

# Village of Pawling Planning Board Minutes

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Date: September 13<sup>th</sup>, 2022

Present: Robert Pfister Jr., Chairman  
Mike Mersand, Member  
Lou Musella, Member  
Peter Pennelle, Member

Absent: Adam Muroski

Also Present: Bob Lusardi (Village Council)  
Kendra Self (Applicant Duane Lake Academy)  
Diana Tomassetti (Applicant 146 East Main Street)  
Ben Gailey (146 East Main Street Attorney)  
Curt Johnson (Architect 146 East Main Street)  
Kelly Libolt (Heinchon Consultant)  
John Furst (Heinchon Attorney)

FILED WITH  
OCT 11 2022  
VILLAGE CLERK

APPROVED BY  
VILLAGE OF PAWLING  
PLANNING BOARD

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On, **Tuesday, September 13<sup>th</sup>, 2022 at 7:00 PM**, the Planning Board met at the Village Hall. The Meeting was called to order by Robert Pfister, Chairman and began with roll call as indicated above and The Pledge of Allegiance.

## Approval of Minutes

*Member Musella made a motion to approve minutes of August 9<sup>th</sup>, 2022 Planning Board meeting. The motion was seconded by Member Mersand and passed. All present members were in favor.*

## **Sketch Conference**

**Kendra Self (Duane Lake Academy/Applicant)**  
**527 Route 22/Grid#: 7056-05-206939 (B2 Zoning District)**

The applicant is seeking a Special Use Permit for the premises located at 527 Route 22 to operate a local non-profit K – 12 New York State registered school. The school has been operating at 535 Route 22 right above Mizzentop Day School for the past eight years. Ms. Self explained we're a very small school, there's parent participation as part of the registration with New York State and currently there are 5 students enrolled. Typical enrollment is 10 to 15 students per year. She said they received notice in July that Mizzentop would need more space to operate their school and was given until the end of August to move out but decided to move out that same weekend so that Mizzentop could use that time to get ready for the upcoming school year. As a result, they have suspended enrollment until a proper location/facility can be secured.

Member Musella asked what the ages of the students are. Ms. Self replied registration is K- 12. Typically it's high school (9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> & 12<sup>th</sup>) currently we have one student per grade and one 4<sup>th</sup> grader this year.

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Member Mersand asked do you use the soccer field. Ms. Self replied Mizzen-top has been generous and lets us use it during lunch sometimes.

Member Musella asked what the enrollment process is. Ms. Self replied we have an application online. Usually the reason why our enrollment is so small is it does require parent participation. We're a two day a week school. Its two days what is called "on campus" (in person) The rest of the days, the students work at home with an assignment that parents have to make sure they get done. Member Musella said it's kind of like a mixture of 'home schooling' and 'in school.' Ms. Self said yes.

Member Musella asked what the tuition is. Ms. Self explained the tuition costs and stated we are a non-profit; we just kind of volunteer at times. I'm also a parent at the school as well as the administrator. We have a science teacher right now who is a retired doctor and physics major; he teaches all of our science classes.

Chairman Pfister informed Ms. Self that she will need to apply for a Special Use Permit as well as Site Plan Approval. Next step would be to complete a Site Plan Application and recommended hiring an architect to help with the process. He set escrow at \$3,500.

## **Heinchon Place/2k Development, Inc.**

### **2K Development (Applicant)**

**Route 22/112 East Main Street (7056-05-210817, 219835, 226800)**

Mr. John Furst (Applicant's Attorney) said the Planning Board issued a Negative Declaration in January of 2020 and issued a denial in October of 2020 forcing the Applicant to file a lawsuit. The court annulled the Planning Board's denial and based the decision on many factors. Mainly, the existence and the findings in the 2020 Negative Declaration that was completed by this Planning Board. The decision from the judge removes all discretion. Mr. Furst asserted that the Planning Board's consideration is complete and the approval flows naturally from the judge's decision. You had draft approvals from your consultant, Joe Berger Engineering back in August 2020 so we think this is right for the approval as per the judge's instructions. Mr. Furst referred to Ms. Libolt to present the Site Plan to the Board.

