

LIVONIA JOINT PLANNING BOARD

August 24th, 2020

Present: Chair Bennett, D. Andersen, J. Brown, R. Haak, J. Palmer, J. Sparling, CEO A. Backus, Zoning Compliance J. Holtje, Attorney J. Campbell.

Excused: L. Willoughby, Recording Secretary A. Houk

Note, Public Meetings (Covid-19) precautionary policies were followed to the best of our ability and included:

- Applicants would typically be asked to wait in their vehicles until instructed to enter the building; however, the attendees at this meeting were able to maintain social distancing and wore face coverings.
- Hand sanitizer was made available at the entrance of the town hall.
- Meeting room occupancy was restricted to no more than 50% of the maximum occupancy (or 48 persons). Less than 48 persons attended this meeting.

Agenda:

1) Approve the meeting minutes. –August 10th, 2020

2) Bruce Beardsley – Meadow Drive, Livonia, NY
4- lot Subdivision off Meadow Drive.

Chair Bennett opened the meeting at 7:00 p.m.

1) Approve Meeting Minutes for August 10, 2020. Chair R. Bennett asked for a motion to approve. M/2/C (R. Haak/J. Palmer) approved as submitted. Carried 6-0

2) Bruce Beardsley - Meadow Drive, Livonia, New York.

Chair R. Bennett asked Bruce Beardsley and Glenn Thornton of Thornton Engineering, LLP to come forward to discuss the Subdivision. Chair R. Bennett asked that they bring the Board up to date since they were here the last time. G. Thornton stated that the water main & pressure has been fixed by the LCWSA. They have received a letter from Attorney P. Skivington regarding the off-site storm water pond. The letter indicated that B. Beardsley was responsible to improve the pond, or gain and easement for the off-site pond. Since the Town's storm water from the existing road is directed into that pond, it would seem to be the Town's responsibility to maintain or obtain an easement if one is required. The Subdivision was designed so that the storm water discharge from the Subdivision to the storm sewer in the street that leads to the pond is being maintained. The applicant is not increasing the storm water run-off to the pond, it will maintain existing run off. Since they are creating additional impervious surface, they will be directing some of the water to the west into a new storm water pond that that applicant will be constructing as a portion of the Subdivision. In the pond, they will be mitigating flows and maintaining

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existing storm water run-off patterns to the west as well. There were concerns that the cul-de-sac not being built to standards. This is really a private drive, and the applicant has provided the driveways and adequate room for emergency equipment which is shown on the plans. There is a paved, hammerhead type turnaround for fire apparatus.

Chair R. Bennett asked for comments regarding the drainage and water main pressure from CEO A. Backus & Attorney J. Campbell. Chair R. Bennett stated that the water is being pressured, but there is not a water main extension to the property, and the turnaround is non-conforming. The Village still needs to approve the water main, and the non-conforming turn around. CEO A. Backus stated that the turnaround that the applicant implemented, is not what Clark Patterson Lee provided. The Village was not asking for a design criteria turnaround because the road leading up to it doesn't meet standards. Clark Patterson Lee brought a School Bus & Fire Truck up to the site, and designed a solution that would work for the turnaround. That is not what the applicant implemented, so that would need to be revised. The applicant is stating that the road is private, and the School Bus and Fire Truck had no purpose to be on it. Attorney J. Campbell stated that in regards to the water main extension, that is something that the Village has to opine on, and the LCWSA as well. The infrastructure for the Village is generally owned by the Village, and main extension agreements usually happen between the Village and the LCWSA. Attorney J. Campbell asked G. Thornton if it was the intent that the new retention pond was going to be privately maintained, as the Village is going to require an agreement for that. G. Thornton stated that it would be privately maintained. B. Beardsley stated that the sewer was installed on the property when the Meadow Drive subdivision was developed. They will still need approximately 100' of water main for the new Subdivision to hook on. CEO A. Backus stated that for clarification, no one has mentioned anything regarding the sewer. The water extensions were installed without any permits. It still needs to be extended with the blessing of the Village and the LCWSA. G. Thornton asked in regards to the water main extension, should they be dealing directly with the Village and LCWSA. CEO A. Backus stated that ultimately, it is the Village, but LCWSA will be involved. The purpose of the meeting tonight is to figure out what is needed to be accomplished. The goal is to identify the path and find a way to move forward. Attorney J. Campbell stated that the path forward involves fixing the cul-de-sac, so that it can be dedicated to the Village. CEO A. Backus stated that it was unclear if the Board has addressed the issue, and if they were comfortable with a private cul-de-sac being a road. B. Beardsley stated that he spoke to the Mayor when he first purchased this property, and allowed the Village to use the road if they wanted. At the end of the two years, the Mayor stated to B. Beardsley that, "I do not want, nor do I need a cul-de-sac". At that point, B. Beardsley decided to make it a private turn around. B. Beardsley has spoken to the Fire Chief and he has stated that he has no problem turning around in that area. Currently, and for the last 40 years there has never been anywhere to turn around there. He is providing that, and according to G. Thornton it does meet the States criteria. It would appear it would be far superior that what is there now. Currently, the garbage trucks drive up that street, there are no sidewalks and no lights and no place to turn around, so they have to back all the way back down street to leave. This is the same time that the kids are walking down the street to go to school. During the period of time that he allowed the Village to use this turn around, School Buses and Garbage trucks all used the gravel cul-de-sac turnaround, and he thought that it was acceptable, and able to work it out. At that time, the Mayor told B. Beardsley that he didn't want or need the cul-de-sac. B. Beardsley stated

