

TOWN OF JERUSALEM
SPECIAL PLANNING BOARD MINUTES
March 15, 2012

Approved

The special meeting of the Town of Jerusalem Planning Board was called to order by Chairman Bob Evans, on Thursday March 15, 2012 at 7:05pm, the roll was called:

Present	R. Evans - Chairman
Present	M. Coriale - Vice Chairman
Present	E. Pinneo
Present	B. Pringle
Present	D. Gridley
Excused	J. Gruschow
Present	A. Carcone

Others present, David Wegman, Nancy Sproule, George Sproule, and Town Board member Mike Steppe

APPROVAL/CORRECTION OF MINUTES

A motion was made by Bill Pringle to approve the March 1, 2012 Meeting Minutes, as submitted.

The motion was seconded by Ed Pinneo

Ayes – 6 Nays – 0

Under A-h: under Mark & Marilyn Stanton Mr. Payne stated that this could/not should cause concerns as far as the highway goes.

Under B-Site Plan c. Prior to construction sewer and water dept. must stake out the 12” water main and the sewer service for this property.

Under Harbor View Town House b. the letter from Phil Bailey dated February should be attached and is as attached to these minutes.

Under c. The Email from Daryl Jones dated 3/15/2012 should be attached and is attached to these minutes.

Under Old Business

Don Naetzker – Finger Lakes Museum Review , it should say 160-102 Sketch Plan Conference for Site Plan Review.

THE PLANNING BOARD'S PUBLIC PRESENTATIONS

A. NEW BUSINESS

a None

OLD BUSINESS

A. Harbor View Town Houses:

Bob Evans made a motion to adopt the Resolution drafted by Phil Bailey and Emailed to the Planning Board on February 28th.

This motion was seconded by Mary Coriale

Ayes – 6 Nays – 0

The Resolution was as follows:

TOWN OF JERUSALEM PLANNING BOARD
SUBDIVISION EXEMPTION RESOLUTION
HARBORVIEW TOWN HOMES PROJECT

_____, 2012

WHEREAS the Subdivision Law of the Town of Jerusalem became effective on December 15, 2009; and

WHEREAS site plan approval of the construction of townhouses in the Branchport Service Park District of the Town of Jerusalem to be known as Harbor View Townhomes (the “Project”) was granted by this board on November 10, 2010; and

WHEREAS, a permit for the demolition of certain structures was issued to one of the owners of the project by the Code Enforcement Officer of the Town of Jerusalem on September 8, 2009; and

WHEREAS, in reliance upon the permit so issued, the owners expended more than \$220,500 for the demolition of said structures and the acquisition of other property in connection with the Project prior to the effective date of the Subdivision Law; and

WHEREAS, the attorney for the town of Jerusalem has opined that substantial expenditures by an owner in reliance upon valid permits issued by the town may vest the owners in the right to continue the project free from the application of laws, rules, or regulations, later adopted by the town;

NOW, THEREFORE, be it RESOLVED by the Town of Jerusalem Planning Board that the Subdivision Law of the Town of Jerusalem does not apply to the Project known as Harbor View Townhomes,

located at Route 54A and Mill Street in the Town, because the owners made substantial expenditure on the project based on a valid permit prior to the effective date..

After the motion was made and passed there was much discussion on the subject.

There was a Public Hearing on this project.

All of the DEC paperwork was received.

A Town House law was established.

The applicants have already spent over \$200,000 on this project.

This project needs to be expedited.

This project shows the planning board needs to have a timeline for future projects.

This has been a learning process for the planning board.

THE PLANNING BOARD'S PUBLIC BUSINESS

1). OLD BUSINESS

- a. None

2). NEW BUSINESS

- a. Is anyone interested in serving on a Committee to review and update current Zoning Regs?
 - i. Didn't we already this? We were going to start with Ag-Res.
 - ii. Didn't we hire a company to review all of our codes and get rid of some of the duplicates?
 - iii. It was suggested that we look at setbacks and variances.
 - iv. There was much more discussion on this subject.