Mr. Bob Lusardi (Village Attorney) disclosed he had a 15 minute meeting with the Planning Board earlier this evening for legal advice and to discuss the status of the litigation between 2k Development and the Village of Pawling. Mr. Lusardi read the judge's orders as follows: "There are two versions of the Comprehensive Plan and remand is required as to the Board as previously found that the project was fully inconsistent with the December 1994 plan and there is no evaluation of the project vis-à-vis the May 1994 plan as the court cannot substitute its own judgement for that of the Planning Board. It would be inappropriate for the court to engage in its own analysis of this issue." Mr. Lusardi asserts that the court is directing that the Planning Board make a fact-finding determination regarding how the subject applications are only inconsistent with the 1994 plan how that was a basis to deny the applications. Mr. Lusardi said it is the opinion of my firm that particular order is executory. In other words, it's requiring that the Planning Board engage in future conduct. As such, it is our opinion that particular decision order is subject to an automatic stay under CPLR 5519a. The Village has in fact filed a Notice of Appeal from that decision and that appeal is pending. As such, this action cannot move forward as it is stayed.

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Mr. Furst said I respectfully disagree because the judge, in her decision, actually goes through both Comprehensive Plans and the judge has specific language that says both Comprehensive Plans are consistent whether it's May or December 1994 so there is no discretion. There is no review or consideration for the Planning Board. The judge's instructions were to review it with respect to the Negative Declaration and her decision. He further commented page 11 quoting from the Judge, "the contents of the May 1994 plan are not so different from the December 1994 plan" so what's there to review? There's nothing to review. The judge has already addressed this in her decision so I'm going to have to respectfully disagree with Mr. Lusardi. I think in the interim, in the interest of time, since my client brought his consultant here to go over the site plans. I think at the very least, maybe we can agree to disagree for now and argue this at another time, but at the very least I think the consultant should be able to go over the site plan since they came here tonight.

Mr. Lusardi said it would be inconsistent with our position that this matter is stayed. I would not recommend to this Planning Board that you start hearing the applicant at the time. Chairman Pfister and the Board said they are in agreement with Mr. Lusardi. Mr. Lusardi said it's right on page 12 of the amended decision that I read. The decision says what it says so as a matter of law, it's my opinion that the automatic stay applies. Mr. Furst said right but what about the decision from two pages before that where the judge says that both comprehensive plans are not so different. Mr. Lusardi asserted the original decision remanded it back to the Planning Board for the purpose of approving the Site Plan and the Special Use Permit. The amended decision is the decisions that contained the language I read where the court is now asking this Board to make a determination and to make additional findings of fact here. That's executory and that is why that decision, as amended, is stayed automatically under 5519a. That's my opinion.

Chairman Pfister introduced a motion to adopt the resolution stated as follows: **"Be it resolved that upon the opinion of Counsel, it is the determination of this Planning Board that enforcement of the Decision and Order of the Honorable Christy Acker, J.S.C. is subject to the automatic stay pending appeal set forth in CPLR 5519. Accordingly, no action will be taken upon the submission made by the Applicant pending determination of the pending appeal."** The motion was passed by a roll call vote of 4 to 0 with 1 absent.

**Main Corner Properties, LLC  
Diana Tomassetti (Owner/Applicant)  
146 East Main Street/Grid #: 7056-09-244711**

Village Attorney Bob Lusardi disclosed that he had about a 10 minute meeting with the Planning Board for the purpose of giving legal advice to this Board with regard to pending litigation between the Applicant and the Village.

The Applicant is before the Planning Board to further discuss the architectural changes that were not in compliance with the approved site plan. Mr. Ben Gailey (Applicant's Attorney) said at the last Planning Board meeting the Board requested that we submit the Long Environmental Assessment Form (LEAF) which was done.

Chairman Pfister said unfortunately our Planner had to attend to unforeseen family matters out of state and has not had a chance to complete her review of the LEAF.

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Mr. Curt Johnson (Applicant's Architect) said I think we spelled out in our initial submission basically all of the issues that were outstanding that we're not in compliance with the approved site plan. I think that was all in the initial submission to this Planning Board. Mr. Johnson asked if it would be possible to tentatively schedule a public hearing pending on the next week or so if he can work with Planner LoBrutto if there's anything she wants tweaked on the LEAF that can be done in advance of the next meeting.

