

APPROVED

CRAIG PAEPRER
Chairman

ANTHONY GIANNICO
Vice Chairman

BOARD MEMBERS
KIM KUGLER
RAYMOND COTE
ROBERT FRENKEL
MARK PORCELLI
VICTORIA CAUSA

TOWN OF CARMEL
PLANNING BOARD



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MICHAEL CARNAZZA
Director of Code Enforcement

RICHARD FRANZETTI, P.E.
Town Engineer

PATRICK CLEARY
AICP, CEP, PP, LEED AP
Town Planner

PLANNING BOARD MINUTES

MAY 20, 2020

PRESENT: CHAIRMAN, CRAIG PAEPRER, VICE CHAIRMAN, ANTHONY GIANNICO, KIM KUGLER, ROBERT FRENKEL,

ABSENT: MARK PORCELLI, RAY COTE, VICTORIA CAUSA

***** ZOOM MEETING *****

<u>APPLICANT</u>	<u>TAX MAP #</u>	<u>TYPE</u>	<u>PAGE</u>	<u>ACTION OF THE BOARD</u>
Carmel Fire Dept.	44.14-1-24	Subdivision	1 – 5	No Action Taken
MK Realty	55.6-1-44 & 45	Extension. ~ Final Site Plan Approval	5 – 6	Extension Granted
VIP Wash & Lube	55.12-2-5	Bond Return	6-7	Schedule Public Hearing
Jordano/Gervasi Subdivision	63.-1-16	Bond Return	7 – 10	Bond Return Request Denied
Barone, Mariano	65.18-1-4	Regrading Application	10-11	Schedule Public Hearing
Dewn Holding	63.-2-28	Reapproval of Final Subdivision Approval	11 – 17	Reapproval Granted Extension Granted Bond Reduction Granted
Minutes – 02/26/20			17	Approved as Written

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Dawn Andren

CARMEL FIRE DEPARTMENT – 94 GLENEIDA AVENUE – TM: 44.14-1-24 – LOT LINE ADJUSTMENT

Mr. Carnazza stated the applicant proposes to remove the rear 0.632 acres from the bank property and add it to the Carmel Fire Department property. A question is what is the purpose of the lot line adjustment. Variances are required for the MSB Bank property; a lot area of 40,000 [square feet] is required. They'll have 24,052 square feet existing, so a 15,948 square foot variance is required. Variances are also required to allow the lot line adjustment application. It can't create a sub-standard lot which you are and the increase/decrease cannot be 20% or 20,000 square feet of the total area so they're going to need a variance from that also.

Mr. Franzetti stated this is a lot line adjustment so the Engineering Department does not have any comments regarding the adjustments being proposed.

Mr. Cleary stated Mr. Carnazza touched on the Planner issue which is the purpose of the lot line adjustment and why the property is being transferred. As Mr. Carnazza noted, there are two variances that are necessary. It should be noted that the bank building will remain dimensionally compliant with respect to setbacks even though the back portion of the property is being removed. There is a new easement that is proposed to allow bank property access across the fire department out to Vink [Drive]. So, that new easement will require Mr. Charbonneau to look at it. There's also an existing easement on the property, and it's not clear if the ownership change would affect the easement in one way or another. So, Mr. Charbonneau should take a look at that as well. That's all I have Mr. Chairman.

Chairman Paepre asked Kathleen Gallagher (Insite Engineering) to explain why they're looking to do this.

Ms. Gallagher responded absolutely. Is this an appropriate time to share my screen to bring up the Plan?

Chairman Paepre said please do.

Ms. Gallagher said as previously mentioned, it's 0.63 acres that is looking to be conveyed from the Bank to the Carmel Fire Department, and that's parcel "X". What this does is it allows the Carmel Fire Department to have some additional acreage on the back. This is part of a future development plan. This application was originally submitted in February. The intent at that time was to start this process, get potential variances and then submit a site plan application subsequent to that. Obviously, there has been a lot going on and the timeline is a little different. The Board will be receiving the site plan application. It was submitted today so you should be receiving digital copies soon which will allow the project to make a little more sense of the intent of the site plan development.

Mr. Franzetti interjected I just want to confirm that it was received. I have a copy, and we'll be reviewing the application package for completeness. Then we will be presenting it to the Board to see when it can get onto another agenda.

Chairman Paepre said so the site plan development will outline what the future plans are for this space?

