

**TOWN OF SWEDEN
Planning Board Minutes
March 23, 2009**

A regular meeting of the Town of Sweden Planning Board was held on Monday, March 23, 2009, at the Town Offices, 18 State Street, Brockport, New York, commencing at 7 p.m.

Members present: Richard Dollard, David Hale, Craig McAllister, Matthew Minor, Arnold Monno, David Strabel, William Hertweck (arrived at 7:07 p.m.)

Also present: James Oberst, MRB, Jim Butler, CEO, Reuben Ortenberg, Esq., Patrick Labor, Richard Bebout, Greg McMahan, Don Payne, Jim Pappas, Harold Mundy

The meeting was called to order at 7 p.m. by Chairman McAllister.

Correspondence passed to members for review.

Moved by Richard Dollard, seconded by Mr. Monno, that the minutes of March 9, 2009, be approved.

Mr. Strabel asked if it was documented in the minutes that the Planning Board would make the determination on the loading dock instead of it leaving it for the ZBA to decide. The Clerk and Mr. Hale stated it was made part of the minutes.

Ayes – 6

Moved by Mr. Hale, seconded by Mr. Minor, that the regular meeting be adjourned to the public hearing.

Ayes - 6

Chairman McAllister read the notice of public hearing and affidavit of publication.

CountryMax Farm and Garden Center Site Plan. 4875 Lake Road. 083.02-1-17

Chairman McAllister asked if there was anyone present with questions regarding this project.

Harold Mundy, 121 Campbell Road – Mr. Mundy asked if a legal notice was printed in the Suburban News for this hearing because he didn't see one. The Board agreed it was and the Clerk located the copy on file.

Moved by Mr. Strabel, seconded by Mr. Hale, to adjourn the public hearing to the regular meeting.

Ayes – 6

1000 Transit Way Amended Site Plan. Transit Way. 084.01-1-1.113

Mr. Pat Labor addressed the Board. He introduced Mr. Rich LeFrois, LeFrois Builders and Developers. The applicant is proposing an amended site plan for an increase in building size from 5,010 sq. ft. to 5,839 sq. ft.

Chairman McAllister asked for clarification because a building the size of 5,600 sq. ft. was approved already. Mr. Labor stated the most recently approved plans are at 5,010 sq. ft. Chairman McAllister explained when the two original variances were approved, it was determined that a 5,600 sq. ft. building would fit. This was not made clear in the second application to the ZBA, whereby the minutes only reference a 5,000 sq. ft. building instead of a 5,600 sq. ft. building.

Member Hertweck arrived – 7:07 p.m.

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Mr. Labor stated there have been some minor changes to the plans. Along the south side, in order to facilitate access into the two tenants' space, another door has been added. Also, the dumpster enclosure was pushed back to the southwest corner of the site. An additional parking space has been added due to the whole site being pushed forward to accommodate the larger building. In order to keep the required green space, a sidewalk area on the east side is now landscaped, as well as the island located at the northeast corner of the building. Due to everything being pushed forward, a variance is required for the front 25 ft. open space requirement. The sidewalk was moved farthest away from the road, along the curbing of the parking lot. This is a benefit because it is farther away from the road. The landscaping, previously proposed for the north side, was flipped to the other side of the sidewalk. The site lighting has been placed on the other side of the sidewalk.

A variance was approved for the front open space requirement and for the south property line to meet the rear buffer zone requirement. Everything else stayed the same. The plans were sent to Monroe County Pure Waters, who had no comments. The Monroe County Water Authority asked that the storm system be reviewed, even though it is essentially the same.

Mr. Strabel asked where would the site lighting be located. Mr. Labor stated on the opposite side of the sidewalk. He asked is it in the R.O.W. Mr. Labor stated no, the R.O.W. is north of the landscaping. Mr. Strabel pointed to another line for clarification. Mr. Labor stated it is a sidewalk and water main easement line.

Moved by Mr. Hale, seconded by Mr. Hertweck, that the 1000 Transit Way Amended Site Plan be accepted for review.

Mr. Labor asked if this project would need to go through the normal process with a public hearing. He said it was the applicant's hope that a public hearing could be skipped because the plans are similar to what they were before. Chairman McAllister stated the normal process would need to be followed.

Ayes - 7

The Public Hearing will be April 13, 2009.

CountryMax Subdivision and Amended Site Plan. 4875 Lake Road. 083.02-1-17

Chairman McAllister stated that the applicant had received approval for an area variance for green space. Mr. Greg McMahan distributed a revised site plan. The only differences from the previous plan are that the open space requirement has been updated and a note has been added regarding the approval of the area variance. The planters have been shown on the plan and an additional area north of the loading dock as greenspace.

