expended \$5.5M. From that \$5.5M about \$394,000 has been paid to the applicants' consultants. Over \$100,000 has been paid to the Village consultants because of that four-year process. That four-year process which was totally unexpected, has caused a massive financial burden that is irreparable to the applicant if they are not allowed to move forward. The comprehensive committee is nowhere near finishing. We are monitoring those meetings to keep our client up to date on changes that can affect this project. The moratorium will be in effect for at least a year if not longer. Typically, in Orange County moratoriums go for eighteen months to two years. After two years the courts step in to help with the delay. The other standards are: can we get a return on the property? The answer is no. Are there irreparable injury, the answer is yes, and it is financial. Is it unjust to apply the moratorium to this project? The unjust is language is not used in many moratoriums. It is used in this moratorium. The answer is yes, it is wildly unjust to apply the moratorium to a project that has been going on for four years. If this project does not go through the traffic issues at Rt. 208 and North Main will not get resolved. There is no other applicant who would be willing and able to extend money to address the current traffic issue, that are needed now, before they can build.

Chairman Boucher had a question for the Mr. Gottlieb. What work would not get done if your project was held to the moratorium? Mr. Gottlieb stated the DEIS has been submitted and

comments were received from the Village consultants. The updated DEIS will be submitted to the Board within a month for the Village consultants to review, if deemed complete, a public hearing is scheduled. The majority of the work is done. I cannot express that enough. At this stage there is six to eight months left till approval. Completing the DEIS will finalize the SEQRA review. Every project has two things that the Board needs to do, the SEQRA review and the underlying permit process. After the DEIS is complete the site plan/permit approvals are reviewed. Under the Village moratorium this cannot be done. The SEQRA review can move forward under the moratorium but there is no point of doing that if the site plan cannot be reviewed. If the site plan review was not done until after the moratorium, it will take another three or four months for site plan review which just adds to the delay.

Member Kelly asked if the \$5M plus dollar amount was speculative and if Mr. Gottlieb included the purchase price of the property. Member Kelly stated he is not doubting the numbers, he wanted to know, if the Village Board does not grant the extension how is all that money wasted? Mr. Gottlieb explained the applicant will not get back the purchase price of the property or the legal fees, Village fees, and any consultant and legal fees already paid. That money is spent. All the applicant has at this point is the land, and the land without approval is only worth \$1M. That money is gone unless they are able to develop that property. Member Kelly stated that when the moratorium is lifted they can move forward and they will get that money back. Mr. Gottlieb stated it is speculative that the moratorium will be lifted without zoning changes or that the applicant can survive financially until the moratorium is lifted. At this point in time the applicant has spent \$5.5M and without approvals nothing can be done with that land. That is not speculative.

Member Iannucci asked if all that work is done so far and the last four years that this project has been going on, the applicant has not lost any money. All the work that has been done can still be picked up after the moratorium is that correct? All that work will not go away so all the money spent isn't necessarily a loss. Mr. Gottlieb stated at the moment it is considered a loss as no new zoning has been done. Member Umberto stated that the probability of new zoning affecting that zoning district are minimal. Mr. Gottlieb stated he does not know that. We have been monitoring the meetings, but we don't know. Member Umberto stated as Mr. Gottlieb has been thru other moratoriums he knows what are the critical areas that are going to be changed. I have that much respect to your organization to know that where this area is, probably will not change. Mr. Gottlieb stated he does not know that. Typically, moratoriums in Orange County are addressing warehousing issues which does change the zoning for some projects. Whether that applies to our project here or not, we don't know that. There is not enough information from the comprehensive review committee to determine if the zoning will change or not. Chairman Boucher stated it is speculative for both sides at this point. Giving this project a waiver is the "right thing to do". That is the point of Chairman Boucher letting his opinion known.

Member Iannucci asked if this was normal procedure for the Village Board to come to this Board for its opinion or did they see that this case may have some value so we will let this Board take a look at it. Chairman Boucher stated the Village Board does come to this Board from time-to-time asking its opinion. Board Attorney Cassidy stated this is just the Village Board asking for its recommendation. Board Attorney Cassidy stated that in the instance it was optional for the Village Board to go to this Board but this Board has been dealing with this for four years so this Board is in a better position to make the recommendation for the waiver. The Village Board will still have the final approval on if the waiver should be granted or not.

