

**THE VILLAGE OF PAWLING PLANNING BOARD MINUTES****APPROVED BY**

<b>Date:</b>	April 25, 2007
<b>Present:</b>	Michael Grogan, Chairman Dr. George Coulter, Member Stan Mersand, Member Taren Tanner, Member
<b>Also Present:</b>	Michael Hayes, Village Attorney Bart Clark, Engineer, Oakwood Environmental Earl Slocum Mary Rahe

**VILLAGE OF PAWLING  
PLANNING BOARD**

4/6/07

On Wednesday, April 25, 2007 at 7:00 PM, the Planning Board met in the Village Hall at 9 Memorial Avenue. The meeting was called to order by Mary Heubel and began with the roll call as above indicated and conducted by the Planning Board Secretary, Mary Heubel. Mr. Cerny was absent.

**CONCEPT DISCUSSION****Mary Rahe Site Plan**

Mr. Grogan asked Mr. Hayes to explain the situation with the tobacco shop going in the lobby of the former M&T Bank. Mr. Hayes said the business would be a temporary business in a B-1 Zone. The question to be asked – Is a temporary stand permitted in an area where there are permanent businesses? Mr. Hayes suggested this project would be more of a ZBA matter. He went on to say Ms. Rahe could apply for a Transient Merchant's license. According to the Village Code a Transient Merchant is "any person engaging in activities commonly referred to as transient merchant or itinerant vendor who merchandises or sells with the intent to close out or discontinue such business within a period of one year from the date of commencement and occupies a room, building, tent, lot or other premises for the purpose of selling merchandise".

Mr. Hayes felt that the Zoning Code did not intend to permit this kind of use.

He said the owners of the Quick Stop were up front on this matter and the people behind the counter would be employees of Quick Stop.

He said the Village would need to look into the traffic crossing the street to get from the Quick Stop to the tobacco shop.

Summing up, Mr. Hayes stated there was nothing the Planning Board could do at this time. Ms. Rahe would need to go before the ZBA for an interpretation or before the Village Board for a Transient Merchant's license.

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Mr. Mersand asked if there was anything in the Code regarding minimum square footage for a retail store. Mr. Hayes said he did not recall any.

Mr. Tanner stated that he is representing Zarecki on renting the former bank and therefore would abstain from voting on Ms. Rahe's site plan.

Ms. Rahe stated she was trying to make a positive out of a negative situation and perhaps, in the future, work out a permanent situation for herself.

Mr. Grogan explained Ms. Rahe could go before the ZBA but the ZBA solution would be time consuming. Ms. Rahe would be better going before the Village Board for the Transient Merchant's license.

Ms. Rahe thanked the Board for their time and left the Meeting.

The Board thanked Mr. Hayes for his professional handling of a delicate situation. The Board was in agreement with Mr. Hayes's assessment of the problem.

### **OTHER BUSINESS**

The Secretary stated a letter was sent registered mail, return receipt to Mr. Creitoff requesting \$2000 escrow. Mr. Creitoff called on 4/24/07 stating he received the letter. He was going to talk to the town and the town's attorney. Mr. Creitoff indicated he was asking the Town to pay the \$2000. Mr. Grogan suggested the Village might need to add the escrow to his taxes.

The Secretary, then, explained about the Memo to the Mayor regarding the inspection of the steel on the Stone Hill project. A special escrow was set-up for these inspections because the building inspectors were not comfortable inspection the steel on a commercial building. Stantec had done all the reviews for this project and were slated to do the inspections. The Mayor told the Secretary to have Zarecki do the inspections.

There was some discussion regarding the three projects Zarecki has before the Planning Board. Mr. Hayes said he spoke with the Mayor about these projects. The Mayor agreed to let the Planning Board use another engineer to review the projects. The Board all agreed the engineer should be Stantec since they had done about 80% of the review. Mr. Mersand asked Mr. Hayes how the Board should go about getting Stantec for the projects. Mr. Hayes said he would send a letter/contract to Stantec requesting them to continue with the projects and to charge the previous rates. Mr. Grogan said this would save the three applicants a lot of money. Mr. Mersand asked Mr. Hayes if Zarecki planned on taking new clients that might come before the various boards. Mr. Hayes said

that the Mayor stated Zarecki would not take on any clients that would come before any village boards.

#### **MS4 WORKSHOP**

Mr. Clark started the workshop by explaining where the watershed boundary was located on the topography maps he displayed. Mr. Clark stated that the section of the Village in the watershed would be governed by much more stringent regulations than the section outside the watershed.

