

**VILLAGE OF MONROE
PLANNING BOARD
MEETING MINTUES**

**TUESDAY September 12, 2022
7:00 P.M.**

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

Absent: Chairman Boucher and Member Allen

Member Hafenecker opened the meeting at 7:00 p.m. with the Pledge of Allegiance.

208 Business Center:

Board Attorney Cassidy stated the 208 Business Center has been before this Board since December 2018. It has been a lengthy project given its size but mostly because of the Department of Transportation (DOT) reviews. The Village Board has adopted a moratorium, the applicant has applied to the Village Board for a waiver from the moratorium. If the wavier is granted, it would authorize this Board to continue its work on the project and its review of the application. The Village Board has asked this Board for its recommendations and thoughts about the wavier before they decide. Board Attorney Cassidy read the requirements for a waiver to the moratorium. For this discussion we will not be talking about the details of the project. We are just discussing if this project is should move forward during the moratorium. This is a different question for this Board tonight. The Board engineer and traffic consultant are here to discuss any items you may want to discuss with them.

Board Attorney Cassidy stated attached to the Village Board application for the wavier, there was an investment letter on how much the applicant has currently invested into this project. It is approximately \$5.5M. This does not include monies spent for traffic consultants and traffic studies. The traffic plan will significantly improve the traffic in that area.

Mr. Gottlieb, Attorney for the applicant, stated the investment statement included the monies the project will commit to improving the traffic issues. Traffic is an issue with that area so the applicant will be on the hook for those traffic mitigation measures. Future projects in the area will likely be putting monies into a fund to address the traffic issues in that area as well.

Member Iannucci asked if the \$5.5M figure included the \$2M to address the traffic. Mr. Gottlieb stated no, that \$2M is monies already committed but is not included in the \$5.5 Million. The \$5.5M does include the cost of the acquisition of the property, consulting fees for both the applicant's and the Boards consultants, the research for the DEIS documentation and the DEIS document.

Member Umberto stated he has been on the Board about a year and has not seen or heard anything about this project.

Mr. Gottlieb stated the DEIS was submitted in April 2022. Member Umberto stated he started on the Board in May 2022. Board Attorney Cassidy stated the Board did see the DEIS and it went

through a completion review process by the Board consultants. The Board passed a resolution that the DEIS was not complete (June 13, 2022). This gave the Board more time to review what was submitted. The Board consultants were reviewing the DEIS when the moratorium was adopted in July 2022. Mr. Gottlieb stated the applicant has received the Board consultants' reviews and they are in the process of addressing them. They will then resubmit the DEIS with the changes in an attempt to get the DEIS document complete.

Member Iannucci stated her concern is the traffic in that area, has the solution been approved or accepted by the county or the state as being a viable solution. Board Attorney Cassidy stated that is a good question but it does not fall into the discussion we are having tonight on if this Board will recommend to the Village Board if this project should get a wavier or not.

Board Attorney Cassidy stated there are very limited reasons that the Village Board will grant a wavier during the moratorium. A lot of the applications that were before the Board prior to the moratorium were in the early planning stages. This project was not. The Village Board is asking this Board if this is a project that should move forward. This Board will still need to do all it's work.

Mr. Gottlieb stated the projected cost of this project is \$12M, outside of traffic costs. Member Hafenecker asked if the applicant was going to be responsible for all the traffic improvements. Board Attorney Cassidy stated that part has not been worked out yet but the Board is working with the applicant and the Village Board on that. But, this project cannot and will not be built until the traffic in that area is fixed.

Board Traffic Consultant Connell explained what still needs to be done. The applicant has met several times with the DOT with a concept of their plan. The plan calls for a complete re-design of the triangle area at the intersection of Route 208 and North Main Street. Ms. Connell stated she did not know at this time where the applicant stands with the DOT.