HEATON & VENUTI, LLP

ATTORNEYS

Murray P. Heaton
Mark A. Venuti

—
Eliza G. Heaton
Philip L. Bailey, Of Counsel

PARALEGALS

Mary S. Chelenza
Denise M. Multer
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Reply to:

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February 28, 2012

Planning Board
Town of Jerusalem
3816 Italy Hill Road
Branchport, NY 14418

Re: Harbor View Townhomes project

Dear Board Members:

While I was talking with Chairman Evans and Mrs. Nesbit about the procedure for reviewing the Harbor View project under the new subdivision law, Mr. Sproule approached the Supervisor and inquired whether he and Mr. Wegman really need to go through the subdivision procedure. I then researched the law and find that the courts in New York recognize that it is unfair to require a developer to comply with rules and regulations adopted by the municipality after the developer has received initial approval from the municipality including a permit and has expended substantial money in reliance thereon.

In the words of the Court of Appeals, “a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development,” *Town of Orangetown v. Magee*, 88 N.Y.2d 41 (1996)

Attorney Licht, who represents the developers, has furnished me with a letter (copy attached) that documents more than \$476,000 in expenditures. Not all of this was expended prior to the adoption of the Subdivision Law by the town. Upon inquiry, Mr. Licht informs me by email (copy attached) that \$223,250 was expended prior to December 2009, when subdivision became effective.

There is no exact formula for determining when the expenditure is substantial enough to justify the exemption from subsequently adopted regulations. The issue is approached on a case by case basis, each case depending on its specific facts. The reported cases tend to involve much larger projects that justify the expense of litigation to resolve such issues. For instance, in *Glacial Aggregates, v Town of Yorkshire*, 14 NY3d 127 (2010), the owners had spend \$850,000 for a DEC mining permit before the town adopted its first zoning law. The total cost of the project was unstated, but the owners had a commitment for additional bank financing of \$2.9 Million. The court of Appeals held that even though the DEC permit is not a town permit, it is the main expense in preparing for surface mining and could be considered on the issue of substantial expense incurred before the zoning law became was adopted.

In this case, we have proof of \$223,250 spent (or \$22,325 per unit) before subdivision went into effect. We do not know the total cost of this project. We do know that the developers have spent in excess of \$476,000 (or \$47,600 per unit) and have yet to begin actual construction. It is rumored that the cost of each townhouse unit will be upwards of

\$400,000. The amount spent per unit would be approximately 5.5% of that figure. But in order to make a profit the amount actually spent by them will be significantly less than the \$400,000, so the ratio would be higher, at least 10%.

In my opinion, given the amount spent and the obvious commitment to this project by Mssrs. Wegman and Sproule, the facts here would justify a finding that their investment satisfies the test described by court decisions (See *Orangetown v. Magee*, above) and that the town subdivision law adopted after this project commenced does not apply to it.

I have prepared and enclose a suggested resolution for you to consider and adopt (if you agree) that would create a record of this decision.

I understand that this matter will be on your agenda for March 1, 2012. I do not know whether you will be able to consider and vote on it at that meeting.

Very truly yours,

Philip L. Bailey

Enc.

Cc: Town Board

Kenneth Licht, Esq.

Email from Daryl Jones to the Planning Board on March 1, 2012

This morning I was given a copy of an E-mail sent by Bob to Carol Goebel and copied to Mary C, Phil and Elaine Feb 28, at 9:52PM denying Attorney Bailey's request to the Planning Board to place the Harbor View subdivision resolution on your agenda for the March meeting.

If the Planning Board agenda does not allow addressing the resolution tonight, a special Planning Board meeting needs to be scheduled to expedite this matter as you did for the Farmers' Market application.

Thank you for your attention to this matter.

Daryl

A motion was made to adjourn the meeting at 7:30pm was made Bob Evans and was seconded by Donna Gridley.

Ayes - 6 Nays – 0

Respectfully submitted,

Carol Goebel