Mr. Monno asked what the loading dock greenspace would look like. Mr. McMahan stated it will be turned into a lawn area and the asphalt removed.

Mr. Strabel asked if the diagonally hatched area was concrete. Also he asked if there would be bumper blocks. Mr. McMahan stated that the hatched area is just painted on the plans. Mr. Payne stated there would be bumper blocks.

Mr. McMahan stated the subdivision plan has not changed since the last meeting.

Mr. Hale asked that the spelling of Mr. Duryea's first name be checked. He believes it should be Erwin not Edwin. He will make that change.

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Mr. Minor asked if the turning radii are set for the turn off at the north access. Mr. McMahon stated the plans were revised so that the turning radius is over to the edge of the existing pavement. Also, he ran the turning radius for a tractor trailer truck coming in around that corner and it worked.

Mr. Monno asked if the 20 ft. wide easement over the State's property was checked into to confirm if it is wide enough. Mr. McMahon explained that at the last meeting it was decided that it would fall on the potential buyer(s) of the northern lot because it doesn't impact Lot 1 at all. Mr. Monno asked if that would require a note to be included on the plan. The Board agreed it would not because it's in the minutes.

Mr. Monno asked if the Fire Marshal commented on the seasonal storage, and if it would affect the access to the building. The Fire Marshal's comments were read and there was no mention of a concern.

Mr. Payne stated there would be no storage of hazardous materials on the site. Mr. McMahon added that the mechanical design would include all the components required by law, including the exterior connections. Mr. McMahon pointed on the map where the RPZs and double detector checks would be located. Mr. Strabel asked if the loading dock area would interfere with that location. Mr. McMahon agreed and that it would be one of the side exterior walls accessible by truck. Mr. Strabel stated that information should be included on the site plan as well.

Mr. Dollard asked if there would be any pesticides or nitrates. Mr. Payne stated fertilizers and over the counter pesticides, but no bulk quantities.

Mr. Strabel asked if the fence would have padlocks. A padlock key should be included in the knox box too. Mr. McMahon stated the gates are 12 ft, which trucks could get through and make the turn.

Mr. Strabel asked if all of the Town Engineer's comments were addressed. Mr. McMahon stated a review of the comments was started, but put on hold until it was decided whether a subdivision, site plan or amended site plan approval was required.

Mr. Strabel asked the Town Engineer if he was all set. Mr. Oberst stated he hasn't received a letter with responses yet, and still has some questions. Mr. McMahon stated he could go through them now.

Mr. Monno asked if the CountryMax Subdivision name is listed as the same on the plan. Also, it should be the same as the site plan and legal notice. It was agreed to have the name be CountryMax Subdivision and Amended Site Plan.

MRB's Comments:

1. The green space calculations have been resolved with the granting of a variance.
2. There has been an environmental audit. If there is an oil water separator, it will remain. All the vehicle lifts have been removed. There are no buried tanks. There is no need for site remediation on the site. Mr. Oberst asked if the Town could have a copy of that audit. Mr. Payne stated there wasn't one done technically. The Chairman asked for a copy of the Summary Record for the Town's records indicating that it was discussed and it exists.

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3. The lighting plan details for the fixtures will be included on the final plans. The wall packs are being replaced with dark sky compliant ones. Mr. McMahon stated the applicant is keeping three light poles, one at each entrance and one in the middle of the grass island. All other poles will be removed on Lot 2. Mr. Minor asked what would happen to the poles not in use anymore. Mr. McMahon stated there will be a new panel box and all of the feeds will be dead-ended, cut away, never to be used again.
4. Lighting contours have been added to the plans.
5. The Planning Board has addressed the loading dock issue.
6. The fencing running along the site fronting Rte. 19 details will be included in the architectural set.
7. As soon as the contractor is on site, test holes will be performed.
8. Sanitary sewer lateral has been added to the plan. Mr. Oberst asked if that was the one coming out of the overhead bay area. Mr. McMahon stated there is only one lateral coming into that manhole. There will be no changes to the sanitary system. The bathrooms will be internally relocated, but nothing to the exterior.
9. A note has been added to the plan showing the RPZ location. Mr. Strabel suggested that location be moved to another wall. Mr. McMahon will discuss that with the mechanical engineer.
10. Approval signatures have been added to the plans. Discussion took place regarding the main water connection. Mr. McMahon stated the best way to go is to abandon the old water connection and put a new one in.
11. There is no work proposed in the NYS R.O.W.
12. Erosion control measure details and notes have been added to the plans.