Mr. Gailey asked if there are other people in her firm that could handle the review of the LEAF. Member Musella suggested that the Board should stick with Planner LoBrutto because she's familiar with the entire project and did the review of the first LEAF.

Mr. Lusardi said I've been through these papers and I don't see a proposed amended site plan that contains all of the changes that the Applicant is requesting. There's been a back and forth, I'll agree, there is the Orr letter and the response to the Orr letter. There's stuff here and there but if the applicant's going forward with an amended Site Plan there's got to be a set of documents that constitutes the full panoply of changes between the original approved Site Plan and what they're looking for this Board to approve. I would also mention that there may be issues as to whether or not the changes that have been made to the physical property whether or not they are shown or not shown on the proposed amended plan. I think we should take an opportunity to be clear about what the differences are that you're seeking to have this Board approve in an amended site plan. In other words, changes from the original site plan to a full picture of all of the changes you're looking for this Board to approve.

There was a lengthy discussion on whether or not an amended site plan was submitted to the Planning Board. In the end, the recommendation of Village Counsel to the Planning Board is for the Applicant to submit/resubmit and amended site plan. Mr. Lusardi explained that zoning code sets forth regulations for a site plan, whatever the plans were that you would have submitted originally for site plan approval. That's generally a series of site plan maps showing the site and showing the features on the site that you want to

Install. In this particular case, you would have a site plan (a map) showing the original plan and what you seek to change in each of those items on the original plan under the amended plan. That way the whole picture is before this Planning Board in the manner that the Village's regulations require for a site plan approval.

Ms. Tomassetti said if you'd like us to recap everything and get it, we can sit down and put it together one more time. Ms. Tomassetti asked what that has to do with the EAF long form we submitted. Mr. Lusardi replied the LEAF relates to what you're proposal is. They have to be consistent. Mr. Gailey said and they are.

Ms. Tomassetti asked if it's the Board's intention to hold a public hearing and actually come to a point where we can work together and actually get this situation rectified and the restaurant opened. Chairman Pfister replied, absolutely!

Ms. Tomassetti replied, ok well, there's very little communication and if we could speed this along. We gave you our architectural things at the last meeting and then you asked for the environmental. Now we come back with the environmental and you're asking us for the architectural again. I understand where we are now.

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It makes sense to do. I would just like to know the Board's intention in the near future or is this really going to kick the can for another year or two. Just so I know.

Mr. Lusardi said we can't prejudge this matter. I don't want to be binding this Board to some agreement before everything is discussed in the way it's supposed to be discussed with the Board. It's a collective Board, it has a comprehensive decision made in accordance with SEQR and in accordance with the laws of the Village. To have this Board say that we're going to do something before they've gone through the process is not proper. Ms. Tomassetti said I asked if it was their intention.

Member Musella said our intention is to get the project complete. Our intention is not to continually kick the can down the road which we haven't been doing. You might think we are but we certainly are not. This is difficult for you and it's difficult for us. I want this project over with as soon as possible.

Mr. Gailey said so let's schedule the public hearing for October and we can move the project along.

Mr. Lusardi replied we will have some SEQR issues that we have to be deal with before that. I don't want to go to a public hearing with a plan that still needs to be further developed.

Mr. Gailey said we don't believe it does. Mr. Lusardi said we may have a different opinion. (In audible)

Member Musella said we just said we want to go forward and we're not going to kick the can down the road so if we have to wait another month for a public hearing, I think we can wait another month until we receive the documentation that we're requiring tonight, make the comparisons and go from there.

Ms. Tomassetti asked what kind of SEQR issues could there be? Is there something that you should tell us about now?

Mr. Lusardi said I'm not going to prejudge and I think the Planning Board has to do some collective decision making. I can tell you that one of the issues is going to be what the environmental impacts are over the changes in the appearance of the building. Whether it's in keeping with the character of the neighborhood or not, what the aesthetics are, what the historic impacts are and so forth. Not only the appearance of the building but all of the other aspects of the amendment to the site plan and if that's a substantial change. Does there need to be a rescission of the negative declaration and does there need to be further environmental review of the projects? These are all questions that are going to need to be addressed by this Board. That's a process and other involved agencies might want to be heard as well.

