

Village of Lansing

MINUTES of the Board of Trustees Meeting held a special meeting on Monday, August 30, 2021, at the Village of Lansing Office.

PRESENT: Mayor Ronny Hardaway; Trustees, Simon Moll and Patricia O'Rourke, Carolyn Greenwald; Clerk/Treasurer, Jodi Dake; Attorney, Bill Troy; Code & Zoning Officer, Mike Scott.

Mayor Hardaway called the Board of Trustees meeting to order at 7:30pm. Hardaway opened the public comment period. There was no public comment.

Motion - To Close the Public Comment Period

Moll made a motion to close the public comment period. O'Rourke seconded the motion. A vote was taken:

Mayor Ronny Hardaway-Aye	Trustee Simon Moll-Aye
Trustee Patricia O'Rourke-Aye	Trustee Carolyn Greenwald-Aye

Motion - To Approve the Minutes of August 12, 2021

O'Rourke made a motion to approve minutes. Greenwald seconded the motion. A vote was taken:

Mayor Ronny Hardaway-Aye	Trustee Simon Moll-Abstain
Trustee Patricia O'Rourke-Aye	Trustee Carolyn Greenwald-Aye

Motion - To Approve the Minutes of August 16, 2021

Moll made a motion to approve minutes. O'Rourke seconded the motion. A vote was taken:

Mayor Ronny Hardaway-Aye	Trustee Patricia O'Rourke-Aye
Trustee Carolyn Greenwald-Abstain	Trustee Simon Moll-Aye

The main purpose of tonight's special meeting is to determine if the Trustees approve of the **changed** language proposed in the Shops at Ithaca Mall ECCR. This is a condition of Subdivision Resolution #2020-4456. The proposed changes/additions in wording to Section 3.2 and 3.3 are highlighted in red:

Section 3.2 Easements for Access Roads. Declarant hereby establishes for the benefit of the Land non-specific easements for pedestrian and vehicular traffic for the purpose of providing ingress to and egress from the public ways to and throughout the Mall **and through the Mall when the portion of Graham Road West that is a public road is closed to**

traffic (“Access Roads”), together with the following rights and subject to the following restrictions and reservations:

Section 3.3 Easements for Utility Facilities. Declarant hereby establishes for the benefit of the Land perpetual easements on the Outparcels, except within the Permissible Building Area, as shown on the Site Plan, for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Common Utility Facilities and Separate Utility Facilities serving the Land. Declarant acknowledges that third party(ies) currently utilize the underground domestic and fire protection water systems as of the date of this Declaration and hereby establishes for their benefit an easement for their continued use of the water system in accordance with the terms hereof for so long as said party is in compliance with all applicable agreements regarding their use of the water system (a “Water Agreement”), including, but not limited to, payment for their use of the water system. In the event there is a conflict between any provision of this Declaration and any Water Agreement, the terms and provisions of such Water Agreement shall prevail for so long as said Water Agreement is legally binding and enforceable and has not expired by its own terms (i.e. expiration of a lease term) or operation of law.

The reason for the Section 3.2 change is to allow the BJ’s parcel to use Graham Road West for their customers to access the store. If/when Graham Road West is under construction, their patrons have no legal right to use the other Mall roads without the change in wording.

BJ’s public water is connected to the Shops at Ithaca Mall’s metered water system. If something were to happen to the mall system or other unforeseen events which cut off the water supply to the BJ’s parcel, that parcel would have no other way of supplying itself with public water. The language in Section 3.3 would allow for that parcel to be able to install their own system by way of an easement. There is also a proposed easement being worked on from Triphammer Road to the BJ’s parcel.

Hardaway asked if there were any questions or concerns.

Greenwald stated that these two subsections are part of a contract, and she feels they contradict sections 7.2 and 7.6. Greenwald feels the language does not go far enough. Greenwald does not want to review these two sections separate of the whole contract. She feels that is how a court of law would look at this.

