

Village of Walden  
Planning Board Meeting  
September 21, 2020

Chairman:	Stan Plato	Present
Members:	Jay Wilkins	Present
	Lisa Dore	Absent
	Jason Trafton	Absent
	Zac Pearson	Present
	John Thompson	Present
Alternate:		
Building Inspector:	Dean Stickles	Present
Village Attorney:	Robert Dickover	Present
Village Engineer:	John Queenan	Present
Secretary:	Marisa Kraus	Present

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Chairman Plato - Called the meeting to order at 7:30pm.

**1. APPROVAL OF MINUTES:**

Tabled

**2. BOARD BUSINESS**

**A. PUBLIC HEARINGS:**

A.1

**B. FORMAL APPLICATIONS:**

**B.1 52 Oak St, LP Builders, Three Lot Subdivision**

**Rueben Buck:** I'm here with our revised plans and ready to listen to Planning Board comments. This is a subdivision of a lot up to a half an acre and subdivided three times, single family dwelling on each lot. Each will be served with public water and sewer. And these improvements comply with the zoning district, R5.

**Engineer Queenan:** My comments right now are very minor. Everything proposed meets the zoning in an R5 district. Three single family's lots with access on Oak St. Water and sewer service from Oak St mains. We've gone through the application. Short Form EAF is adequate. Tonight, if the board is so inclined, we can review that and complete the SEQR determination. We just had some clean up comments on plans. Most specifically, the biggest change from when they were last here to now is that they've added an easement on proposed lot #1. I guess it's an existing 16.5 foot easement for a driveway access to the rear of the lots. That's now formally Rainbow Ridge Realty. Incorporated this onto their plan and have shifted all the improvements accordingly to lot 1. I do not believe it's going to be an issue, but it is one of the major changes.

**Rueben Buck:** It's believed to an access easement. We were taking a look at aerial and street views and there's gravel drive that extends from Oak St back to the property to Rainbow Realty. There are drainage manholes on the property, so we will need to make revisions to the driveway and make it so that we're not changing the existing drive to that property.

**Engineer Queenan:** Spoke to Ross this afternoon. They're just going to flip the driveway so that the driveway for lot 1 match the access for this. The rest of our comments were just clean up notes.

**Member Pearson:** Grading lot changes?

**Engineer Queenan:** Minimally. There's not much to it now.

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**Attorney Dickover:** Just picking up on this drainage easement. You have the building envelope going on these lots. Lot 1, you're saying one side yard is 10 feet. The other side yard is not being shown. But the requirement, according to your bulk table, is 18 feet for one side yard. Twenty six feet for both.

**Engineer Queenan:** It's a little confusing. It actually requires 10 on one side and they have 18 total. So you have to provide one at 10 and the other at 8.

**Attorney Dickover:** So the easement is going to encroach into the side yard on that one side. The question simply is whether or not we're going to be a place to house into that lot without imposing upon easement. Now, that's a private question between you with the joining owner but the easement itself by its language might prohibit development or obstruction. If it does, you're going to have an issue with probably your own client who appears to be the lot owner. You might want to just take a look at that.

**Rueben Buck:** Right now, I know that we're not showing any set back line on our C1 sheet. We can provide those for further clarifications. If there were an overlay of those sheet. We move the house on lot one, north. So that it doesn't fall within that easement.

**Attorney Dickover:** Right. As long as you have room. That's the question. And any other improvements that you might want to put in an easement, it might violate the terms of that easement agreement whatever it says.

**Engineer Queenan:** Right now, you don't have anything proposed on the easement, correct?

**Rueben Buck:** No.

**Engineer Queenan:** So, everything is outside of the easement.

**Chairman Plato:** Does the easement have to be a certain size?

**Rueben Buck:** It's a 16 and a half foot wide easement.

**Member Pearson:** Existing.

**Chairman Plato:** So, you really shouldn't build with that easement?

**Attorney Dickover:** It would depend on the terms of the easement. It's a private easement. My comment only is that I think the applicant should check the language of the easement. Really easements and their use is a private issue between this applicant and the neighbor that serviced by the easement. I'm making a cautionary statement so you don't run into a problem down the road. I think that the last time that we were here, the board did classify this as a minor subdivision. The SEQR purposes, don't recall if we declared ourselves lead agency or not. This is gonna be an unlisted type action. I don't believe there are any other agencies involved. So, you could resolve uncoordinated review. I don't have my notes from that meeting.

**Engineer Queenan:** I believe the board did the lead agency. There are no other agencies involved.

**Attorney Dickover:** I believe the Short Form EAF is ready to be reviewed. If you want to do that this evening, you could.

