

**A Village Board Special Meeting was held on Monday May 13, 2024 at 7:00 P.M. at Village Hall, 9 Fairlawn Drive, Washingtonville, New York.**

**PRESENT:**

**Mayor Thomas DeVinko, Deputy Mayor Donna Jacaruso, Trustee Susan Walski, Trustee Steve Presser, and Trustee Vernon Coleman.**

**ALSO PRESENT:**

**Village Clerk Christine Shenkman, Police Chief Brian Zaccaro, DPW Superintendent Chris Martino.**

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

**Mayor DeVinko led the Pledge of Allegiance to the Flag.**

**RESOLUTIONS:**

**24 – 0050 – RESOLUTION – DECISION RENDERED DENYING THE HARDSHIP VARIANCE APPLICATION OF 61 E MAIN STREET ASSOCIATES LLC:**

**Deputy Mayor Jacaruso made a motion, seconded by Trustee Coleman and adopted to deny the Hardship Application of 61 East Main Street Associates, LLC; said Resolution passed by a unanimous vote of the Village Board. 5 Ayes, 0 Nays, 0 Abstentions.**

**A Special Meeting of the Village Board of the Village of Washingtonville, New York was convened on May 13, 2024 at 7:00 P.M.**

**The following Resolution was duly offered and seconded as above to wit:**

**WHEREAS, on or about December 28, 2018, Applicant 61 East Main Street Associates, LLC ("Applicant") submitted a site plan application (the "Planning Board Application") to the Village of Washingtonville Planning Board (the "Planning Board") for 61 East Main Street, Washingtonville, New York (the "Property"); and**

**WHEREAS, the Property consists of two tax parcels, one of which is wooded, undeveloped, and in a designated wetlands; and**

**WHEREAS, on or about August 23, 2019, Applicant submitted a significantly revised site plan in connection with its Planning Board Application; and**

**WHEREAS, Applicant would need to seek at least two variances from the Village of Washingtonville Zoning Board of Appeals (the "Zoning Board") in connection with the Planning Board Application, including:**

- an area variance for minimum lot area per dwelling unit; and**
- a variance to allow parking to be between structures; and**

**WHEREAS, on June 24, 2020, the Village filed suit (the "61 East Main Lawsuit") against, among others, Applicant because defendants were using the Property as a boarding house without proper approvals and permits; and**

**RESOLUTIONS: (CONTINUED):**

**WHEREAS, on September 22, 2020, the Village and defendants, including Applicant, entered into a stipulation of settlement (the "Stipulation") resolving the 61 East Main Lawsuit,<sup>1</sup> in which the parties agreed that:**

- the Planning Board Application "is or shall be caused to be in compliance with the provisions of the Village of Washingtonville Code unless specifically otherwise authorized by the Village";**
- the Project contemplated by the Planning Board Application "shall . . . be constructed and/or utilized in accordance with all applicable Village Code provisions"; and**
- the "Village shall review" the Planning Board Application "to a conclusion, diligently and in good faith"; and**

**WHEREAS, the Planning Board was not a party to the 61 East Main Lawsuit, and as such, as a separate legal entity, the Village could not bind the Planning Board to review the Planning Board Application "to a conclusion, diligently and in good faith";<sup>2</sup> and**

**WHEREAS, as of May 15, 2023, the Planning Board had neither issued a negative declaration under the State Environmental Quality Review Act ("SEQRA") for the Planning Board Application nor approved the Planning Board Application; and**

**WHEREAS, as of May 15, 2023, the Zoning Board had not granted any variances in connection with the Planning Board Application; and**

**WHEREAS, on May 15, 2023, the Village Board of Trustees (the "Board") passed Village Local Law 2 of 2023 (the "May Moratorium Law"), which was filed with the New York Department of State on May 17, 2023; and**

**WHEREAS, the May Moratorium Law provides:**

- No Land Use Approvals shall be issued for any use or development in any districts within the Village without the approval of the Village Board of the Village of Washingtonville, which approval shall not be considered except in the event of proven hardship;**
- The Village Planning Board shall not accept any application, grant any approval to issue any determination or continue the review of a subdivision plat, site plan, special exception use permit or other permit that includes the permitting, construction and/or development of any use in any districts within the Village or would have as a result of the enlargement, relocation, or modification of any existing use; and**