MC Planning and Development Comments:

1. The extension of the water main requires MC DOH approval if greater than 4 inches. Chairman McAllister stated that has to be known because the plans can't be finalized or signed until the MC DOH signs.
2. The backflow device has to be approved by the MC DOH and the MC Water Authority.
3. The subdivision plat will be filed.
4. The applicant is aware of the work permit for Rte.19.

Moved by Mr. Hale, seconded by Mr. Dollard,

WHEREAS CountryMax has applied to the Town of Sweden Planning Board for approval of a two-lot subdivision at 4875 Lake Road, known as the CountryMax Subdivision; and

WHEREAS the Planning Board has reviewed the application; the Short Environmental Assessment Form, the comments of the Town Engineer, the Environmental Conservation Board, and the Monroe County Department of Planning and Development; and the comments at the public hearing of March 23, 2009;

NOW, THEREFORE, BE IT RESOLVED that the CountryMax Subdivision is an unlisted action which will not have a significant impact on the environment; and

BE IT FURTHER RESOLVED that the CountryMax Subdivision be granted preliminary approval, that the final public hearing be waived, the subdivision be granted final approval, and the Chairman be authorized to sign the mylar.

Ayes – 7

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Moved by Mr. Hale, seconded by Mr. Strabel,

WHEREAS CountryMax has applied to the Town of Sweden Planning Board for approval of an amended site plan for a CountryMax Center, said site plan having been previously amended on August 13, 1979, and March 27, 1989; and

WHEREAS the Planning Board has reviewed the application for amended site plan approval, the Short Environmental Assessment Form, the comments of the Town Engineer, the Environmental Conservation Board, the Fire Marshal, and the Monroe County Department of Planning and Development; and the comments at the public hearing of February 23, 2009; and

WHEREAS at its meeting of March 19, 2009, the Zoning Board of Appeals granted an area variance permitting 26.13% green space instead of 30%;

NOW, THEREFORE, BE IT RESOLVED that the CountryMax amended site plan is an unlisted action which will not have a significant impact on the environment; and

BE IT FURTHER RESOLVED that the Planning Board, pursuant to § 175-11.B (3) of the Zoning Ordinance, waives the requirement of § A 177-51 (b) (c) of the Land Use Development and Subdivision Regulations concerning the location of the loading dock because the proposed location is the most feasible way to utilize the existing door, and grants approval to the amended site plan contingent on approval of the Town Engineer, Fire Marshal, Monroe County Health Department, Monroe County Water Authority, and authorizes the Chairman to sign the mylar

Ayes – 7

McDonald's Restaurant Amended Site Plan. 6500 Brockport-Spencerport Road. 083.08-8-21

Mr. Randy Bebout addressed the Board. He requested final approval for the amended site plan contingent upon agency approvals and signatures. Granting a contingent approval triggers action by McDonald's on the legal and process side. Monroe County Water Authority and Pure Waters have accepted the plans. The Monroe County Health Department is still reviewing the plans, not only for the RPZ, but also due to the upsizing of the water main to six inches. The Town Engineer's comments have been satisfied except for the storm water agreement, which a draft was sent to Mr. Oberst today. After Mr. Oberst has commented, McDonald's attorneys will add their comments. NYSDOT has approved the utility permit items and provided comments on the driveway permit items, which were minor in nature. At the last Planning Board meeting, all of the Town Engineer and County comments were addressed. SHPO has sent a letter stating that the McDonald's site being in a sensitive district is a non-issue. The tree layout on the east side has been revised to space out the trees. Per Mr. Monno's question regarding the rear access, it was looked into and determined that the ideal spot would be more in the center, and if changed, would allow cars to get into the outer lane out of turn. The proposed spot is really the best place for it.

Mr. Monno asked what the outcome was from the discussion regarding the storm pipes. Mr. Bebout stated that issue is still outstanding until the sewers can be televised to make sure there are no impacts. Mylars will be created after that.

Mr. Oberst stated that all of his comments have been addressed. He added he had received a draft of the storm water agreement, which was modeled after the Wal-Mart agreement.

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Moved by Mr. Hale, seconded by Mr. Monno,

WHEREAS McDonald's USA LLC has applied to the Town of Sweden Planning Board for an amended site plan for the McDonald's Restaurant at 6500 Brockport-Spencerport Road (NYS Rte. 31), said site plan having been approved on September 28, 1970, and previously amended on August 13, 1979, and March 27, 1989; and

WHEREAS the Planning Board has reviewed the application, the comments of the Town Engineer, the Fire Marshal, Monroe County Water Authority; and the comments of the public hearing of February 9, 2009; and

WHEREAS on December 10, 2008, the Zoning Board of Appeals granted four area variances; and

WHEREAS at its meeting of February 9, 2009, the Planning Board declared the amended site plan an unlisted action which will not have a significant impact on the environment;

NOW, THEREFORE, BE IT RESOLVED that the McDonald's amended site plan be approved, contingent on the approval of the Town Engineer, the Fire Marshal, Monroe County Water Authority, NYSDOT, Monroe County Health Department, Monroe County Pure Waters, Highway Superintendent of Sewers, and the Chairman be authorized to sign the mylar.