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that he would close the cul-de-sac down. CEO A. Backus stated that if its going to be private, the garbage trucks still won't be able to use it. B. Beardsley stated that they will be able to use it, as long as he owns it. CEO A. Backus stated that if its private, the garbage truck has no right to use the turnaround. If he only has a contract with some of the homeowners, the garbage truck and everyone else is going to use the turnaround. B. Beardsley asked how that was any different from the street location where the Town Supervisor and Mayor live. CEO A. Backus stated that he has pointed that out several times and its stated in previous meeting minutes. That is coming off a legal road to a cul-de-sac. It is totally different than a dead-end road, 150' long. Its not apples to apples, but the point is that if you want to keep it private, that means no one else except the four new home owners have a right to drive on it. CEO A. Backus stated that is why it is in the best interest to have it dedicated. Its 80% done, lets finish it and get it to the Village and move on, there is a path forward. B. Beardsley stated that he may consider doing that if it was agreed upon what G. Thornton has provided. It is adequate for the Fire Trucks, and meets requirements, even though it may not be what is required if a new Subdivision was created. CEO A. Backus asked G. Thornton if what he drew, was the path that Clark Patterson Lee provided to accommodate for the Fire trucks and School Buses. G. Thornton stated that it was not what CPL provided. CEO A. Backus stated that CPL provided drawings, and Land Surveyor Barry Carestio plotted it out. G. Thornton could modify his plans to show what CPL wanted, and what B. Carestio plotted out. The fact is that if the applicant wants the Village to participate financially. The tax levy was raised and the Village attorney stated that they could not use taxpayers' funds for that. B. Beardsley stated that if we want to move on, but the Village doesn't want to contribute financially, they would be benefiting as much as he would. There are 17 houses on Meadow Drive and they don't have a place to turn around. Kids are walking down the street, in danger of trucks backing down the road. There is no place to plow the snow, they push it down to his gates and pile it up. There is nothing there now, and the snow plows and fire trucks are able turn around there now. If they want to move forward, B. Beardsley stated that he would dedicate that, and it would give them a place to plow the snow and turn around. It will also give the school buses a place to turn around, and makes the area safer for the kids walking on the road. He feels that his plans, even though they may not meet the Design Criteria, are adequate and would be a benefit.

Zoning Assistant J. Holtje stated that it appears historically that this property started as a development with a developer that has gone through stages of development. The one thing that is consistent along the whole path, is that this road was intended to be continued somehow. Provision has always been made for the end of this section. The map that B. Beardsley purchased it off from shows the temporary turnaround. It was laid in gravel and served that purpose which people used for many years. The fact is that it was laid out to serve the current development. You as a new developer, are responsible for making it a conforming turnaround. B. Beardsley stated in the beginning the developer who was Magar, sold the land to a developer from Rochester. That developer had a plan to put the road all the way through, and out around the back of all the houses and back out on the other street. When B. Beardsley purchased the land, he discussed with Code Enforcement Officer K. Matterson, at that time, that he did not want to proceed with that as it would be too involved and there wasn't enough water. You could put more houses than what he is asking for, but he is only asking for a simple thing and would like to only have four houses. At that point, CEO K. Masterson stated that would be fine since