**WHEREAS, the May Moratorium Law defines "Land Use Approvals" as "building permits, certificates of occupancy or completion, site plan approvals, subdivision plats, special use permits, area and use variances and architectural approvals"; and**

**WHEREAS, the May Moratorium Law allows any person or entity subject to the May Moratorium Law to seek a hardship variance from the Board; and**

**WHEREAS, on November 20, 2023, the Board passed Local Law 8 of 2023 (collectively with the May Moratorium Law, the "Moratorium Law"), which was filed with the New York Secretary of State on December 14, 2023, and which extended the moratorium through May 31, 2024; and**

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<sup>1</sup> 2020 WL 4811117, 2020 WL 4811118, 2020 WL 4811119, 2020 WL 4811120, 2020 WL 4811121, 2020 WL 4811122, 2020 WL 4811123, 2020 WL 4811124, 2020 WL 4811125, 2020 WL 4811126, 2020 WL 4811127, 2020 WL 4811128, 2020 WL 4811129, 2020 WL 4811130, 2020 WL 4811131, 2020 WL 4811132, 2020 WL 4811133, 2020 WL 4811134, 2020 WL 4811135, 2020 WL 4811136, 2020 WL 4811137, 2020 WL 4811138, 2020 WL 4811139, 2020 WL 4811140, 2020 WL 4811141, 2020 WL 4811142, 2020 WL 4811143, 2020 WL 4811144, 2020 WL 4811145, 2020 WL 4811146, 2020 WL 4811147, 2020 WL 4811148, 2020 WL 4811149, 2020 WL 4811150, 2020 WL 4811151, 2020 WL 4811152, 2020 WL 4811153, 2020 WL 4811154, 2020 WL 4811155, 2020 WL 4811156, 2020 WL 4811157, 2020 WL 4811158, 2020 WL 4811159, 2020 WL 4811160, 2020 WL 4811161, 2020 WL 4811162, 2020 WL 4811163, 2020 WL 4811164, 2020 WL 4811165, 2020 WL 4811166, 2020 WL 4811167, 2020 WL 4811168, 2020 WL 4811169, 2020 WL 4811170, 2020 WL 4811171, 2020 WL 4811172, 2020 WL 4811173, 2020 WL 4811174, 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**RESOLUTIONS – (CONTINUED):**

**WHEREAS, the Board anticipates that it will pass one more extension of the Moratorium Law on or before June 1, 2024 and, as such, the Board anticipates that the Moratorium will end no later than December 1, 2024; and**

**WHEREAS, on May 6, 2024, the Board set a Public Hearing for May 20, 2024 for a six-month extension of the Moratorium Law; and**

**WHEREAS, no party has filed an Article 78 action to challenge the Moratorium Law; and**

**WHEREAS, Section 7(B) of the Moratorium Law does not allow a person or entity to obtain a hardship variance under the Moratorium Law because of:**

- **the mere concern that regulations may be changed or adopted, or that the comprehensive plan may be amended; or**
- **the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by the Moratorium Law; or**
- **financial impacts that may result from the applicant's desired project being potentially precluded by zoning changes and requiring development of a project of less value; and**

**WHEREAS, under Section 7(E) of the Moratorium Law, the Board must examine the following three criteria in determining whether they grant a hardship variance:**

- **the extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Village;**
- **whether the Moratorium Law will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property; and**
- **the extent to which the property owner presents proof demonstrating severe financial hardship and demonstrates that such property owner cannot achieve any reasonable return on the property in question as a result of the Moratorium Law; and**

**WHEREAS, on or about January 26, 2024, Applicant submitted the Application to the Board, which is incorporated herein by reference; and**

**WHEREAS, in the Application, Applicant made the following arguments for why Applicant satisfies the criteria necessary for the Board to grant the Application:**

- **Moratorium Law Section 7(B) (rationale for application that preclude a finding of hardship)**
  - **not granting the Application will violate the Village's requirement to review the Planning Board Application in good faith and result in litigation;**
  - **Applicant will purportedly "suffer significant financial loss if the Project is not exempt" from the Moratorium Law; and**