Ayes – 7

The Woods at Sable Ridge – Phase I

Attorney Reuben Ortenberg addressed the Board, requesting the Planning Board to delay taking any action on the resolution for the above-mentioned project. He explained that this Board approved The Woods at Sable Ridge subdivision September 2005; however, after all the contingencies were met and everyone signed, the mylars were filed on April 24, 2006. To date, not very much has happened. Under the code and State law, the subdivision and site plan will expire April 24, 2009. The code does provide for reapproval of the subdivision.

There is a Letter of Credit for \$2,125,000 that was established to make sure all improvements were done, but there never was a schedule of public improvements set forth. Although, the code states there has to be a reapproval, it doesn't say the conditions can't be imposed that were suppose to be imposed the first time around.

Attorney Ortenberg has been working on a resolution that references an agreement between the Town and the developer. This agreement has to be completed before the Planning Board can reapprove the resolution. The two parties are very close; however, the current question is, what happens if three years later, the costs to complete this project exceed the Letter of Credit amount. The Letter of Credit is now at \$1,665,000 or so. Mr. Oberst feels strongly that it won't be enough. The plan is to get the developer to agree that in the event there is a gap, that the developer will be responsible for it. The developer would like to rely on bonds that go with contracts. The Town Board is concerned with doing it this way and would like a little more security.

Attorney Ortenberg stated there is going to be another Planning Board and Town Board meeting before April 24. He is recommending any decision be put off until either the Planning Board meeting scheduled for April 13 or the Town Board meeting on April 14.

Mr. Hale asked when a subdivision is approved and filed, does that also expire. Attorney Ortenberg stated he believes it does because there is a life to it. Chairman McAllister added that when a subdivision is signed, but not filed, the applicant has to come before the Board again to reapply. Mr. Hale's concern is once a subdivision is filed, does it expire.

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Mr. Minor asked what is the status of the improvements made on the property so far. Mr. Oberst commented that the storm sewers, site grading and ponds have been completed. The water main and sanitary sewer still need to be completed. Attorney Ortenberg stated there would be a whole list of things attached to the agreement with the Town needing to be done.

The resolution completed by Attorney Ortenberg was sent to the members via email. He explained there are blanks for the schedule so that the Planning Board could determine how long to give the developer to finish. Chairman McAllister stated this was discussed earlier and the Board came up with two years as max. The order of work to be done is very important so that the money can be applied accordingly.

Mr. Dollard asked if the current Letter of Credit could be amended to reflect the market adjustment based on the site costs. The developer has stated that M & T Bank would not issue a new Letter of Credit, but no one has disputed it. The Letter of Credit expires October 5 with terms extending it one year at a time. He also asked if there is any evidence the developer was declined by the bank. Chairman McAllister stated the partner in the LLC, who was picking up the construction loans and set up the Letter of Credit died. The Town is planning to draw down the Letter of Credit and set the money aside, and the agreement sets forth what will happen. The concern is what happens if the \$1,665,000 is not enough money to cover today's costs. When the contractors' estimates are given for the amount of work to be done, the Town will clearly see if there is enough money.

Chairman McAllister discussed the Town Board's role and authority in the Letter of Credit process. The Planning Board has not had involvement with the Letter of Credit process before. Attorney Ortenberg stated the Town Code gives authority to the Planning Board for approving the form of it. The Town Engineer sets the Letter of Credit amount.

Discussion took place regarding the Heritage Square project and how a Letter of Credit has not been established to date even though the project has received final approval. It was suggested that the establishment of the Letter of Credit be made part of a Planning Board checklist to ensure that it is completed for future applications before final approval is given and signatures signed on the mylar.

Chairman McAllister reiterated unless the Town Board takes the authority formally back, anytime there is a project that requires a Letter of Credit, the Planning Board must include the Letter of Credit and a build out schedule for construction as part of the resolution for final approval and before any signatures are given.

Mr. Dollard asked if there would be provisions for retainage of a percent of the Letter of Credit for one year after completion of the project. Attorney Ortenberg stated there's nothing in the code for retainage, but there's no reason it can't be a part of the approval.

Attorney Ortenberg stated if anyone has any comments regarding the resolution he has prepared, please feel free to forward them to him.

The meeting was adjourned on motion at 9 p.m.

Planning Board Secretary