Mr. Clark reviewed Article I with the Board. In Section 5.11, wording was added, at the request of the Board, making landscaping & horticultural activities associated with wholesale & retail sales become a part of the regulation. Such activities will not be exempt.

Next, Mr. Clark reviewed Section 6.2.1, Performance Guarantee. He had a question as to whether it was prudent to cover the issue of performance guarantees in more than one section of the Code. He felt it might cause confusion. Mr. Hayes said the section concerning performance guarantees should remain in this part of the Code so all would know that a performance guarantee could be required under this section of the Code. He did not want anyone to say the Village lacks the authority to require such a guarantee. Mr. Clark said these guarantees will be required for disturbances of 5000 SF or more.

The next Section under discussion was Section 6.3.1, Notice of Violation. Mr. Hayes stated a specific officer, ideally the Stormwater Mgmt. Officer, should determine that a violation exists. He, further, recommends that the notice of violation section contain the requirements that were deleted. These requirements will be a useful guide for the Stormwater Mgmt. Officer administering the Code and it helps the Village with its due process obligations. This Section does not specifically name the person or board responsible for hearing any appeals. The Section needs to precisely identify the person or board.

Mr. Clark, next, took up Section 6.3.4, Penalties. Mr. Clark stated that at the last Meeting, the Board agreed upon a sliding scale of fees rather than a set amount for all size area disturbances. Mr. Hayes said the Village can set the fines for violations so long as the fine is not disproportionate to the offense. This fine will hold up in court. Mr. Hayes asked if "Ultimate Area of Land Disturbance" was a defined term. If not, the definition should be added and the language should be very clear to everyone as to how the sliding scale calculations are made. The standard for calculating the "Ultimate Area of Land Disturbance" must be very clear before the sliding scale idea be adopted. Mr. Hayes answering Mr. Mersand's question concerning the offences, stated that the first

offence for an acre disturbance would be \$700 for the first week and \$700 for each week after until the violation is corrected. If the person/company had another violation after the first offence, the fine would be \$1400 for the first week of the new violation and \$1400 for each week after until that violation was corrected, etc.

There was some discussion about the fixed amount on the scale. Some Members suggested using a range, (ie \$50-\$200) instead of a single fine for each category. Mr. Mersand suggested that by the time an owner reaches the third offence, he should be paying much more than what the scale is now suggesting. It was, then, suggested that the third offence be double the second offence.

There was much discussion concerning whether the money owed from the fines could be tied to taxes. Mr. Hayes said he would check on it. Next, the Board took up the matter of fines imposed on the Village by the DEC as a result of a private individual's violation. Mr. Hayes stated he did not think this section should be written as an automatic pass-through. The pass-through language suggests a finding of automatic liability without a judicial determination. He thinks the Village can reserve the right to bring action for reimbursement of the fines monies that the Village was forced to pay as a result of an individual's violations. Mr. Hayes, also, said he thought the DEC would not be happy with the language in this section.

Moving along, Mr. Clark began review of Article 2, Stormwater Control (Zoning). Section 1 is a list of definitions with some revisions. Mr. Hayes suggested the last part of the definition for Agricultural Activity be changed to read, "or the construction of new structures, roads, ponds larger than 500 SF", etc. Mr. Clark said the definitions of "Illicit Discharge" and "Wetland" were added to the list.

Mr. Clark, then, took up Section 2, Stormwater Pollution Prevention Plans. There was some discussion about the fact that the Village lies between two watersheds and some properties are split between the two watersheds. Mr. Clark stated that the Modal Code does not address this situation and the Village has the discretion to address the situation. The DEC may or may not agree with the language set forth by the Village. It was also recommended that the Village hold onto as much authority as possible in this regulation. There was also discussion on diverting the water during construction. This will be taken up again at our next Meeting.

Mr. Clark suggested that Article 2 should be reviewed at the next Meeting and Articles 3 and 4 be reviewed at the following Meeting.

Mr. Clark said a Construction Site Waste Ordinance has not been enacted by the Village. He believes now would be a good time to enact it. The Ordinance will be discussed at the next Meeting.

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**ADJOURNMENT**

Mr. Mersand made a Motion to adjourn the Meeting. Mr. Tanner seconded the Motion and all Members were in favor.

Submitted by

Mary Heubel  
Planning Board Secretary