Chairman Boucher wanted to clear the record for a comment member Umberto made earlier, Member Umberto stated the Village Board “punted”. When I hear that expression, it sounds like the Village Board did not want the responsibility so they passed it off. The Village Board did the exact opposite. They don’t come to this Board because this Board has heard this applicant for four years. They do not have the knowledge that this Board does about this project. What the Village Board is saying is we value this Board’s opinion. They didn’t “punt”, they included. There is a big difference. Member Umberto agreed with that statement.

Member Hafenecker asked what happens if the Village Board grants the wavier and the zoning does in fact change? Board Attorney Cassidy stated if the Village Board grants the wavier the applicant can continue their work. If the Village Board does make zoning code changes that effect that zoning area, the applicant will need to modify their plan using the new zoning or the project would stall. If the applicant gets approval before the moratorium is lifted they will need to abide by the old code. Those are the two options if the wavier was granted.

If the wavier was not granted for the project, they will have to hold off until the moratorium is lifted. They could come back at that point and make their next submission and everything would move forward. As for a time frame, it cannot be determined. The Village Board has not had a formal presented of the final comprehensive plan. Until the comprehensive plan is publicly presented it is hard to give a timeframe. I do agree with Mr. Gottlieb assessment that most moratoriums are eighteen months to two years.

Member Allen stated no one has mentioned that this project was impacted by Covid. This caused delays as well. There were shut downs everywhere, even the Board shut down for several months. The Board held Zoom meeting during Covid. Covid caused delays in all the projects before the Board.

Board Attorney Cassidy stated she put together a procedural history on the application which will be included in any recommendation this Board makes. A giant chunk of the four years was spend dealing with the New York Department of Transportation (DOT). What was being looked at during SEQRA, is what was going to work for the traffic issues at Route 208 and North Main Street. Both the Board and the applicants traffic consultants were working on getting an idea of what traffic studies the DOT wanted. There were a lot of options so all the consultants needed to be clear. That process took a long time, about two years. Member Allen stated the traffic studies were happening when Covid was happening so everyone knew the numbers were scudded. Board Attorney Cassidy stated no one can control the DOT. Mr. Gottlieb state there was a lot of time trying to find a solution to the traffic problem. The solution will be implemented prior to the construction of this project.

Member Hafenecker asked if the Board could hear the traffic solution. Mr. Kenneth Wersted from Creighton Manning, representing the applicant spoke. Mr. Wersted presented a drawing of what the traffic solution will look like. The Village Mayor contacted Creighton Manning in 2019 for a solution to the traffic issue. A few months later 208 Business Center approached Creighton Manning about their project. 208 Business Center took the concept Creighton Manning was looking at for the Village and carried it forward. For an overview, Mr. Wersted submitted a draft to the DOT using traffic studies that were already done. There were many changes in the plan

for the solution that were worked on with the DOT and all traffic consultants. They found a plan that the DOT was comfortable with. Mr. Wersted presented the Traffic mitigation plan and explained what he was presenting. The mitigation plan is to get the traffic off local roads and onto Route 208. The mitigation plan was discussed.

The next step is to get a preliminary design so we can get a real cost estimate. Mr. Gottlieb stated the traffic problems need to be built before the 208 Business Center can be built. As projects in the area come online there will be a fund set up to help with the cost of the mitigation problem. Mr. Gottlieb stated that will be worked out. Chairman Boucher state this process could take one to two years.

Member Hafenecker asked how the Board consultants feel about this solution. Ms. Connell from Kimly Horn, consultant to the Board, stated yes, they agree with this plan. Mr. Wersted stated there were four or five alternatives over the years. The models have been shared with the Board consultants, and the DOT. They all agreed this was the best solution.

Chairman Boucher asked the board if they had any other questions. Board Attorney Cassidy stated we are here to answer the narrow question, how the Board will decide in regards to a letter to the Village Board. In the letter she would like to add comments about how the Board members voted and why. If the reasons are articulated they can be incorporated in the letter to the Village Board.