Ms. Gallagher replied correct but the general idea is that they are adding an addition to the east side, the left side of the sheet (picture up on screen) for the Fire Department and it will be the apparatus bays. At the moment, the current bays are an old redevelopment of a supermarket. Based on the height that's allowable in that area, the firetrucks.... This was originally developed in the 1990s which was the last time it was renovated. Since then, the firetrucks are bigger and higher so there's conflict with clearing space. There's no available area for decon[tamination] which is now a requirement. The addition of apparatus bays would allow the Fire Department to be up to safety and to Code issues. As part of that, we would reconfigure the vehicular circulation and relocate the site amenities. The focus of the easement is that we're presenting ... I have two exhibits after this which will outline the easements with a little more clarity... those are to assist in a reconfiguration of vehicular circulation due to the addition. [New screen/picture appears.] At the moment, there are four distinct easements on site; the red is the sewer easement in favor of the Town. That's the Town sewer line that goes through both the TD Bank parcel and the Carmel Fire Department parcel. The yellow is a sewer easement in favor of the ambulance corps which is located on the right of the sheet to the east. That allows them to connect into the Town sewer line. The blue is an access easement in favor of TD Bank, and that allows them to use the driveway that exits off the rear of their property which allows them to connect to Vink Drive. The orange is another access easement which accommodates for a little bit of parking and the drive that goes over the property line into Carmel Fire Department. All of the easements will remain intact except for the blue. The blue easement will be extinguished because it is no longer necessary due to the proposed new easements. [New screen/picture appears.] So, there are three proposed new easements. The teal is, again, an access easement. It will be in favor of the Bank parcel. The purple is on the ambulance corps property. That's in favor of both TD Bank and the ambulance corps. That allows a connection now from the TD Bank parcel, through the teal and through the orange. There is already a potential location for the driveway. This has already been coordinated with TD Bank and with the ambulance corps. We've staked it out in the field. They've been able to review it, and we've been able to come to an agreement on the location and the easement. Then, the green is a utility easement in favor of TD Bank. Obviously, because this is their property, there are several utility lines running through the rear of the property including what we believe is the sewer line and several electrical lines. This just gives the TD Bank parcel the protection that they can repair, maintain and update anything that they need to from a utility perspective that serves their parcel.

Mr. Franzetti said all the easements are staying the same. So, the sewer easement is going to stay – correct?

Ms. Gallagher responded correct.

Chairman Paepre then opened this application up for questions from the Board Members.

Chairman Paepre said one of the concerns I have, and believe me ~ I'm fully supportive of our local fire departments, is what we do to that TD Bank property. Obviously, the non-conforming will be a very small piece of commercial property. The Town lacks commercial business so I have those concerns. Do you know if the Fire Department has thought of or even if TD Bank would be interested in....I, personally, would rather see TD Bank or the Firehouse own the entire lot and lease space or rent

space to the Fire Department than to chop up this lot and to have a large lot and a non-conforming lot that I'm not sure what it could be used for in the future if TD Bank closes, relocates, etc. or moves to a larger facility somewhere else.

Ms. Gallagher responded I do not know if they've had those discussions but I'm happy to reach out to our attorney who has been assisting them through this communication with the TD Bank parcel to see if that's been discussed at all.

Chairman Paepre said again; I'm just concerned about that small piece of commercial property for the Bank. Thoughts from the Planning Board?

Vice-Chairman Giannico said currently, the two lots are conforming – correct?

Ms. Gallagher responded there is one pre-existing, non-conforming condition which is the relationship of the setback from the Carmel Fire Department to the side line on the north. That is pre-existing, non-conforming and the minimum lot width for both the parcels are also pre-existing, non-conforming so they don't meet the 200 foot ~ they're little long, narrow parcels that do not meet the 200 foot minimum lot width. And, the TD Bank parcel is pre-existing, non-conforming in that it is a small building. It doesn't meet the minimum footprint that's required.

Vice-Chairman Giannico replied so from a planning standpoint, we're really taking lots that have conformity issues and going into the opposite direction by making them more non-conforming.

Chairman Paepre answered that's the problem. The Fire Department has 1.4 acres possible; the Bank has almost 1.2 acres. We're taking almost half of the Bank's property and transferring it to the Fire Department which creates a problem for us for the Bank property.

Vice-Chairman Giannico asked is there a foreseeable plan in the future for the Firehouse if they were to acquire this property.

Ms. Gallagher replied yes; that was delivered today, and the Planning Board will be able to review it.

Mr. Cleary interjected to be clear, the issue is not necessarily affecting the Bank. The Bank can continue to operate today. It's the potential of, as the Chairman indicated, if the Bank leaves and a new tenant were to come into that space, the site is now significantly non-conforming in that regard. So, correct. It's an issue.

Ms. Gallagher reiterated it's non-conforming in the minimum lot area at the moment. Everything else is either pre-existing or non-conforming, we are not increasing our non-conformity or setbacks or any of the other requirements.

Chairman Paepre asked if there were any other thoughts from anyone.

Mr. Charbonneau asked is that utility meant to overlap with the proposed easement - the teal and the green?

Ms. Gallagher responded yes; it'll allow them to be able to continue to connect into the sewer line, maintenance and repairs. Anything they'd need for their utilities coming out of the rear of the property, they'll still be able to have access to maintain.

Mr. Cleary said (to Mr. Charbonneau) we're talking about cross-easements, so you've got to pay attention to the documents and how...

Mr. Charbonneau interjected yes; there's multiple ones there so I'm going to need to take a look at those.

Chairman Paepre said I'd like to ask our consultants, Mr. Franzetti, Mr. Carnazza and Mr. Cleary and I'm not even sure this is feasible, but if the Fire Department had the entire two lots, would that be something that the Town would prefer?