Mr. Johnson asked in order to do your SEQR determination you have to have a public hearing, correct? Mr. Lusardi said we also have to have plans to submit to the public for a public hearing. We have to have plans to review for the SEQR determination and other involved agencies are going to need to see plans too.

I need to have a comprehensive set of plans to show the changes and preferably a list of what the changes are between the approved map and what you're proposing to this Board and then I think we have something that we can work with.

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Mr. Johnson asked if that's in place by the deadline for the next meeting, could that work to have the public hearing at the October meeting.

Ms. Tomassetti replied aside from pushing the public hearing. How are we going to get to the place where we determine if it fits into the character of the community because when you read the Comprehensive Plan and then you to discuss that being the gateway into the Village; that building is not mentioned so there is a lot of grey area and how are we going to determine that.

Mr. Musella said I can give you some advice. Ask Curt! He came before us and sold us on the original site plan so he knows exactly what the gateway to the community means and he knows exactly what's got to be on that corner.

Ms. Tomassetti said with all due respect, it's not Curt's fault that the building looks like that. Mr. Musella said I'm not saying it's his fault.

Mr. Johnson said I understand exactly what Lou is saying but we're at a point now where we have a building there and I think in the good of all of us working together if we can come to some sort of resolve that works for, maybe not 100% for everybody, but at least get to a point of compromise to get this open and get tax dollars coming in. Member Musella said I understand, I was just advising Diane to speak to you because you are learned in exactly what is needed. Mr. Johnson said I understand your point. Ms. Tomassetti said I can't go to him and ask him for the decision. Member Musella said you can't go to him for the decision but you can go to him and ask him what you need to do to get a decision. I think Curt knows what we need. Mr. Johnson said I understand conceptually what we need but I think we need to really look at each issue separately. Member Musella said Curt if you don't think that each one of us has been doing this for the past year and a half, you're mistaken. Mr. Johnson said I understand that but we need to come to consensus somehow to say, yes, let's move this forward. I understand we're all working but we're not getting anywhere unfortunately.

Ms. Tomassetti said I'm not asking you to make any decisions or to answer my questions but these are some of the questions that I have like, if we, on the second floor, make that brick wall look like more of a banister and we put the shutters in where they belong, are you going to consider leaving the roof as it is, are you going to insist that roof is painted? Member Musella said what I would recommend is let's follow up on what Mr. Lusardi advised. Let's get two lists going, let's know exactly what we're going to have on the site plan and move forward from there. Ms. Tomassetti said I'm not asking you for an answer. I'm saying are those the steps that we have to take because we don't know what else to do. I don't know how to prove whether it fits into the character of the community. Mr. Johnson said it's very subjective. Mr. Gailey said there's more than one answer as to what fits into the character of the community.

Mr. Lusardi said I think we have a method for going forward here that will be efficient if it's followed and I think at that point when you submit what I've suggested you submit, we can methodically go through proposed amendments and you can have a meaningful dialogue with the Board but we need to have all of the issues on map and one list of changes and let's go through it. Mr. Johnson said I can put that together.



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Chairman Pfister said anything else you can think of as well. Like if there's any other changes that deviate from the original site plan. Mr. Johnson said, yes, we'll go through it. We'll put the letters together that we've already submitted into one document and maps so that you have a full package and hopefully we can move from there.

Chairman Pfister said I can think of a couple things. For example, I know that the basement height was raised which raised the building a foot from grade so maybe establish what the height of the building is now from what was established last year. Obviously the commercial generator on the property next door sitting out there is a little bit of a contention. That's probably not just for the house. I don't know if the intention is to use it for the restaurant as well. Ms. Tomassetti said at this point I may just bring it back to the factory. Chairman Pfister said if you're going to have a generator there, work that into the site plan. Mr. Johnson said with that issue I would think it would be an easement with the property at 140 to allow 146 to also use that generator but it won't fit on our site plan.