On a motion by Member Kelly and seconded by Member Allen it was resolved: **To write a letter to the Village Board to recommendation 208 Business Center be granted a wavier from the Village moratorium.**

Voting is as follows:

Member Allen: Aye
Chairman Boucher: Aye
Member Hafenecker: Aye
Member Iannucci: Aye
Member Karlich: Nay
Member Kelly: Aye
Member Umberto: Nay

Member Allen stated he is voting to recommend the wavier, because the project has been delayed due to circumstances beyond the applicants control such as COVID and the DOT.

Chairman Boucher stated he is voting to recommend the wavier based on the reasons he stated earlier. The benefit to the Village to resolve the traffic issue, and based on how far they are in the process and the potential for a great loss monetarily to the applicant.

Member Hafenecker stated he is voting to recommend the wavier because of time invested and the benefit to the community due to the traffic solution. They still have a lot of work and they will be here to continue to work with the Board.

Member Iannucci stated she is voting to recommend the wavier because she feels they have done their due diligence and she thinks the project moving forward will not negatively impact the Village.

Member Karlich stated she is voting not to recommend the wavier because she believes in the letter of the law. The moratorium was put in place by the Village Board so they have time to look at the zoning and make changes that are needed. She feels the project will take awhile to get done anyway.

Member Kelly stated he is voting to recommend the wavier because while he is not convinced there are damages, he does believe there is benefit in the traffic solution for the Village.

Member Umberto stated he is voting not to recommend the wavier because this falls under developer's risk.

Chairman Boucher stated we have a five to two in favor of the wavier so the motion passes. Board Attorney Cassidy stated she will draft a letter and include the rationale from all Board members. Also, included with the letter will be a complete time line of the procedural history and the project minutes so the Village Board has a complete understanding of the project. There will be a conditional section that states all Board schedules and procedures will remain in place such as submission dates. The statement will include that the applicant is proceeding at their own risk and if there are zoning changes made before the Board takes action on this project, those zoning changes will need to be followed.

Engineer Kurt Rother, engineer for the applicant, asked normally the DEIS meetings and the site plan review take place at the same time, will that still be the case? Board Attorney Cassidy stated yes, that is correct, the project will follow normal procedures if granted the wavier.

236 High Street:

Mr. Mitts, the applicant, was present to request an extension for 236 High Street. Mr. Mitts stated the New York Department of Health has gotten stricter with rules for this project of this nature and a second architect had to be brought in for the project. He stated the work is progressing slowly and inflation has impacted the project. For example, the price of the fire escape has doubled. They are working on getting the finances in order that are needed to comply with New York State requirement. There will be no changes to the work that has already been done. Chairman Boucher asked if the six-month extension would be enough. Mr. Mitts stated he is hoping it will be.

Member Iannucci stated all the Building Departments permit had expired. Mr. Mitts is aware and will take care of that. Member Iannucci asked if the building permits need to be fixed prior to the Board granting the extension and how many extensions can the Board give. Board Attorney Cassidy read the verbiage in the Village Code granting the extension and it says "... one or more extensions can be granted for a special use permit...". The Board secretary will provide Mr. Mitts with a list of Building Permits that have expired. Board Attorney Cassidy stated the extension will have conditions that states the Building permits must be updated within thirty to sixty days depending on what the Board wants, and if another extension is needed the Board would need a detailed statement of the reasons for the extension.

On a motion by Member Iannucci and seconded by Member Allen it was resolved: **to grant a six-month extension with the condition that the building permits are renewed within forty-five days. The extension will start on October 19, 2022 and run for one-hundred and eighty days.**

Aye: 6

Nay: 0

Abstained: Member Kelly

On a motion by Member Kelly and seconded by Member Iannucci it was unanimous resolved: **to move to executive session for an Attorney/Client meeting.**

Aye: 7

Nay: 0

The Board came out of executive session.

On a motion by Member Kelly and seconded by Member Allen it was resolved: **The board gives permission for Attorney Cassidy's office to file an appeal to the Zoning Board in regards to Spring Hill Apartments.**

Aye: 7

Nay: 0

On a motion by Member Kelly and seconded by Member Hafenecker it was resolved: **To approve the July 26, 2022 meeting minutes.**

Aye: 7

Nay: 0

Abstained: Member Kelly

On a motion by Member Hafenecker and seconded by Member Allen it was unanimous resolved: **To adjourn the meeting.**