Member Pearson made a motion to reaffirm intent to be the lead agency, type unlisted action, conduct an uncoordinated review. Seconded by Member Wilkins. All ayes. Motion carried.

Member Wilkins made a motion to grant Negative Declaration. Seconded by Member Thompson. All ayes. Motion carried.

Member Pearson made a motion to schedule Public Hearing for October 19, 2020 for 7:30pm or shortly thereafter. Seconded by Member Thompson. All ayes. Motion carried.

**B.2 107-121 West Main St, Site Plan, Special Exception Use**

**Zack Peters:** We were referred to the Zoning Board to get a variance and I did receive that variance. In addition to that, I responded to John's previous comments. We've resubmitted everything and are back before you to get any other comments.

**Engineer Queenan:** Most of my comments deal with generally zoning and housekeeping on its application. It doesn't look like there are really any proposed site plan changes or legal zoning issues. \*inaudible\* some variances that you received from the Zoning Board.

**Zack Peters:** \*inaudible\* for the church use in B3 zoning district. Requirement of 50 feet for any setback. All the existing buildings, they were all deficient from that. There's a variance for lot coverage. Which is a maximum limit of 20% for the church use in this zone. Existing lot has 35.7% lot coverage.

**Engineer Queenan:** There are several different tax parcels. The application has two different zoning districts within the B3 and you're within R5. The application includes the church facility, the single family residence next door on the corner of Pine and 52. Also includes the parking lot parcel across the street. And then a vacant parcel to the rear of the single family residence. From my review, the zoning, looks like everything now complies with the variance that has been granted. I think we finally have a road map. Based on the information that Zack's office has provided, they have done their homework with some of the outside agencies. The NY State DOT, Zack's office contacted them in regards to a possible crosswalk from the parking lot to the church. DOT said thank you, but no thank you. ZBA has granted the requested variances and Zack and Dean have worked with SHIPPO. Don't want to speak for Dean, but looks like their office does not get involved with this type of application at this time, because there are no other state or federal permits or funding associated.

**Chairman Plato:** Is the crosswalk shown correctly?

**Engineer Queenan:** The existing one is.

**Zack Peters:** We did reach out to them and sent them a sketch plan of what Larry had discussed with the board the time. They said no.

**Engineer Queenan:** The only outside agency or referral that I know that hasn't been done is the 239.

**Chairman Plato:** Back to the crosswalk. So, this is a church. There's a day of the week, do they ever do a temporary cross walk for day? Where you put a sign up?

**Engineer Queenan:** I've never seen that. A lot goes into crosswalks and it all boils down to liability, signage and consistency. Maybe for a bigger, special event you could do it but nothing on a regular basis.

Member Wilkins made a motion to reaffirm leady agency, type one action. Seconded by Member Thompson. All ayes. Motion carried.

**Attorney Dickover:** John mentioned 239 referral. I don't know if it was made or not.

**Building Inspector Stickles:** No, it has not. It can go out tomorrow or next day.

**Attorney Dickover:** That needs to be done. The public hearing could be scheduled this evening, but you could not make a decision on this application until the 239 response is received or until 30 days have transpired since that referral was made.

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Member Wilkins made a motion to grant Negative Declaration. Seconded by Member Pearson. All ayes. Motion carried.

Member Pearson made a motion to schedule Public Hearing for October 19, 2020 at 7:30 pm or shortly thereafter. Seconded by Member Wilkins. All ayes. Motion carried.

**B.3 Overlook at Kidd Farm, Resolution of Conditional Final Approval**

**Jerry Jacobowitz:** The purpose of me being here tonight is to try to keep moving forward and to identify some things that we need to make special mention of. Nothing that's calamitous, I hope, but things that are involved. We sent through Dean's office the draft of the resolution of the conditional final subdivision site plan approval. We also sent through one sheet of schedule of exhibits and the second sheet, I labeled "open items". These are attempting to make a score card that will be a checklist to make sure that when we come in and say we're ready for you to take action, everything's going to have a positive check. And if there's something I missed, then I would hope that Mr. Dickover and Mr. Queenan would share that with us. I just received tonight, a report to your board from Lanc & Tully. Which he lists a bunch of items on the plans that he is raising. These will all be sent to our engineers so they can see what they are and try to address them.

**Engineer Queenan:** Just so you know, this is the same memo that I provided for back in December 2019.

**Chairman Plato:** This is the same list?

**Engineer Queenan:** Basically. Some items were addressed, some weren't. And what we did add was the Village DPW has reviewed it and provided their comments.