Mr. Carnazza replied no; I don't think that they would prefer it because then it would be a commercial property on a tax-exempt property.

Chairman Paepre said alright; so, from a tax point of view, it would be a hit on us but from a planning or a zoning point of view, it'd be a plus because we're not creating a non-conforming lot.

Mr. Cleary said I guess the question could be, could the Fire Department lease the wooded portion of the TD Bank property instead of acquiring it. Maybe that's a potential. I haven't seen the site plan so I'm not sure what physical improvements would go there. If it's just a parking lot, for example, maybe that's a feasible option; but if it's a physical building, that's probably not a realistic option.

Chairman Paepre said I'm sure the Planning Board is very interested to make this work for everybody. I'm just trying to do some due diligence here and make it work without creating a non-conformity.

Vice-Chairman Giannico asked when will the plan be available.

Ms. Gallagher replied it was submitted today so as soon as Ms. Trombetta is able to distribute it, everybody will have a copy.

Mr. Franzetti added it needs to be reviewed for completeness. If we have any comments, we will send it back to the Applicant in case we need to have additional information. If there are none, then Ms. Trombetta will make sure she distributes it to the Board. It'll be up to the Board to determine when/if they want it on the next agenda or whatever agenda they would like it back on. They can have it to review it at any point in time once it's completed the application.

Vice-Chairman Giannico replied I see; thank you. He said I think that would be the next step then Mr. Chairman - in my opinion.

Chairman Paepre replied yes; I think we need to hold it over until we can get a chance to review the site plan. Does that sound reasonable?

Ms. Gallagher responded it does.

Chairman Paepre said (to Mr. Carnazza) you bring up an excellent point about the taxes. Let's hold this over so we can all learn more about it and hopefully, we can work everything out.

Ms. Gallagher said excellent. Thank you so much for your time.

MK REALTY – ROUTE 6 & OLD ROUTE 6 – TM: 55.6-1-44 & 45 – EXTENSION OF FINAL SITE PLAN APPROVAL

➤ Mr. Zack Pearson (Insite Engineering) representing applicant appeared via Zoom.

Mr. Carnazza stated there was no objection to the approval of this. Since there's some new Board Members, they should be given a little detail on what the project entails.

Mr. Franzetti stated the Engineering Department has no objection to approving the site plan extension for this project. However, the Planning Board Member should be aware of the following and read from his memo: NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION (NYCDEP) REQUIREMENTS

- THE NYCDEP APPROVED THE STORMWATER POLLUTION PREVENTION PLAN (SWPPP) FOR THIS PROJECT ON AUGUST 17, 2006. THE NYCDEP PROVIDED A CONDITIONAL EXTENSION TO THE AUGUST 17, 2006 SWPPP ON JANUARY 30, 2017. A COPY OF THE NYCDEP JANUARY 30, 2017 LETTER IS PROVIDED AS AN ATTACHMENT.
- THE CONDITIONS OF THE SWPPP ARE NOW SET TO EXPIRE ON AUGUST 16, 2021.
- SUB-SURFACE TREATMENT SYSTEM (SSTS) PERMIT IS SET TO EXPIRE ON MARCH 29, 2021.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC) REQUIREMENTS

- THE PROJECT HAS COVERAGE UNDER THE NYSDEC GENERAL STORMWATER PERMIT FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES (GP-0-10-001), PERMIT NUMBER NYR NYR10U062.

TOWN OF CARMEL

- THE PROJECT SOUGHT AND RECEIVED A WETLANDS PERMIT (PERMIT 844) UNDER §89 FRESHWATER WETLANDS OF THE TOWN OF CARMEL TOWN CODE. THE PERMIT IS SET TO EXPIRE IN MARCH 14, 2021.
- THE FILE CONTAINS THE REQUISITE PERFORMANCE BOND (\$199,770.00) AND ENGINEERING INSPECTION FEE (\$9,988.50) IDENTIFIED IN THE APRIL 11, 2006 PLANNING BOARD RESOLUTION (#06-12). THE BOND IS SET TO EXPIRE ON OCTOBER 5, 2018.
- AS THE BOND HAS EXPIRED AND WAS ORIGINALLY DEVELOPED IN 2006, A NEW BOND SHOULD BE PROVIDED. BASED ON THE ENGINEERING NEWS RECORD, THE ESCALATION IN COSTS FROM 2006 TO 2020 IS ~21%. THEREFORE, THE NEW BOND AND ENGINEERING FEE SHOULD BE INCREASED TO \$241,337 AND \$12,000) RESPECTIVELY.

So, we recommend that the bond be updated because the last time it was looked at was 2006.

Mr. Cleary said no comments but just to remind the Board that this has a long history. Mr. Pearson can summarize that for you but you reapproved this about a year ago. So, it was approved 2006, 2008 ~ something like that. You'd granted the reapproval about a year ago and now, this is an extension of the reapproval. So, I agree with Mr. Carnazza that Mr. Pearson give us a little background for some of the Board Members that weren't around back then.