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he would only be putting four houses in. Originally, there was another lot that was supposed to be a roadway to go back out, but he has since sold that lot, and a house is now there on that lot. That development plan was hypothetical, and never happened. Regarding the pond issue, that was built in the beginning to take care of the retention water, which was approved. Someone dropped that ball along the way and didn't get an easement, that was never an issue when Magar was there. The water is still going there, and was never an issue. He purchased the property and it was never an issue until he proposed developing it. Tony Backus was interested in purchasing the pond property, so he sold it to him. B. Beardsley stated he doesn't understand why something that has been existing for 40 years, and was approved by the Town is now a problem. Someone dropped the ball with getting an easement. It was the same way on his property with the easements for the sewer, there were none there. Zoning Compliance Assistant J. Holtje stated that the detention, stormwater area and turnaround are filed in a record as part of this development, and you as a developer assume that responsibility. The property you bought, and the intentions you have for the future are great. It doesn't eliminate the responsibility for the existing Subdivision and turnaround, in order to make that a legal and safe road with a fire approved turnaround. B. Beardsley stated that he is all for doing that and has had G. Thornton draw that proposal up for approval. He thought that CEO A. Backus requested that he have the Fire Chief come to the property to make sure the turnaround was adequate, which he said it was. Zoning Compliance Assistant J. Holtje stated that these are all great opinions, but the proposal needs to meet the Design Criteria and Code. CEO A. Backus stated that he felt that we could get between what you have, and what is required. He thought that G. Thornton has B. Carestio's rendering of the "practical" turnaround that Clark Patterson Lee has provided. G. Thornton stated that he felt it was going to take up too much space. CEO A. Backus suggested that they discuss with the Board regarding whether they would even entertain something that didn't include dedicating that part to the Village. G. Thornton felt that they could work out the cul-de-sac, that wouldn't be a problem. B. Beardsley stated that's where he leaves things up to G. Thornton. He can build things, but he is not an Engineer and doesn't know the details. He has a common sense approach to it, but understands that the Town and Village needs to enforce the Codes. Attorney J. Campbell stated that we have an opportunity to fix things that weren't done properly. Somewhere, sometime a ball got dropped 30-40 years ago, this is an opportunity to fix it instead of perpetuating the problem. It is going to benefit everyone, including B. Beardsley and the purchasers of the lots. People are not going to want to have some little stub of a cul-de-sac as their responsibility. Simple maintenance and an easement agreement are going to devalue these lots. If any one of those four home owners doesn't like the idea of being responsible for snow maintenance and upkeep in that little cul-de-sac area, it will drive the value down, and cause problems between the intersection where the Village road stops and private property starts. It sounds like that can be done; this is the catch here. For the Village to be willing to entertain something like a main extension agreement on the water, they are going to a lot more interested in doing this if all these problems can be resolved at once. We should be thinking of this as an opportunity. That means that the applicant needs to bend a little bit. B. Beardsley stated to quote you at a past meeting when Eric Gott was there, he thought this was a perfect statement. Talking about the problems that existed and having no place to turnaround, and what were going to do. Mr. Campbell had said at the time, "we can't just keep kicking the can down the road". B. Beardsley stated that was good, and he agreed with that. However, he doesn't feel that he should be held responsible to a higher standard that what really needs to be done to correct the

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problem, referring to the turnaround. Having said that, he won't comment further, and will leave it up to G. Thornton and professionals to try to work that out. G. Thornton stated that it was pretty obvious a cul-de-sac meeting the Village's needs could be built. It would probably be at least 60% larger than what they have on the plans. Attorney J. Campbell stated that it is Design Criteria requirements. CEO A. Backus & G. Thornton reviewed the plans prepared by B. Carestio, and approved by Clark Patterson Lee. CEO A. Backus stated that we are not far off. If we could find a way that the School Buses and Fire Trucks could adequately use the turnaround without being on private property, you need an extension from the Village and this could solve the problem.