**Jerry Jacobowitz:** One item that you mention, which is on the open item, is the review from DPW. Which is one of your conditions. It took us a little less than a year to get that answer. The sign off on SHIPPO, September 8th letter from them. There are five things they want the report to address. One of the pictures didn't come out clear enough. All minor stuff that our archeologist is proceeding to take care of. Number five is proofread the text for typographical errors. Hopefully, going to get their sign off momentarily. Walden DPW sign off, Mr. Queenan speaks for them in the memo he just gave us today. We'll take care of that. The Architectural Review Board, that hasn't been approved yet. You're the ones who are going to approve it. The reason you don't have elevations other than the set we showed you \*inaudible\* each builder has his own module. Until we know for sure who the builder is, it's a waste of your time. The design of the pump station upgrade has to be done later. That's something that has to be done. We have been unable to get NYSEG or Spectrum to look at the plan and give us a response. The answer I've gotten is when we have the final plan, and then they will look at it. You want their sign off before you give approval. They want your approval before they give a plan. We'll try to figure out something as we get a little closer to that moment of truth. The review and inspection fees is a mathematical calculation based on what the bond is for the doing of the improvements. Recreation fees are to be addressed. We have contacted the Village and we are unable to get an audience with anybody in the Village to discuss this. You folks make a determination that something is needed. The Village Board makes the decision about what to do about that and how much money they want. We're ready to sit down about it. We sent a budget for what the onsite recreation facilities will cost on site. We need somebody to talk to.

**Chairman Plato:** Robert, is there anything we can do?

**Attorney Dickover:** If the Board were inclined, you could make a request to the Village Board to consider the applicants request.

**Chairman Plato:** Should we give a recommendation as far as the recreation fees?

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**Attorney Dickover:** No. I believe that's outside your purview. That's a decision for the Village Board to make. The other thing that you could do is make this a condition to the final approval. I think maybe it is a condition to final approval.

**Chairman Plato:** What you're saying is it's a Village Board issue?

**Attorney Dickover:** It is. This is a condition. You can leave it as a condition to your final approval, which is how it sits. Mr. Jacobowitz is simply reporting on the status of it. I don't know if there's anything further for us to do.

**Jerry Jacobowitz:** The easement agreement has been done. I believe that's been reviewed. Title policy, we need to get that. The performance bond involves the Village Board. The approval over the offering plan by the NYS Attorney General and reviewed by your attorney of that submission, that hasn't been done. There's a draft on the offering plan. There is great detail of everything. What the water, sewer, electric rate, etc. and has to be current information. So, there's blanks to be filled in as soon as we're able to determine a timeframe. The HOA bylaws, those have been prepared. They were submitted to Bob. He's reviewed them. We made some changes. He wanted better language concerning the power and right of the Village to assert the rights if the HOA doesn't do their job. The Declaration of Covenants restrictions, that's what's going to go against the title of each and every one of these units that says they must obey the by laws and rules and regulations of the HOA and the rules and regulations of the Village of Walden. That has been done and reviewed.

**Chairman Plato:** Is there a way to do an event chart? Some of these are all dependent on something else happening before.

**Jerry Jacobowitz:** If you mean chronologically, we're working on all of these at once. Which one comes home first is beyond our ability.

**Member Wilkins:** When are you scheduled to go before the Village Board again?

**Jerry Jacobowitz:** I don't know. They won't put it on the agenda.

**Chairman Plato:** I'd rather talk to them first and see what the issue is.

**Jerry Jacobowitz:** One of the items listed in your findings, that the Village was under a consent order with the state concerning the sewage treatment plant. My understanding is that the Village has complied with the consent order. But I am not sure if the consent order has been withdrawn or dealt with. It's on the list that you say you want to make sure about. Somebody has got to get in touch with the Village and ask them for an update on that. My informal response that I got was it's a non-issue. The last item is a Village Board matter, which your approval said that we had to have the affordable housing plan approved by the Village. In the plans that's been submitted to you, there is a plan that shows the location of every affordable housing unit on it. Shows that they're spread out. The units are very similar to market rate units that are right next door to it. That plan has been submitted to the Village Board also for their action. SHIPPO, we've had three excavations on the property. They found nothing that is historic. The report went in and that's the one that they responded to on September 8th, asking for a clearer picture. Photograph of exhibit six, et cetera. We're hopeful that before the end of this month, we'll have a sign off from SHIPPO. There's one other item and it's up in the air. Which sections first? Pretty much everybody that has been interested in the property wants section one. It's off the main highway and it's a perfect spot for the model home. Do they want to have more than one section? Should they do section two, which is on Coldenham Rd or should they do the section next to section one? That's a matter for a buyer to make up his mind. There are people interested. We've made it very clear to everybody, we want to see what this looks like. We want to see the elevations of the buildings and how it's going to look. One item that Bob and I have a disagreement about that needs some input. Deals with item 14. I tried to explain why it