Member Umberto stated he does not believe that anyone in the area likes the triangle intersection. Member Umberto stated he attended the Village Board meeting when 208 Business Center applied for relief from the moratorium. He does not see any construction and does not feel they will be near construction for another year or two. Member Umberto asked when Mr. Gottlieb thought they would be in the construction process. Mr. Gottlieb stated it depends. It depends on the length of the approval process, and if they are given the waiver from the Village Board to proceed. The moratorium may take about a year or more, and they may change the zoning code or they may change other things that impact this project. This could require changes to the plans/project. The project could be delayed until this is done. If permitted to proceed, it could take six months to complete the DEIS, then a public hearing will need to be done, a site plan review, and special permit approval, will take another six to eight months. Member Umberto stated he does not believe that. He believes it will take about two years or more till construction can be started. Mr. Gottlieb stated he was only talking about the approval process, not the start of construction. Mr. Gottlieb stated he has worked on moratoriums before and has never seen a moratorium last less than a year and a half. After the moratorium is lifted it will take about three months for those changes to be made to the zoning code. When the moratorium hit this project, the DEIS, which is the longest part of the approval process, was being worked on. The Board has already done the majority of its work, we would just like the opportunity to continue the work for site plan and special permit approvals.

Member Karlich asked if the applicant can proceed at their own risk. Board Attorney Cassidy stated that the way the moratorium is written it states a complete application can be reviewed. The complete application as defined by state law includes the acceptance of the DEIS. We are in the process of getting the DEIS to be approved but we are not there yet. If the Board was complete with the DEIS process, a waiver from the moratorium would not be needed as it would be past that point. Under state law the application is not considered complete, they do not qualify as a complete application therefore they are impacted by the moratorium.

Member Kelly asked if the problem was that there may be Zoning Code changes. Is it possible they can be grandfathered into the old code? Board Attorney Cassidy stated they would be proceeding at their own risk because there is no way to grandfather them. Board Attorney Cassidy does not think there will be a big change to the Zoning Code for that area but there could be dimensional changes that would impact the project. Based on conversations with the Village Board, Board Attorney Cassidy does not see that happening. There may be tweaks and minor changes but not large changes to that area.

Member Kelly asked Mr. Gottlieb if the Board does not know what changes are going to be made to the comprehensive plan, how can the applicant show irreputable harm. Mr. Gottlieb stated the way the moratorium is written, it allows the applicant to proceed if the SEQRA review is complete. But, there are still things the Board needs to do. They have to complete the SEQRA review and they need site plan and special use permit approvals. The moratorium stops the Board from moving forward on the site plan review and the special use permit during the moratorium period. If the applicant continues with the SEQRA review it is done at its own risk. Knowing the comprehensive plan is being reviewed, and different zoning regulations may come down the pike, this could be a problem for the applicant. Mr. Gottlieb stated there are three criteria for the wavier: 1) the applicant cannot get a reasonable return on the property, 2) will the moratorium cause irreparable damage and 3) is moratorium unjustly applied to this application. Mr. Gottlieb stated he has worked on a lot of projects affected by a moratorium but this is the furthest into any project that he has had a moratorium stop the project. The applicant cannot get a reasonable return on investment without the approvals to the property. The irreparable is the loss of the monies already spent on consultants for both the applicant's and the Board consultants is money that cannot be recovered. Mr. Gottlieb feels all of this is very unjust.

Member Iannucci asked if there were site plans for this project. Board Attorney Cassidy stated there are a lot of plans and iterations to those plans, that have been submitted to the Board. Any concerns the Board had were incorporated into the scoping documents and the DEIS documents. In regards to the moratorium, this Board is an independent Board, and we cannot make the determination of what changes will be made to the comprehensive plan. This Board has been working on this project which why the Village Board has asked for our recommendation. If the wavier is approved, this Board could proceed with approvals of the site plan and the special use permits provided it meets all the current Zoning Codes and current standards. The applicant is operating under the risk that if there is a change to the comprehensive plans they will need to change the DEIS and the site plan or adjust it. Member Iannucci asked Mr. Gottlieb if this was what they are trying to avoid? Mr. Gottlieb stated if a change was made to the comprehensive plan which wipes out the project completely it is a very different legal action as it is a different problem. If this project is permitted to proceed he believes it will be about six months. They are close to resubmitting the DEIS.

Board Traffic Consultant Connell stated the project will make a substantial traffic improvement to the area. One of the items in the applicants request for relief is that they are committing \$2M, which is not accurate. It is contingent on when and how the DOT will allow them to proceed. This will depend on what the final plan will be and that has not been determined. Our recommendation to both this Board and the Village Board is to remove that figure from the determination. It is more consistent with the way the moratorium is written, what was spent to date not future spending. This should be done to avoid future issues. Another consideration is the DEIS is still under review and is not accepted as complete as well site plan review and the special use permit are not approved. If the applicant is granted relief there are still risks that they may encounter.