Mr. Lusardi said it must be part of your site plan application. If you're going to have an offsite item that is part of the functioning of the 146 EMS property, it needs to be shown on the site plan. You can show it as an easement on the adjoining property but it's got to be on the site plan. We don't want to be going through this over and over again. Let's get it all here. So if it's not on the site plan, like the generator for example, then it's not part of the site plan. If it's not part of the site plan that we're going to approve or disapprove, it will be a violation. We want to get these violations straightened out. So let's be clear about that. If it's not on the site plan, it's going to be taken off the site.

Chairman Pfister brought up the screening that was cleared from the adjacent property (140 East Main Street) asking the Applicant to confirm that screening will be placed on the 140 EMS property. Ms. Tomassetti said we've been waiting for the weather to change to fix 140 East Main Street because it was just too dry. Mr. Johnson said that has a row of plantings I think on 140 that is screening. Ms. Tomassetti said on both sides of 140 it needs to be fixed up but **inaudible**. Chairman Pfister said I know but that was a direct impact that you guys own the property next door that you cut down all of that screening and now you kind of left us with **inaudible**. Ms. Tomassetti said we had to cut down things just for maneuvering. Listen what happened at 140 is irrelevant right now. Chairman Pfister said we were told that screening was going to be placed on that piece of property to screen the residential from the restaurant on 146 East Main Street. Ms. Tomassetti said give us a chance, we haven't been on the property and we were in a major drought. Mr. Johnson said I think there was a row of plantings that was on the approved Site Plan that was going to be on the property line between 140 and 146 EMS. Mr. Pfister said 140 wasn't on the site plan and 146 shows nothing.

Mr. Bailey asked which property the Board wants screening from. Chairman Pfister replied we would like to screen 146 (the restaurant) from the residential houses. Mr. Bailey asked if that was on the original site plan.

Member Mersand said I think there was still a bunch of trees there at that point. Chairman Pfister said, yes there was and that's why it wasn't necessary to show screening on the site plan at that time.

Mr. Lusardi asked if these two properties are under common ownership. Mr. Johnson replied it's not the same ownership they're different entities. Mr. Bailey said same control. To clarify, Mr. Lusardi asked if the

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Board were to ask, for example, for an easement on 140 for a screening, if that would be something that would be in the control of the Applicant. Mr. Johnson replied correct. Mr. Lusardi so then you must show the easement for the plantings for screening on the adjoining property.

For clarification, Mr. Bailey asked if the screening for the restaurant will be placed on the 140 property. Chairman Pfister said it has to be unless you're going to put it in the parking lot. You were given a variance right up to the edge of the property so there's no room left for screening. Mr. Bailey said ok. I just wanted to make sure it was that side of the property that we're talking about.

Member Musella asked Mr. Johnson if the generator has to be placed above ground. Mr. Johnson replied, yes, I think so. Ms. Tomassetti said we can enclose it. Member Musella said something is going to have to be done to that because it is an eyesore. Member Pennelle said that wasn't on the original plan. Chairman Pfister asked if that is a propane generator. Mr. Johnson replied, yes. Member Pennelle asked if the tanks are buried. Mr. Johnson said there are two underground tanks that were on the approved site plan. Member Pennelle said that's a lot of gas. Ms. Tomassetti commented if we lose power, we'd like the restaurant to remain open. Member Pennelle said you're probably one of the only few in the area I can tell you that.

Ms. Tomassetti thanked the Planning Board and the meeting concluded with the Applicant agreeing to submit an amended site plan as detailed Mr. Lusardi for the next Planning Board meeting.

## Adjournment

With no old business or Escrow to discuss, *Member Pennelle made a motion to adjourn until the next Planning Board meeting scheduled for **Tuesday, October 11, 2022**. Member Musella seconded the Motion and passed. All present members were in favor.*

Submitted by:



Vivian Nikolatos

Planning Board Secretary



# **Village of Pawling Planning Board Agenda**

**DATE: September 13<sup>th</sup>, 2022  
7:00 P. M.**

- 1. Opening of Meeting, Roll Call and Pledge of Allegiance**
  - 2. Approval of Minutes**
  - 3. 527 Route 22 (Duane Lake Academy)**
    - Sketch Conference**
  - 4. Heinchon Place/2K Development, Inc.**
  - 5. Main Corner Properties (146 East Main Street)**
  - 6. Old Business**
  - 7. Escrow**
  - 8. Adjournment**
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