**RESOLUTIONS – (CONTINUED):**

- Governor Hochul’s mandate requires the Village to provide for more housing in the Village; and
- **Moratorium Law Section 7(E)(a) (proposed development’s impact on environment, safety, comfort, and Village)**
  - **O-R Zoning allows the Project;**
  - **the Project is surrounded by a mixture of commercial and residential buildings;**
  - **on April 25, 2023, the Planning Board was purportedly on the cusp of issuing a negative declaration under SEQRA, demonstrating lack of environment impacts on the Village; and**
- **Moratorium Law Section 7(E)(b) (substantial monetary liability / no reasonable alternative use of property)**
  - **Applicant has made investments into the Project to date of \$1,426,180.27 and will have made investments of \$7,626,180.27 when the Project is built out;**
  - **the Project, when fully constructed, will have a value of \$10,500,000;**
  - **the Property is worth \$670,000 without approvals sought by the Planning Board Application; and**
  - **the Property is worth up to \$950,000 with uses exempt from the Moratorium Law; and**
- **Moratorium Law Section 7(E)(c) (severe financial hardship)**
  - **for this prong, “the list of potential uses to be considered are those that are permitted while the Moratorium [Law] is in effect”; and**
  - **because the maximum value of the Property is \$950,000 without the Planning Board Application, “Applicant will face financial harm”; and**
  - **the Property has no value because of the Moratorium Law; and**

**WHEREAS, in the Application, Applicant failed to provide any documentary evidence of any investments into the Property or losses purportedly incurred because of the Moratorium Law; and**

**WHEREAS, on March 4, 2024, the Board set the public hearing (the “Hearing”) for the Application for April 15, 2024; and**

**WHEREAS, on April 8, 2024, despite arguing in the Application that granting the Application would avoid unnecessary litigation, Applicant filed suit (the “Federal Suit”) against the Village and the Board in Federal Court before the Board could hold the Hearing on the Application;<sup>3</sup> and**

**WHEREAS, on April 15, 2024, the Board held the duly noticed Hearing regarding the Application, a transcript of which is incorporated herein by reference; and**

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**RESOLUTIONS - (CONTINUED):**

**WHEREAS, (1) Applicant; (2) Charles Gottlieb, Esq., Applicant's Attorney; (3) Michael Morgante P.E., Applicant's Engineer; and (4) Phil Grealy, Applicant's Traffic Engineer, appeared at the Hearing on behalf of Applicant; and**

**WHEREAS, Mr. Gottlieb gave Applicant's version of the background of the Application, including that:**

- **The Project has been before the Village since 2020;**
- **As of April 25, 2023, the Planning Board purportedly was close to issuing a negative declaration under SEQRA; and**
- **The May Moratorium Law prevented the Planning Board from issuing a negative declaration or approving the site plan; and**

**WHEREAS, Mr. Gottlieb reiterated the same arguments as in the Application for why the Board should grant the Application; and**

**WHEREAS, Messrs. Morgante and Grealy presented presentations regarding site plan and traffic issues during the Hearing; and**

**WHEREAS, public comment regarding the Application was unanimously opposed to the Application, including concerns that:**

- **Applicants' traffic studies did not take into account times of high-volume traffic on Route 94, such as 3:00 p.m. on school days and other times of high congestion;**
- **The Project would place significant stress on Route 94 by adding significant numbers of additional vehicles;**
- **The additional stress on Village roads would exacerbate existing difficulties emergency services have in traveling to emergencies; and**
- **The Project's design does not fit within the character of the Village in its proposed location; and**

**WHEREAS, the Board makes the following findings of fact:**

**SEQRA**

**The Application is a Type II action under SEQRA pursuant to 6 NYCRR § 617.5(c)(26) and (36).**

**Section 7(B)**

**Section 7(B) of the Moratorium Law precludes a finding of hardship where Applicant (a) has a mere concern that regulations may be changed or adopted, or that the comprehensive plan may be amended; (b) complains of the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by the Moratorium Law; or (c) may suffer financial impacts that may result from the applicant's desired project being potentially precluded by zoning changes and requiring development of a project of lesser value.**

**RESOLUTIONS - (CONTINUED):**

In the Application and the Hearing, Applicant contends that the value of the Property is no more than \$950,000 because of the Moratorium Law, yet it has currently invested \$1,426,180.27 in the Project. Applicant's real estate appraiser contends that "[w]ithout the moratorium in effect, in its current condition but will all approvals, the Property values at \$1,260,000."