Mr. Pearson said this is a commercial lot on the corner of Route 6 and Old Route 6 in Carmel. The original site plan approval was granted in, I believe, 2006. It's a single building with parking circulating around the building with associated stormwater, utility connections. At the direction of the owner, we've kept all of the permits up to date; we have a DEP approval, a SWPPP approval, DEP sewer connection, State coverage. The owner is actively trying to find someone to fill this space and has been since the approval. It's a tighter site. It's a smaller commercial lot with access only off of Old Route 6. He is actively looking for a user and I know he's stated this at past meetings. Should he find a user that needs a different layout or set-up, we would be back before the Board for an amended site plan at that point. Our charge is to keep all of the permits active as he's marketing it to potential users.

Chairman Paepre asked if the Board Members had any questions and reminded them that this was an extension of the final site plan approval.

Vice-Chairman Giannico moved to grant an extension of the final site plan approval for one year; seconded by Mrs. Kugler with all in favor.

Mr. Cleary interjected you have to do it by roll call so that we can record the vote.

Chairman Paepre then did a roll call vote:

- ***Vice-Chairman Giannico made the motion***
- ***Mrs. Kugler for the motion***
- ***Mr. Frenkel for the motion***
- ***Chairman Paepre for the motion***

Motion carries.

Mr. Pearson said I just have one question. The approval – does it go retroactive to the date it was approved to or does it go to this meeting date.

Mr. Cleary replied it'll be retroactive to the date of the prior approval.

VIP WASH & LUBE – 118 OLD ROUTE 6, CARMEL – TM: 55.12-2-5 – BOND RETURN

➤ Mr. Sergio Santos, owner of VIP Wash & Lube appeared via Zoom.

Mr. Carnazza stated I have no comments on the bond return.

Chairman Paepre said I also realize that Mr. Cleary has no comments.

Mr. Franzetti stated the applicant contacted the Engineering Department to request a field inspection earlier this year and read from his memo: A REPRESENTATIVE OF THE ENGINEERING DEPARTMENT (DEPARTMENT) PERFORMED A FIELD INSPECTION OF THE REFERENCED PROPERTY IN FEBRUARY 14, 2020 AND ON MARCH 11, 2020 TO EVALUATE THE CURRENT STATUS OF THE SITE CONSTRUCTION, FOR THE PURPOSE OF DETERMINING WHETHER A BOND RETURN WAS WARRANTED. THE RESULTS OF THE SITE INVESTIGATION ARE PRESENTED BELOW.

THE APPLICANT POSTED A BOND IN THE AMOUNT OF \$134,000.00 ON AUGUST 11, 2015. BASED UPON OUR INSPECTION ALL THE SITE IMPROVEMENTS REQUIRED PURSUANT TO THE BOARD'S SITE PLAN APPROVAL HAVE NOW BEEN COMPLETED.

ON THIS BASIS, THIS DEPARTMENT RECOMMENDS THAT THE BOND OF \$134,000.00 BE RELEASED.

Chairman Paepre asked does the Planning Board have any questions. If not, we can schedule a public hearing to which the Board Members had none.

Chairman Paepre then said we'll get you on the next agenda for a public hearing.

Mr. Franzetti said you'll be on the next meeting for a public hearing if there's no comments. Then the Board votes on it. After the Board votes on it, it is presented to the Town Board and the Town Board votes on it and then you get your bond returned.

Mr. Santos said we don't have any kind of timeline on this because of all that's going on, do we?

JORDANO/GERVASI SUBDIVISION – BULLET HOLE ROAD – TM: 63.-1-16 – BOND RETURN

- Mr. John Gervasi & Mr. Robert Folchetti, Esq. appeared before the Board via Zoom.

Mr. Carnazza stated that he had no comments regarding this bond return.

Mr. Cleary stated that he had no comments regarding this bond return.

Mr. Franzetti stated the Engineering Department received a bond return request from the applicant and read from his memo: This Department performed a field inspection of the referenced property on March 9, 2020 to evaluate the current status of the site construction, for the purpose of determining whether a bond return is warranted. The results of our investigation are presented below. The original bond amount posted was \$48,300.00. Based upon our inspection of July 29, 2015, all of the site improvements required pursuant to the Board's Site Plan approval was completed with the exception of the paving of the common driveway. It was recommended in July of 2015 that the bond be reduced to \$22,000.00 and that upon completion of the common driveway paving per the approved subdivision plan, the remainder of the bond can be returned. As the common driveway has not been paved this Department does not recommend that the bond be returned at this time.

Chairman Paepre asked Mr. Folchetti to comment on that.

