

TOWN OF LLOYD TOWN BOARD

SPECIAL MEETING

APRIL 26, 2011

Present: Deputy Supervisor Nancy Hammond
Councilmember Kevin Brennie
Councilmember Herbert Litts, III
Councilmember Jeffrey Paladino

Also present: Lewis DiStasi, Attorney
Sean Murphy, Attorney
Rosaria Peplow, Town Clerk

Absent: Supervisor Raymond Costantino

4:20 PM – Deputy Supervisor Hammond opened the meeting and led the Pledge of Allegiance.

Lewis DiStasi, Town Attorney, explained that Lloyd Nine would like to renew their bond. The Town requirement that it be renewed at 150% is extremely difficult for developers because it takes the amount up so high that they have trouble posting bond. The Zoning law requires that the road is either built or bonded; most of these bonds are several years old but at this time there are not many house sales. An estimate is made and a bond is posted with a letter of credit, cash or an insurance company bond; the Building Department Supervisor is asking for the bond to be renewed because the developer has the benefit of a filed subdivision map. The developer could sell lots off the subdivision map whether or not they could get building permits. He said that Sean Murphy, Town Attorney, is now working on a way of prohibiting developers selling lots.

He said that Amanda Circle is another project which has houses built and a \$280,000 cash bond had been posted. Frank Lombardi, Highway Superintendent, and Bill Rohde, Town Engineer, have to estimate what it would cost the Town to build the road. That bond is not up for another three months.

Lloyd Nine has indicated that they want to renew the bond, he called the insurance company and asked what is needed to make a claim because it is due May 13. They are willing to rollover the existing bond, which will only do part of the subdivision. The amount of the bond is \$452,000; it would be close to \$1-million if it was multiplied by 150%.

The unfortunate thing is nothing happens until the time is running out on the bonds and he sends out reminders that the bonds are due.

Sean Murphy interjected that the agreement expires May 1 but they have indicated that they are going to extend the bond which does not expire until May 13; the Town Board has accepted the 100% in the past.

DiStasi said that he has tried to be consistent; there are towns that do not require bonds.

Litts asked what the percentage was on renewals when the subdivision was approved and Murphy answered that it was 100%, not 150%.

Paladino asked the length of the road for Phase I of Lloyd Nine.

DiStasi replied that he did not know that it was in phases; however, he knew that there are 12 lots.

Murphy read that it 2442-feet of roadway. Both Pleasant View and Lloyd Nine subdivisions were passed before the 150% requirement was adopted. Lloyd Nine would like to renew the bond at its current amount.

DiStasi noted that it is similar to a mortgage as when they start to build the road, equity builds in the bond; a \$452,000 bond becomes more valuable when the roadwork starts. He does not feel that refusing building permits is a sufficient penalty for not posting a bond; as lots and subdivisions can be bought and sold. Then the Town Board is questioned having had the money in hand and letting it go when it allowed the bond to expire.