The Moratorium Law is a stopgap measure pending the conclusion of revisions to the Village's comprehensive plan and concomitant rezoning. The Village anticipates that that process will be completed by the end of the year. Once that process is complete and the Moratorium Law is lifted, Applicant will be able proceed with its Planning Board Application.

Applicant alleges financial losses because it is unable to carry forward with the Project as proposed by the Planning Board Application. Yet Applicant fails to demonstrate any damages that arise from the Moratorium Law itself, rather than (1) a delay in consideration of the Planning Board Application; or (2) a concern that that, post Moratorium Law, Applicant will be forced to modify the Planning Board Application.

The Board finds that Applicant's arguments to the contrary are unavailing. *First*, Applicant claims that the Moratorium Law violates the Stipulation and granting the Application will avoid unnecessary litigation. At the threshold, Applicant's Federal Suit belies this argument, unless the sole purpose of the filing of the Federal Suit was to compel the Board into granting the Application. Moreover, the Board finds that the Planning Board Application "is or shall be caused to be in compliance with the provisions of the Village of Washingtonville Code." The Moratorium Law is part of the Village's Code, and by the express terms of the Stipulation, the Planning Board Application must comply with the Code. The Board complies with its requirement to entertain the Planning Board Application by hearing this Application, as provided for in the Moratorium Law.

*Second*, Applicant claims that it will "suffer significant financial loss if the Project is not exempt" from the Moratorium Law. The Board notes that Applicant failed to detail what financial loss it will incur if the Application is not granted apart from (1) loss from delay; and (2) concern that the Planning Board Application will need to be modified post-Moratorium Law.

*Third*, the Board finds that Governor Hochul's proposed housing compact does not apply. Applicant ignores that Governor Hochul scrapped the housing compact.<sup>4</sup> The housing compact never became binding law that affects the Village.

Accordingly, the Board determines that Applicant solely (1) complains of the mere delay in waiting for a decision on its Planning Board Application during the period of the Moratorium Law; and (2) claims it may suffer financial impacts that may result from the applicant's desired project being potentially precluded by zoning changes and requiring development of a project of lesser value. These concerns are not any different than those experienced by other potential developers who may desire to build in the Village.

**Section 7(E)(b)**

Section 7(E)(b) requires the Board to determine whether the Moratorium Law will expose Applicant to substantial monetary liability to a third person or would leave Applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the Property.

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**RESOLUTIONS - (CONTINUED):**

The Board determines that Applicant has failed to propound evidence that the Moratorium Law will expose Applicant to substantial monetary liability to a third

person. Applicant contends that it "had a [sic] investor who has since dropped out due to the elongated permitting process and arbitrary actions of the Village." Applicant fails to detail to the Board the identity of this investor or provide corroborating information about the reason the purported investor asked to leave. Similarly, Applicant failed to provide the investment agreement to substantiate its allegations. The Board is left to speculate on the reasons this purported investor supposedly asked to leave the project.

Finally, Applicant fails to document the \$994,054.13 payment, despite this being a very specific amount. The Board is left with a bald, unsupported allegation from Applicant that this payment was made and was directly related to the Moratorium Law itself, rather than delay in processing the Planning Board Application or fear that subsequent zoning changes will require changes to the Planning Board Application.

Removing the unsupported allegation of the investor payment, Applicant has spent \$432,126.14 to date on the Property. Applicant's real estate appraiser admits that, as a remodeled house, the Property could be worth as much as \$950,000 through allowable Moratorium Law uses.

Given this, the Board determines that use of the Property as a house is a reasonable alternative use of the Property.

**Section 7(E)(c)**

Section 7(E)(c) requires the Board to determine the extent to which Applicant presents proof demonstrating severe financial hardship and demonstrates it cannot achieve any reasonable return on the Property as a result of the Moratorium Law.

The Board determines that Applicant has not demonstrated severe financial hardship or that it cannot achieve a reasonable return on the Property. As noted above, putting aside the unsupported \$994,054.13 purported payment to an investor, Applicant contends it has invested \$432,126.14 into the Property, and based on Applicant's real estate appraiser statements, Applicant could achieve a \$950,000 sale of the Property under the Moratorium Law. Applicant and its real estate appraiser fail to detail how much Applicant would need to invest to remodel the house. Assuming a large figure, such as \$350,000, means Applicant would invest approximately \$785,000 into the Property in total. That would result in a \$165,000 profit, or over a 17% return.