Mr. Folchetti stated my basis for this request is the fact that the Gervasis are not the parties responsible to have this bond posted. When they sold the property to Serge Inc., Serge made a representation in the contract. It was to replace their performance bond with their own performance bond with the Town at, or prior to, closing. With that having been represented, the Gervasis accepted that and expected the return of their bond. I had an informal meeting with you Mr. Charbonneau, Mr. Franzetti and Mr. Carnazza last year and the indication, at least informally, was that the opposition to the return would be that the Town would be left responsible with the legal liability to the owners if they returned a bond before the improvements were completed. Having looked at the contract since that meeting and having many false starts to getting this case on the agenda, it is our position, quite simply, that if the Town wants to have a bond, that's fine; the owner should have the bond. The Gervasis were entitled to the return of their bond upon Serge Inc.'s assumption of title of the property. Whether or not Serge, Inc. did, I do not know. I doubt they did because I wouldn't see the resistance. The current owners have no greater rights than their transferors, predecessors in interest, Serge, Inc. I actually have a copy of the contract with that explicit provision in it. I'd like to share that with members of the Board. I can't just hand you copies so how do I get it to you.

Chairman Paepre said if you have it electronically, you have to share a screen.

Mr. Charbonneau said just so that I understand what you're saying and before you share the contract with the Board, you're saying that in the contract, there was a provision that would replace the surety upon passing of title?

Mr. Folchetti replied absolutely.

Mr. Charbonneau said and that never occurred.

Mr. Folchetti said apparently that was a representation made by the purchaser to the sellers.

Mr. Charbonneau asked was the Town privy to that.

Mr. Folchetti replied I know I gave you a copy of that when we met...

Mr. Charbonneau interjected yes; but the reason I'm asking these questions is for my Board's perspective. If the Town wasn't privy to that, the Town is not bound by that. I've looked at this "9 ways till Sunday" and I am very sympathetic with the position that they're in but I don't see how, until that common driveway has been completed and paved, the Town can return the bond. I have to agree with the Town Engineer in this respect to this matter.

Mr. Folchetti said it's not really a question of the Town returning the bond or it being complete; it's a question of who the Town holds responsible to file the bond.

Mr. Charbonneau replied right. So, you would be placing the onus on the Town to go out and try to get the purchaser of that lot to replace the surety and that's not the Town's responsibility.

Mr. Folchetti said it's not much of an onus since they're after a building permit and they're after all kinds of permits for their misdeeds in handling the property. Anyone who wants a permit has to comply with the Town requirements. This is one of them.

Mr. Charbonneau responded yes; the idea was floated that maybe we would make a condition upon the Certificate of Occupancy being issued and Mr. Carnazza and I discussed that and we determined that it was not a position that we wish to take.

Mr. Carnazza replied that is correct.

Mr. Charbonneau said again; I understand his point and I am absolutely sympathetic but it should have been handled at, or about, the time that the property was transferred.

Mr. Folchetti said okay it wasn't and last year, your reasoning for not recommending it was it would possibly expose the Town to legal liability.

Mr. Charbonneau interjected not only that. It's a requirement of the sub-division approval.

Mr. Folchetti stated but it's not a requirement that the Gervasis do it, it's a requirement that someone do it. Somebody put their name in the "I'll do that" category when the deed was transferred from Mr. Jordano & Michelle Gervasi to Serge Inc. Serge Inc. is the current owners transfer and title ~ if there is any legal liability, the seller and the subsequent seller and the current owners.

Mr. Charbonneau replied but it's not incumbent upon the Town to enforce that.

Mr. Folchetti said but the Town's not being put in a position of enforcing it though. The Town's being put in a position of returning money that it doesn't have the right to hold and if the current owners want to pursue their permits and their C. of O., then they have to do just like anyone else does and comply with the provisions of the Building Permit.

Mr. Charbonneau said I disagree with that.

Vice-Chairman Giannico stated it seems like if you just get the driveway paved, then there's no issue. Who pays for that driveway has to be worked out between the previous owner and the current owner. With all due respect, I don't see how the Town can take any other action.

Chairman Paepreer stated I agree with you. I think it's between the two parties.

Vice-Chairman Giannico said we can return the bond if the driveway gets paved. Who paves it has to be worked out between the two parties; not the Town.

Mr. Folchetti said my client's money should not be held hostage to the current owners, and there are several legal problems in connection with this property and otherwise.

Ms. Kugler said but that initial agreement was made between your client and the new owner so that's something that has to be hashed out.

Mr. Folchetti said and the prior owner; there was an owner in between.

Mr. Frenkel said doesn't your client have the ability to enforce that contract that should have been enforced prior to closing. Can it be enforced after closing?

Mr. Folchetti replied my client's ability to do that may be barred by the statute of limitations. The contract is dated 2006. That's time barred.

Mr. Charbonneau stated Mr. Chairman - my suggestion would be, and you can obviously continue the discussion, but there should be a motion for either the return of the bond or opposed to the return of the bond and then a roll call vote accordingly so there is an official action by the Planning Board in connection with this application.

Mr. Folchetti said that's basically what we're after tonight anyway because we've sort of expected what's going to happen.

Mr. Charbonneau said understood.

Vice-Chairman Giannico moved to return the bond.

Chairman Paepre asked Mr. Charbonneau do I need to ask for a motion to deny or do we vote on who approves or denies.