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doesn't make a lot of sense. I'm not arguing with Bob about what the words say. I'm saying that it makes no sense. It says unless everything is completed in the section that you're talking about or the prior section worked on, whether it's public or private, there can't be a CO issued. My experiences, I've never been to a new house closing there wasn't a punch list. The way this reads, even if Dean feels there is no danger to the public health, there's no danger to public safety, there's no danger to the people who are buying the house. He's prohibited from issuing the CO because some minor item hasn't been done to some place. You could conjure up a million minor things that happen with new construction. The absurd part about it is that it says put up a bond. There's already a bond put up for the public items. So, if something's not done that's covered by the public bond then it already is protected. That wouldn't stop Dean from issuing a CO. The question is, is it safe? Not whether there's a bond. Bond satisfactory informing amount to the Village Board and the Village Engineer. To get the Village Board to rule on every one of these things, they meet every two weeks. I think the language needs to be modified. If you give Bob some direction, I'm sure we'll work out something that makes some sense.

**Attorney Dickover:** That certainly was part of your conversation. This is not a good topic. We worked out this language, agreed to it months and months ago. Jerry and I do have a disagreement about this. I believe it was the intention of the board that these sections be completed to their completion so that if the rest of the project was abandoned, that we wouldn't have unfinished public, which is bonded and unfinished private improvements that these purchasers bought into never got provided. That was one of the concessions this board made when you agreed to sectional approval. That language appears in that resolution is to say we've discussed it ad nauseum back then. It was agreed to, I think was agreed to for good reasons by this board and Mr. Jacobowitz is correct, he and I disagree about his request. I think it should stay.

**Jerry Jacobowitz:** The fear that the job will stop and they'll be a shambles there because things weren't done and people were given CO, is the way I understand the argument that's being made.

**Member Wilkins:** I think the Village Board needs to address the items that need to be addressed. Jerry needs to get any approvals that are still outstanding.

**Chairman Plato:** I don't think the intent has changed. I think the intent of the board has always been. We want to see all the public improvement done. It's bonded so it should be done. And if something on the private side is not done, the applicant is putting them back on the Village, not to the developer. It will go back on the Village for those issues. So, you get a CO, but some of the stuff isn't done. How does it get corrected if the developer walks away?

**Jerry Jacobowitz:** If it's substantial, the Building Inspector is never going to give the CO no matter what this says. You're talking about something substantial? Yes, that's a danger. They're not going to issue a CO. We're talking here about something minor. It says everything. That means everything, including things that couldn't make a tinker's damn.

**Attorney Dickover:** With all due respect, that's no different than any other building permit that you submit to this department. Everything has to be completed before CO would issue. This is no different than that.

**Jerry Jacobowitz:** Yes, it is. Because this is a condition of approval. The Building Inspector has administrative authority by virtue of him being a Village Official who took an Oath of Office. As a result, he's going to be making judgment calls all day long, every day. A minor thing, a screen didn't get delivered, the screen door is broken, any number of things like that are not material that the Building Inspector is going to figure out how to deal with it. He could say that he wants a \$500 cash escrow to cover that. Okay, we don't have to go to the Village Board to find out that it's a \$500 item. But the way this reads, he can't do it and you've got to go to the Village Board for them to decide whether it is A. Something and B. How much?



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**Attorney Dickover:** I think your analogy is wrong because you're talking about the details of interior or unit construction, which don't involve this board. This board is approving site plan elements and subdivision elements. We're not approving, screen doors or approving a window that's broken. We are approving sidewalks and streets and curbing and lighting and landscaping. But this board is not concerned with the construction of a unit. Whether or not a CO is going to be issued because the door is loose or hanging off, it's for him.

**Jerry Jacobowitz:** That's not what these words say.

**Chairman Plato:** That's not a Planning Board issue.

**Jerry Jacobowitz:** But you're making it one because you're not willing to change the language.

**Chairman Plato:** I don't think we're going to solve it tonight. I think we all know the intent.

**Jerry Jacobowitz:** Yes.

**B.4 Overlook at Kidd Farm, Review Bills Approval**

Member Thompson made a motion to approve Overlook at Kidd Farm invoices. Seconded by Member Pearson. All ayes. Motion carried.

**C. DISCUSSION ITEMS:**

**D. INFORMATION ITEMS:** None

**E. CORRESPONDENCE:** None

**3. COMMUNICATIONS:** None

**4. EXECUTIVE SESSION:**

**5. MEETING ADJOURNED at 831pm**

Member Wilkins made a motion to adjourn. Seconded by Member Thompson. All ayes. Motion carried.

RESPECTFULLY SUBMITTED  
Marisa Kraus, Village Clerk  
Planning Board Secretary