Additionally, the one case Applicant cites to support its Application, *Montgomery Group, LLC v. Town of Montgomery*, 4 A.D.3d 458 (2d Dep't 2004), is inapplicable here. In *Montgomery Group*, the Town of Montgomery's Board "actively invited" Montgomery Group, LLC to invest over \$4 million into a project that the Town of Montgomery Board ultimately rejected through a moratorium and zoning changes.<sup>5</sup> There, Montgomery Group, LLC "submitted dollars and cents proof" of its significant investments.<sup>6</sup> Applicant has not done so here, failing to provide the Board with proof of its supposed investment into the Property.<sup>7</sup>

Accordingly, the Board finds that Applicant failed to present proof demonstrating severe financial hardship as required by the Moratorium Law or that

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**RESOLUTIONS - (CONTINUED):**

it cannot achieve any reasonable return on the Property as a result of the Moratorium Law; and

WHEREAS, the Board, having completed its comprehensive review and consideration of the record, and having fully deliberated thereon, has determined to deny the Application for the reasons set forth herein.

NOW, THEREFORE, it is resolved as follows:

- Section 1.** The above "WHEREAS" clauses are incorporated herein as if set forth in full.
- Section 2.** The Board determines that this resolution is a Type II action under SEQRA.
- Section 3.** The Board determines that, under Moratorium Law Section 7(B), the Board cannot grant the Application because Applicant (1) complains of the mere delay in receiving a decision on its Planning Board Application because of the Moratorium Law; and (2) merely argues it may suffer financial impacts that may result from the Planning Board Application being potentially precluded by zoning changes and requiring development of a project of lesser value.
- Section 4.** The Board determines that the denial of the Hardship Application will not "expose" the Applicant "to substantial liability to a third person or . . . leave" the Applicant "completely unable . . . to have a reasonable alternative use of the" Property, under Section 7(E)(b) of the Moratorium Law.
- Section 5.** The Board determines that, under Section 7(E)(c), Applicant has not provided "proof demonstrating severe financial hardship" or proof demonstrating that the Applicant "cannot achieve any reasonable return on the" Property "as a result of the moratorium."
- Section 6.** Because Applicant fails to satisfy the standards in Section 7 of Village Local Laws 2 and 8 of 2023, the Board hereby denies the Application.

**Section 7.** This Resolution shall be effective immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mayor Thomas DeVinko	[ X ]	[ ]	[ ]	[ ]
Deputy Mayor Donna Jacaruso	[ X ]	[ ]	[ ]	[ ]
Trustee Susan Walski	[ X ]	[ ]	[ ]	[ ]
Trustee Steve Presser	[ X ]	[ ]	[ ]	[ ]
Trustee Vernon Coleman	[ X ]	[ ]	[ ]	[ ]



**RESOLUTIONS - (CONTINUED):**

The Resolution was thereupon duly adopted.

**24 – 0051 – RESOLUTION – PART TIME BUILDING INSPECTOR III POSITION:**

Deputy Mayor Jacaruso made a motion, seconded by Trustee Walski and adopted to authorize the employment of a Part Time Building Inspector III Position; said Resolution passed by a unanimous vote of the Village Board. 5 Ayes, 0 Nays, 0 Abstentions.

**24 – 0052 - EXECUTIVE SESSION:**

Trustee Walski made a motion, seconded by Deputy Mayor Jacaruso and adopted to enter into Executive Session to discuss personnel matters; said Resolution passed by a unanimous vote of the Village Board. 5 Ayes, 0 Nays, 0 Abstentions.

**24 – 0053 - RESUMPTION OF MEETING:**

Trustee Coleman made a motion, seconded by Deputy Mayor Jacaruso and adopted to adjourn the Executive Session, and resume the Village Board Work Special Meeting; said Resolution passed by a unanimous vote of the Village Board. 5 Ayes, 0 Nays, 0 Abstentions.

**24 - 0054 – RESOLUTION - ADJOURNMENT:**

Trustee Walski made a motion, seconded by Trustee Coleman and adopted to adjourn the May 13, 2024, Village Board Special Meeting; said Resolution passed by a unanimous vote of the Village Board. 5 Ayes, 0 Nays, 0 Abstentions.

**RESPECTFULLY SUBMITTED,  
CHRISTINE SHENKMAN  
VILLAGE CLERK**