Mr. Charbonneau stated there is a motion on the table to return the bond. In order for there to be a roll call vote there needs to be a second. Someone needs to second the motion and then vote accordingly.

At which time, Mr. Frenkel seconded the vote for the return of the bond.

Chairman Paepre called for a roll call vote:

<i>Ms. Kugler</i>	<i>for the motion</i>
<i>Mr. Frenkel</i>	<i>against the motion</i>
<i>Vice-Chairman Giannico</i>	<i>against the motion</i>
<i>Chairman Paepre</i>	<i>against the motion</i>

Mr. Charbonneau said so the vote is 3 to 1; the vote fails and you have your action Mr. Folchetti.

Mr. Folchetti said thank you and we'll be in further contact upon filing.

MARIANO BARONE - 32 OVERLOOK DRIVE - TM: 65.18-1-4 - REGRADING APPLICATION

➤ Mr. Jack Karell, engineer for Mariano Barone appeared before the Board via Zoom.

Chairman Paepre said that Mr. Carnazza & Mr. Cleary had no comments and asked Mr. Franzetti to read his comments.

Mr. Franzetti read from his memo: the application involves remedying a Notice of Violation (NOV) issued by the Town of Carmel on September 24, 2019. The Planning Board should be aware that the applicant has already had soils delivered to the site and the applicant has had the soils tested. Per the applicants engineer the results are below NYSDEC threshold criteria. All Engineering comments have been addressed based on the prior memo that was forwarded to the Board.

Chairman Paepre said I believe most board members remembers this. Is that correct?

The board members replied yes.

Vice-Chairman Giannico said wasn't this before the Board just before we broke due to the pandemic?

Chairman Paepre replied I believe so. I'm not sure exactly how long but I remember we asked Mr. Karell to go back and do some soil samples.

Vice-Chairman Giannico to Mr. Franzetti – you're saying we received those test results and they're below standard; is that correct?

Mr. Franzetti replied yes; they are acceptable.

Vice-Chairman Giannico said okay; good.

Chairman Paepre this as we know...we've talked about how to educate the community because we've had some bad experiences with people going ahead and doing regrading in particular with soils that were not tested, and in one case, someone had to haul away plenty of soil because of that. That's a different issue for a later date on how we notify the community and the builders of such. Are there any comments on this application in front of you right now? If not, we'll schedule a public hearing.

Mr. Karell asked can we wave the public hearing?

Chairman Paepre replied no; I have a hard time with that. I don't know about the neighbors in that area.

Mr. Karell asked when do we schedule it for?

Chairman Paepre responded we'll work with the secretary and given the current situation, we'll see you as soon as we can get you on the agenda.

DEWN HOLDING – MEXICO LANE - TM: 53.-2-28 – REAPPROVAL OF FINAL SUBDIVISION APPROVAL

➤ Mr. Jack Karell, engineer for the applicant appeared before the Board via Zoom.

Mr. Carnazza stated the developer decided to build the road and do the stuff instead of paying for the bond on the property so he was trying to get a reduction in the number and when they did that, we realized that the subdivision approval had actually expired. The applicant is here right now for a regrant with some changes and an extension of the approval because it ran out, I believe, four years ago so this will put him up to the current date and Mr. Franzetti will explain the changes that they found when they did the inspection.

Mr. Cleary had no comments or issues.

Mr. Franzetti read several key points from his memo: *this project encompasses a subdivision of a 30.448-acre parcel into 5 individual lots, varying in size from 120,000 square feet to 767,000 square feet, along Mexico Lane.*

The Board should note that this is a regrant of an approval and that once regrant is approved the applicant can request an extension. Once extended the applicant will have the option to build or bond.

The project originally came before the Planning Board in 2008. In February 2012 the applicant received "open development" status to the project (covering the 4 lots which don't have access to an improved street with a right-of-way width of 50 feet). The project received Final Subdivision approval on May 18, 2016 - Resolution # 16-14 (copy attached).

As was requested by the applicant and allowed by the Planning board, per § 131-15 of the Town Code the applicant/subdivider was allowed to construct the road and drainage facilities without posting the bond, providing that the engineering inspection fee was paid.

It should be noted that the applicant would not be allowed to get the map signed and filed, (i.e. the lots could not be sold) until the map is signed and filed, and the map would not be signed by the chairman until the bond is posted or the road completed and accepted by the Town.

The original bond amount was \$468,000.00. The Engineering fee, in the amount of \$23,400.00, has been posted. To date, the applicant has not posted a performance bond and therefore the subdivision plat has not been signed by the Chairman and has not been filed at the Putnam County Clerk's office.

This resolution stated the following:

- A performance bond, prepared in form to the satisfaction of the Town Attorney, and in the amount of four hundred ninety-one thousand dollars (\$468,000.00) in accordance with the requirements of set forth in § 131-15E(1) of the Subdivision of Land Regulations, shall be provided to assure the completion of all improvements.*
- Said improvements shall be completed within a maximum period of two (2) years and the performance bond shall so state the same. The developer may apply to the Planning Board for an extension of the completion period as set forth in § 131-15F of the Subdivision of Land Regulations, provided said request is in writing, submitted a minimum of 45 days prior to the expiration, and describes in detail the reason for the requested extension.*

The Engineering Department performed two (2) site in December (12/23/2019 and 12/27/2019). This Department requested an as-built profile of the centerline of the road and advised that a complete as-built of the project will be required and that your client is to maintain erosion control measures until the project is completely stabilized.