Member Iannucci stated she was confused about the applicant needing to make changes due the update of the comprehensive plan or not. Board Attorney Cassidy stated if the applicant gets the wavier and gets the approvals before the Village Board changes the comprehensive plan they will be under the old zoning code, if they cannot they will have to abide by the new comprehensive plan.

Member Umberto stated that all he has heard from the professionals is that there is a lot of work that needs to be done. He has worked with developers all his life and as far as he is concerned that is developers' risk. He does not think this project deserves a wavier.

Member Kelly asked if there is a ballpark figure on what the traffic solution will cost. Board Attorney Cassidy stated that the plan has not been finalized so there is not ballpark figure. Mr. Gottlieb stated that the comment of \$2M was not a cap on what the developer will pay. It works by what percentage of those traffic improvements are needed due to our project and that is the cost they pay. They are certainly on the hook for that, even if it is over the \$2M. The \$2M was a ballpark figure from our consultant team but is by no means a cap.

Member Kelly stated he is not sure if there is a financial hardship because what you are saying is if the project cannot move forward and all monies are lost. That is not the case. On the other hand, if this project proceeds, it will address the traffic nightmare in that area. Maybe it would be better for the Village if this project did move forward. Member Hafenecker stated the traffic will not change unless something happens with that area. Member Kelly stated he is not sure if this project will improve the traffic problem maybe it is a good idea to let this project move forward, but he is not sure.

Board Traffic Consultant Connell stated the applicant has submitted a lot of traffic studies and we have been reviewing them for three years now. They have been working with the DOT on a concept plan for the triangle. Part of the problem is you cannot do part of this solution, you have to do everything. The problem is that the funding has not been identified yet, and the total cost has not been determined. These improvements have to be completed before construction can begin.

Mr. Gottlieb stated the board has the ability to put conditions into the approvals. Board Attorney Cassidy stated that to grant the waivers does not mean they have approvals. It just means they either wait till the moratorium is done to move forward or do you let them move forward now.

Member Umberto stated if you look where this property is you can tell the zoning will not change for that area. If the developer was smart he would have his own people at the comprehensive review meetings. Mr. Gottlieb stated they are at every single meeting for the comprehensive

reviews. Member Umberto stated there will be tweaks to the comprehensive plan but the developer is not going to go all the way back to the beginning of the project. Mr. Gottlieb stated he does not know that, he never thought a moratorium would happen but here we are.

Member Iannucci asked exactly where in the process is this application. Board Attorney Cassidy stated they have completed the EAF review and the result of that is the DEIS document. The DEIS is not complete. When it is, a public hearing will be held and the public will have the opportunity to speak. The public comments and the responses to those comments will be incorporated into the DEIS. At the end of the process the Board will issue a findings statement. Member Iannucci asked if there are any other project at this point. Board Attorney Cassidy stated no, there are not. The Board had no projects on the docket that are anywhere close to this. Member Iannucci stated that they have spent a lot of money but it is questionable if that money is lost or not but if we recommend the wavier, the Board will not be putting itself in a bad spot.

The Board went into attorney/client session.

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

Voting is as follows:

Member Hafenecker: Aye

Member Iannucci: Aye

Member Karlich: Nay

Member Kelly: Nay

Member Umberto: Nay

The motion failed by a vote of 2 in favor, 3 against and 2 absent.

Absent: Chairman Boucher and Member Allen.

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.

Member Iannucci stated she is voting to recommend the wavier because she feels they have put in a lot of time and money. No other project is at this stage.

Member Karlich stated she is voting not to recommend the wavier because the moratorium is in place for a reason. The Village Board wanted to pause and take a look at how things should be. I don't think the zoning in that area will change.

Member Kelly stated he is voting not to recommend the wavier because while he is not convinced there are damages here, 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 he feels waiting has a minimal impact and he does not think the changes to that area will be significant. While they have spent a lot of money, most of that money was spent acquiring the land.

Mr. Gottlieb stated the consequence of this decision and the gravity of it is quite severe. He wanted to make sure the Board knows that and they are comfortable with that. Mr. Gottlieb asked if there was any discussion with the other Board members who were not here this evening. Member Kelly stated if this issue is that pressing maybe the applicant would like to come back when there is a full Board. Mr. Gottlieb stated he would talk to his client. Mr. Gottlieb stated there is currently a legal action about the moratorium itself and they were hoping to avoid that litigation by getting the wavier.

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