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- Litts asked if there is a list of bonds that have expired in the last few years and the values at which they were renewed.
- Murphy answered that the only one he knows of is Pleasant View which was extended at the original amount in 2009 but he offered to check for others.
- Paladino feels that that it is in the best interest of the Town to renew and he asked if the Town was liable to do as much road as \$452,000 covers.
- DiStasi agreed and said that building permits cannot be issued to the portion of the subdivision that is not covered by the bond.
- Litts said that at some point it has to be decided when the new ordinance takes effect; either grandfathered because the subdivision was approved before the new ordinance or does the renewal period trigger adherence to the new Code. He wants to be consistent and does not want to pick and choose one developer who renews at 100% and another developer at 150%; for this reason, he would like to see the history on the bond renewals so that he knows that it is consistent with past practice or follow the new Code. Problems will arise if the Town does not follow the Code.
- Murphy feels that the new Code could be enforced and asked Barton if he knew how many subdivisions have bonds right now.
- Barton agreed that the only one is Pleasant View at 100% and none were renewed at 150%. He added that Hamlets at Bridgeview is being bonded now at 150%.
- Paladino said that there are three or four developments that are currently bonded.
- Rick Duvall, McCabe & Mack, representing A&T Holdings/Pleasant View, said that they have had discussions with Rhinebeck Savings Bank and Robert Levine is at this meeting on behalf of the bank. A&T is requesting another 30-day extension of the letter of credit to finalize the arrangements between the developer and the bank.
- He gave Murphy a proposal that would address the Board's valid concerns about the situation of a filed subdivision map with a lapsed bond if it was not renewed or extended and someone bought a lot from the developer and asked for a building permit. In case the developer is not able to make an arrangement with the bank, the document would be recorded in the Ulster County Real Property records and would protect the consumers and the Building Department.
- Murphy asked if the plan was if they received approval to phase the project and the developer would build the road for the first phase; the road would be built instead of bonded and then the lots would be buildable.
- Art Ackert, Jr., developer, said that he believed the bond covers all of the roads.
- Murphy replied that the bond originally covered the cost of the road but it would not now due to the increased cost. He would also be short due to the 150% requirement. He felt that the \$822,000 bond would not build all of the roads in the subdivision.
- Duvall proposed that the developer puts in cash and builds roads to access 17 lots.
- Akert said that the plan is to put something else into effect for 30 days during which cash would be put up so that everyone is assured that first stage would go through.
- Murphy offered that Robert Levine of Rhinebeck Savings Bank said that the bank is not willing to commit to another 30 days until they do some work and they will not know until Thursday, April 28. The Board could approve a resolution calling the bond on Friday, April 29; if there is an extension agreement for 30 days, the bond would not be called on Friday or an agreement can be done approving this declaration of restrictions, as long as this was filed by Friday, the bond would not be pulled.
- Duvall said that is the document that he suggested that would give comfort to the Town Board that they do not have to call the bond; the rationale behind calling the bond is that the money would have to be used to build the road and not put into the General Fund.

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Murphy explained to the Board that today they could authorize the calling of the bond to occur Friday, unless the Board receives an extension of the bond or the Board could agree that in lieu of calling the bond, as long as this document was filed by first thing Friday morning, you would not call the bond.

MOTION made by Paladino, seconded by Brennie, to move into attorney/client meeting at 4:50 PM.

Four ayes carried.

MOTION made by Brennie, seconded by Paladino, to move out of the attorney/client meeting and resume the Special meeting at 5:10 PM.

Four ayes carried.

Murphy said that the Town Board has decided not to consider any resolution on the Pleasant View development today; the Board will reconvene at 9:30 AM, Friday, April 29, to consider options. If the letter of credit is extended the Town Board will meet to vote on the extension and would like an agreement that could be signed to extend the letter of credit another 30 days at the current amount.

Barton said that Terresa Bakner told him that other towns demand that the developers build out the road.

Hammond agreed and said that in the western part of NYS, all infrastructure including sidewalks has to be in before anything is done in a subdivision.

Litts cautioned that this limits growth to the larger developer as the local resident who wants to subdivide his acreage cannot do so because he does not have the money.

RESOLUTION made by Litts, seconded by Paladino, to authorize DiStasi, Moriello & Murphy Law, PLLC, to notify Lloyd Nine, LLC, that the Town of Lloyd Town Board will accept a \$452,000 bond for a two-year term prior to the expiration of the current bond for road improvement.

Roll call: Paladino, aye; Hammond, aye; Litts, aye; Brennie, aye.

Four ayes carried.

Murphy explained that the bank does not want this agreement; they would rather that the Town Board called the bond.

Litts agreed that the best thing for the bank is to build the road because the property gains value.

Murphy said that the bank has to pay the bond then it can foreclose and the bank owns the property and is \$800,000 to the good for the road. It could be argued that the building permit would have to be given for the lot in the back with the view because we took the bond; however, the road could not be built to the back of the subdivision for \$822,000.

Peplow asked who figures out how much it would cost to build a road.

Murphy answered that it would be Bill Rohde, engineer. He was told that if Pleasant View came in for a new bond today, it would be \$1.5-million.

DiStasi said that they might want to reconsider the 150%.

Peplow asked if the 150% was in Development fees or in the Town Zoning Code.

Barton answered that it was in development fees so that could be modified without a local law.

MOTION made by Litts, seconded by Brennie, to adjourn the meeting at 5:20 PM.

Four ayes carried.

Respectfully submitted,

04.26.2011

Rosaria Schiavone Peplow
Town Clerk