Hardaway stated that Attorney Peter Grossman has read it and has no conflicts with it.

Attorney Troy stated that in his opinion, he does not agree. In 3.2 there was a problem and the mall attorney voluntarily offered to give the right to use the mall property for access. This access is in the final plat approval. Troy stated that this additional wording is there as a concern of John Courtney, Supt. Of Public Works. Courtney wanted to be sure that people would be able to get in and out of the BJ's parcel when the Village was working on Graham Road. Secondly, the utility easements are a condition of the engineering. Troy does not feel we are doing any harm.

Greenwald's concern is that the Mall representatives always said the ECCR would protect the Village and she feels the Village is not protected by this document. Troy stated that the flooding is being protected by the engineering. The stormwater pipe under the parking lot and building has a boulder in it and they have agreed to take it out. Troy feels this is actually overkill. Greenwald still feels that 3.3 and 7.6 are contradictory. Troy stated that there are other agreements and easements for the Village. The ECCR is for the tenants.

Scott stated that he looks at this like a Homeowners Association (HOA) document. We don't really have a say in how the HOA handles their area. The whole area is, however, under Village Code and they would have to follow the Code no matter what the HOA says. The ECCR is between the mall and its tenants. The ECCR explain how money is pooled from each parcel but the overall Village Code trumps any of this.

Greenwald feels the ECCR is not taking care of the Village. Troy reminded her that this is a landlord tenant agreement. The Village has other agreements that protect the Village. The Planning Board wanted the Trustees involved in this process.

Scott reiterated what happen at the Planning Board meeting and how we got to this point. There were two concerns that the Village had that they wanted to make sure were addressed. The first was with Graham Road access to the BJ's parcel. If Graham Road was shut down to be repaired or any other reason, the Village wanted to be sure that there was access to that parcel. The only other way to get to that parcel is thru the mall property. Gavin, the lawyer representing the mall, stated that they would never stop people but agreed to add the changed language to make sure that there would be access. The second situation was with water access. These two changes to the ECCR alleviates these two problems.

O'Rourke thinks having the Trustees look at this is a show of good will to back the Planning Board.

Hardaway stated that if the mall fails, we will have bigger issues. The wording is trying to find a bridge. It is an attempt to give us assurance that the mall won't have an issue.

Greenwald does agree with the language in terms of what it will lead to in the future. She feels it will be less stable and she feels it is contradictory language.

Troy feels this is a novel idea. Section 3.2 is giving right to BJ's that they do not have right now. There is also a separate easement.

Moll asked if the Village plans to run a tap down to allow water hook up when we take over and reconstruct Graham Road. Hardaway was unsure and stated that this would be a question for Courtney.

Hardaway told Greenwald that she has a valid point, but he thinks the mall is trying to accommodate us. Hardaway trusts Attorney Grossman's review. It seems to be a matter of interpretation. We need to remember that the ECCR is not a contract with the Village. The Village enforces with our Code. Hardaway entertained the following motion:

Resolution #6774- To Approve the Revisions to the Shops at Ithaca Mall ECCR Requirements as Required by the Village of Lansing Planning Board Resolution for Final Plat Approval of Major Subdivision #2020-4402 Adopted on March 8, 2021, and Amended on August 18, 2021, as Required in Conditions and Requirements 1. (K).

Moll made a motion to approve this resolution. O'Rourke seconded the motion. A vote was taken:

Mayor Ronny Hardaway-Aye
Trustee Carolyn Greenwald-Nay

Trustee Patricia O'Rourke-Aye
Trustee Simon Moll-Aye

Motion- To Adjourn

O'Rourke motioned to adjourn. Moll seconded the motion. A vote was taken:

Mayor Ronny Hardaway-Aye
Trustee Patricia O'Rourke-Aye

Trustee Simon Moll-Aye
Trustee Carolyn Greenwald-Aye

The meeting was adjourned at 8:02pm.

Jodi Dake, Clerk/Treasurer