A copy of the attached as-built was provided to this Department for review. We spoke with applicant regarding our review which identified the following:

- The entryway is not in conformance with the approved subdivision drawing*
- A request was made for a comparison between the existing condition and approved and a plan to bring the roadway into compliance.*

In further review of the as-built provided, there is common driveway shown for proposed lots 2 and 3. This is not in conformance with the approved plans.

Based on the work that has been completed and the remaining work to be performed for this site, which includes:

- Rain gardens have not been installed per the approved plan*
- Guide rails need to be installed, and*
- Grass-crete per the SWPPP and NYCDEP is required*
- Retaining walls have not been installed per the plan and the SWPPP*
- Top course needs to be added*

The recommended updated bond for the project is \$106,000.00.

The Engineering Department does not have any objection to the regrant of this project.

of the Final Subdivision extension as there are no changes to the site being made. The Planning Board should be aware of the following:

New York City Department of Environmental Protection (NYCDEP) Requirements

- The NYCDEP approved the Stormwater Pollution Prevention Plan (SWPPP) for this project on July 3, 2012.*
- The NYCDEP permit is good for 5 years and will expire on July 3, 2017. The applicant requested and was granted extension from the NYCDEP for the SWPPP, the new expiration date is July 3, 2022.*

New York State Department of Environmental Conservation (NYSDEC) Requirements

- The project has received coverage under the NYSDEC General Stormwater Permit – Permit # NYR11B319.*
- The project received coverage under the NYSDEC Freshwater Wetland Permit on December 5, 2013 (Permit 3-3720-00372/00001). The permit is set to expire on December 31, 2020. This will need to be renewed.*

Town of Carmel Environmental Conservation Board

- The applicant had received coverage under the §89 Freshwater Wetlands of the Town of Carmel Town Code. Per the applicants Engineer, all work authorized under the Town's wetland permit has been completed.*

Following Town guidelines, the Applicant will be required to execute and file with the Putnam County Clerk a "Stormwater Control Facility Maintenance Agreement" as specified in Town Code § 156-85 to assure long-term maintenance of all stormwater treatment devices proposed for the site.

Mr. Karell said I agree with that. He [the applicant] didn't realize the approval had an expiration. He did the work in accordance with the plan. Some things we're looking to change. In one case, he wants to have a common driveway for lots 2 & 3 instead of individual driveways which is going to result in a reduction in the area of disturbance. All the stormwater work, all the drainage work has been done. He's going to be looking to get NYC and Mr. Franzetti to agree to not having a wall on the west side of the driveway – the maintenance driveway going to the detention pond – because he graded it out and he doesn't need a wall. The guiderail is in the bond and we are going to put the guiderail in. The rain gardens I don't believe should be in the bond but I think we left them in the bond because they're on individual lots and we're bonding common facilities and practices. So, we're looking to get the regrant and then want an extension. We want the Board to agree with Mr. Franzetti that the Bond should be \$106,000 and then he's going to post the bond so somebody can build on the individual lots. Until the map plot is final, he can't submit it to the Health Department for improvement of the individual lots.

Chairman Paepre asked assuming the paperwork is passed through, when do you see the building taking place.

Mr. Karell responded he wants to get started on one of the lots 'tomorrow'. If you guys approve this, I would think he's going to start in September. He's been tinkering around with this, as you can see, for a lot of years. He's done a good job with the road; I gave you information that showed the driveway entrance was satisfactory; it meets the code. The original plan did not have the level of detail on the topography at the entrance, but I gave you more detail and I think meets the intent of the code and the approval.

Mr. Carnazza stated there's a difference between meeting the code and meeting the plan and that's what we were saying. We're not arguing with you but it was not the same as what was on the initial plan that was submitted. Mr. Simone gave you a letter saying it was okay and he has no problem with it but it is different and that's what the complaint was. The Board needs to approve the changes. That's all that we were trying to say.

Mr. Karell said if you want to put that in the approval resolution, that's fine. This is just a normal thing that builders do in the Town of Carmel; rather than posting the bond, they do the majority of the roadwork and then they post the bond for the remaining amount. It just took him longer than it should have.

Mr. Franzetti said with all respect, that might have happened when you were Town Engineer but it's the first and only time it's happened so far in the seven years that I've been in this seat.

Mr. Karell said it happened before me and it happened during me.

Chairman Paepre asked Mr. Cleary: I'm trying to get some clarity for myself and in one sense, I don't like to take anything on the agenda that comes in late because we don't have time to prepare. On the table is a motion to grant reapprovals of the final subdivision and to grant an extension of the final subdivision but now everyone is talking about the bond.