Attorney J. Campbell stated that the issues we have are the cul-de-sac, the water main extension for water and drainage. J. Brown asked who is typically responsible for storm water detention ponds, and is that usually maintained privately. Attorney J. Campbell stated that in an ideal situation for a residential Subdivision, 4-8 lots, the developer is responsible for putting in all the necessary infrastructure. They have to show that the infrastructure accommodates drainage so that post construction will have no adverse effects. Once it is done, it's known that it will need to be periodically maintained in order to be effective. Over time we need to plan for that on the front end, as part of the development process. Ordinarily what we do, depending on the size of the development, we consider doing a drainage district. The drainage district states that in the event of modifications that are needed, or maintenance that had cost associated with it, the municipality can step in and take care of those things because presumably the developer is gone. The cost would be passed onto the benefited property owners in that district. It's not appropriate to use tax payers dollars for private benefit. B. Beardsley stated that he looked it up in regards to the Pond, and in the beginning they did it as a retention Pond. The only thing he can see that was done legally, was that Livonia School District gave them an easement to hook into their 12" storm water drain. If you have ever been to the site, you wouldn't know that there is a Pond there, as it is just a cluster of trees. The storm water comes out in a 30" pipe. He has made it a point to go there several times in the past years since he has owned it, and never has he saw very much water going out of it. The 12" pipe that it goes into runs maybe three quarters full at the most. I wasn't there, but common sense tells me what this was designed for in the beginning was a pond when they were working on the property, and there was run offs and no grass and it wasn't directed. It ran faster than what the 12" pipe could take, so it would run into the Pond and build up instead of flooding somewhere. Since it has been all taken care of, and the houses are there, what's in the front goes into the storm sewer. What is in the back falls off and goes toward the school. There is a diversions ditch down there which the water would go. When you talk about the Pond, all that is I think is in the beginning, was for run off retention and silt. Now the water runs in one side of it out of a large storm sewer, and runs out in the 12" line. He is unsure where it goes from there, he assumes to the Lake. CEO A. Backus stated that we know where it goes, but we think all of the catch basins on Meadow Drive goes to it, not out to the road. All the storm sewers from Meadow Drive goes through that Pond, in directly to the ditch on Bull Dog Blvd. It then flows into the storm sewer at Big Tree, and comes around and empties out and goes into Wilkins Creek. B. Beardsley asked if he was referring to the one at the School. CEO A. Backus stated that the Pond takes all the water from Meadow Drive, where he believes was sized for a bigger development, and that is why you don't see a lot of water. There is a 30+ pipe & an 8" pipe coming out, possibly 12". It then goes into a manhole and indirectly goes into

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a ditch at the school driveway. It then goes to a storm sewer on Big Tree, and ends up near the Town Hall building, then goes across and ends up in Wilkins Creek. B. Beardsley stated that the storm sewer that it hooks into is at the School. CEO A. Backus stated that the whole development goes through that pond even though the Pond doesn't get very full, so the Pond is handling the water. Attorney J. Campbell stated that the Pond is handling the water for right now. While we are addressing solving problems, we should at least give some thought to whether we need to address the future of that drainage facility. Its working apparently, but what if the situation changes. Currently we don't have a mechanism in place to address any issues. CEO A. Backus stated that it's possible it could be as simple as granting the Village an easement if they ever had to get in there to maintain it. B. Beardsley stated that there are two ways to get in there now. They could go through T. Backus's property. CEO A. Backus stated, with an easement. B. Beardsley stated that they could come through his property, and needed an easement, that is okay too. As for cleaning the Pond out, when he went up there with K. Masterson, the Pond was a mess. K. Masterson stated that he was glad that B. Beardsley bought it, as maybe he would get it clean up. It has been a mess and no one has ever done anything with it. B. Beardsley went in there with an Excavator, took all the trash, brush and trees out of it, and hauled them all away and graded it up. That was 5-7 years ago, and the Village had never touched it in 40 years. Now, it's grown up and like it was before but still doesn't cause any problem, its just a fact that it is there. CEO A. Backus stated that he understands what B. Beardsley is saying, but there is an adverse effect to one neighbor on the south east edge, where water is pouring off that property across the driveway. Possibly that could be corrected with a swale. G. Thornton stated that they do have an existing Pond that does need an easement for maintenance and access. There is also going to be a new Pond that B. Beardsley will be building as part of this development. Will the Village entertain the thought of taking over maintenance responsibility on the new Pond? CEO A. Backus stated that currently there are no maintenance agreement for the existing Pond. G. Thornton asked if the Village would take maintenance responsibility for both Ponds, if as a part of the Subdivision B. Beardsley went back to the existing pond and cleaned it out and made it functional. CEO A. Backus stated that would be a detail to be worked out, he can't speak for the Village, but possibly they may be willing to take responsibility if needed to maintain the existing Pond. The Board asked for clarification for the new Pond location. Attorney Jared. Hirt of Evan Fox, representing Joanne Backus owner of 106 Big Tree, and also the retention Pond that is being discussed. The reality of all this is that his clients own a property that is significantly encumbered by a retention Pond. The Pond serves seventeen other houses, and if this Subdivision extension gets approved, it will be adding an additional four houses. Now there would be a total of twenty-one homes with all of their storm water run-off going directly through his client's property. B. Beardsley owned this property, and sold it to his clients with the knowledge and understanding that it was encumbered by this Pond. If we are going to increase the run-off, even though the applicant states it will same, it still legally shouldn't be going through their property without some formulization of how this is going to be handled. His client's property is servicing all these other properties, there could be a real issue if for whatever reason that property needs to be maintained. If there is silt build up, and it backs up, that would fall onto his clients to choose if they wanted to service it or not. This is really an issue that got dropped. As Attorney J. Campbell stated, generally this issue would have been addressed years ago, but should be to the determent of his clients. B. Beardsley stated that J. Hirt was insinuating that he sold a pig in a poke. Adam Backus's father sent him a letter