Mr. Cleary said right. As Mr. Karell and Mr. Franzetti have indicated, the plan is changing. So, in order to sync what has been built and what is intended to be built with the plan that has been previously approved, there has to be an amendment. That's the approval that we need to grant.

Chairman Paepre said so there's no bond on this project now but we're asking them for \$106,000 bond because of guardrails, rain gardens, grass-crete....

Mr. Cleary interjected the balance of that work was actually constructed.

Chairman Paepre said okay so we're asking for a bond and then we're also asking for grant reapproval and grant extension.

Mr. Cleary responded that's correct; three different items.

Mr. Carnazza said just to clear it up ~ the Code says to build the subdivision; in lieu of building a subdivision, you can bond it. Just so you know, they actually did it the way the Code intends, initially. What everybody else does is, generally, bond it. They tried to do it the first way – building it; get it all done; get their final map done so they can sell the lots off. At that point, they got themselves however many thousands out and said, we're going to try and bond it now. They want to bond what's left to do so they can sell some lots off and finish off all the work.

Mr. Karell said I thought what you were going to do was approve the original bond with the regrant, and then do a bond reduction to the \$106,000.

Mr. Franzetti said then you would have to post the original bond and then ask for a bond reduction. We were trying to work with everybody on that.

Mr. Karell said that's fine; we don't want to post the original bond amount.

Chairman Paepre said that's the problem with getting paperwork in the day of the meeting.

Mr. Karell responded that paperwork was submitted long ago. It wasn't just submitted today.

Mr. Franzetti explained we got your memo yesterday and I had to then write my memo to the Board and got it to them today. I got it late yesterday.

Chairman Paepre then asked if there were any comments from any of the Planning Board Members of which there were none.

Chairman Paepre then said to Mr. Cleary: so, we need three motions?

Mr. Cleary replied yes; I think we do these individually.

Vice-Chairman Giannico said before we do that, I do have a question. What deliverables are on the applicant right now before we start approving? A revised plan?

Mr. Cleary replied that's correct.

Vice-Chairman Giannico said so, before we do anything, shouldn't we see this revised plan so that we know what we'll be granting approvals to or extensions to?

Mr. Franzetti to Mr. Karell: do you have them to share?

Mr. Karell said I submitted the revised plans.

Mr. Franzetti said no; to share on the screen right now.

Mr. Karell attempted to bring plans up on screen for viewing with success.

Mr. Karell said this is the original plan with separate driveways to each house and this area in here is all rock – very deep with hard rock. That's what was approved. Let's go to this one which is a common driveway to both lots. That's the only change. We submitted these plans. I delivered two sets of those to Mr. Franzetti the other day. That's the only change in the whole subdivision.

Vice-Chairman Giannico said [the only change] was that common driveway.

Mr. Karell said yes.

Vice-Chairman Giannico said I guess we can address each motion individually.

Chairman Paepre said the first motion is to grant reapproval of final subdivision.

Vice-Chairman Giannico moved to grant reapproval of the final subdivision; seconded by Mr. Frenkel with all in favor. Chairman Paepre then called for a roll call vote:

<i>Vice-Chairman Giannico</i>	<i>for the motion</i>
<i>Mr. Frenkel</i>	<i>for the motion</i>
<i>Ms. Kugler</i>	<i>for the motion</i>
<i>Chairman Paepre</i>	<i>for the motion</i>

Motion Carries.

Chairman Paepre said the next motion is to grant the extension of the final subdivision approval.

Mr. Frenkel moved to grant the extension of the final subdivision approval; seconded by Vice-Chairman Giannico. Roll Call Vote:

<i>Ms. Kugler</i>	<i>for the motion</i>
<i>Vice-Chairman Giannico</i>	<i>for the motion</i>
<i>Mr. Frenkel</i>	<i>for the motion</i>
<i>Chairman Paepre</i>	<i>for the motion</i>

Motion Carries.

Chairman Paepre said the last is for a recommended bond reduction to \$106,000.

Vice-Chairman Giannico moved that the amended bond amount be reduced to \$106,000; seconded by Mr. Frenkel. Roll Call Vote:

<i>Ms. Kugler</i>	<i>for the motion</i>
<i>Vice-Chairman Giannico</i>	<i>for the motion</i>
<i>Mr. Frenkel</i>	<i>for the motion</i>
<i>Chairman Paepfer</i>	<i>for the motion</i>

Motion Carries.

MINUTES – 02/05/20

Mr. Frenkel moved to accept the minutes as written. The motion was seconded by Ms. Kugler with all in favor. A roll call vote was taken.

<i>Vice-Chairman Giannico</i>	<i>for the motion</i>
<i>Ms. Kugler</i>	<i>for the motion</i>
<i>Mr. Frenkel</i>	<i>for the motion</i>
<i>Chairman Paepfer</i>	<i>for the motion</i>

Motion Carries.

Vice-Chairman Giannico moved to adjourn the meeting at 8:00 p.m. The motion was seconded by Ms. Kugler with all in favor.

Respectfully submitted,

Dawn Andren