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when he was in Florida during the winter, which stated that they would like to purchase some of the land he owned there. When he met with T. Backus, he had a building setting off the property line that was illegal and wanted to purchase some land to correct that problem. B. Beardsley stated that he didn't really care about selling the land, but he would like to sell a little more than what they were interested in. They agreed that T. Backus would purchase two acres. He was totally aware that the Pond was there, and had an attorney close the transaction. There were no secrets, things are not any different than they were 40 years ago. To indicate that they bought something to take responsibility from me, he didn't ask or want to sell it. They wrote B. Beardsley a letter requesting to purchase the land. Attorney J. Hirt stated that there are two issues that are presented. One is, in a typical transaction where a Pond is located on a property for purposes of retention, there would be an easement that would show up when the attorney does their title search. Generally speaking, when an attorney does the property closing, they would see the history of that property. When they review that history, they would see the easement that gives someone the ability in this case, the Village to maintain the Pond. In this case, because no easement was ever recorded, it would have never have been picked up by the attorney. I take somewhat of an exception to that because there is nothing that was ever going to show up, ever! Unfortunately, Mr. Beardsley was in the perfect position at that time, knowing what his intentions were with the four lots, could have reserved an easement at that time to maintain control, but that didn't happen. Unfortunately, his clients are now stuck with this situation. Now seems like the perfect opportunity to address the issue. B. Beardsley responded back to J. Hirt in an aggressive tone??. Chair R. Bennett requested that B. Beardsley stop the conversation. CEO A. Backus requested that B. Beardsley refrain from stating "Adam Backus's father". When Joanne Backus purchased the property, CEO A. Backus was not an employee of the Town of Livonia. We have an opportunity to solve this problem, lets stay on track and solve the problem.

Chair R. Bennett stated let's stick the points that need to be solved. First, the water main extension. That will need to be worked out with the Village and LCWSA. Chair R. Bennett has requested that confirmation back in writing to the Planning Board. He is also requesting something back in writing from the Village & Fire Department regarding the cul-de-sac. That is what the Planning Board needs in order to approve the Subdivision. The drainage easements need to be addressed. This would be the new ones associated with the proposed Subdivision, & and the existing one that is 40 years old that has never been filed. All parties involved will have to approve it. G. Thornton stated that the existing easement will be difficult for them to do as they have no leverage on that easement. Chair R. Bennett stated that its not a matter of leverage, it's a matter of working together in the best interests of everyone. The Planning Board wants to see how that will be addressed. We are in the perfect position to fix it.

JoAnne Backus stated that she takes great insult when her property is referred to as "Adam's father's property". She purchased the property on her own and it is in her name. Tony represents her in her absence.

J. Brown asked for clarification regarding the new detention Pond. If they could make a bigger one and retire the old one. G. Thornton stated that if they could get water to flow uphill. CEO A. Backus stated that the issue is its already set up to go through there.

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CEO A. Backus stated that it might be helpful for J. Hirt to present something that would suit his client, however that gets resolved. Let's start with the water main extension and contact the Village, and the LCWSA for their approval as well. Attorney J. Campbell suggested to G. Thornton that he should be making those communications. With no disrespect, they will want to hear from an Engineer what that plan is. Very strongly, I suggest you incorporate in that first conversation, the cul-de-sac. Everything should flow after that. G. Thornton stated with what CEO A. Backus has presented tonight, extension of the cul-de-sac that has been built, it is doable. He feels that they can fix that without impacting the lot size. The drain will be a little more difficult, as they have no control of J. Backus's property. CEO A. Backus stated that everyone is going to work together to figure out what it will take for this party, who inherited this issue, what would satisfy them. B. Beardsley needs a water main extension, and the Village needs the turnaround. Attorney J. Campbell stated that he means no disrespect, but he encouraged B. Beardsley to let his Engineer, G. Thornton have the conversation with the Village. B. Beardsley agreed he would let G. Thornton handle it, and CEO A. Backus stated he would do his best to speak with the Village, as this would be in everyone's best interest.

With no further questions, Chair R. Bennett asked for Motion to adjourn the meeting at 8:25 p.m... Motion to adjourn: M/2/C (R. Haak/J. Palmer) Carried 6-0

Respectfully Submitted,
Alison Houk, Recording Secretary