Tentative Agenda

Board Member - Conflict of Interest Disclosure

Meeting Items

1. 75 Monroe Avenue – Resolution Discussion
2. Proclamation on Inclusiveness
3. Move Regular Meeting from 7/9/19 to 7/23/19
4. Treasurer’s / Village Clerk Report

Code Review


Trustee Dan Keating with be appearing by Video Conference from Hilton Garden Inn, Downtown, 10 East Market Street, Indianapolis, Indiana, 46204

Next Scheduled Meeting – July 9, 2019  
*Subject To Change Without Notice
VILLAGE OF PITTSFORD BOARD OF TRUSTEES

Resolution Addressing the Information Submitted by FOPV in Regard to Brownfield Credits and LWRP Grant Funds, including Supplemental Submissions by FOPV and PCP, Reaffirming the Board of Trustees’ Decision Issuing the Special Use Permits for the Westport Crossing Project at 75 Monroe Avenue, Reaffirming the Regulating Plan as an Integral Component of the Special Use Permits, and Reissuing the Special Use Permits for the Project as Initially Reviewed and Approved

WHEREAS, Pittsford Canalside Properties, LLC (“PCP”) submitted an application to the Village of Pittsford (the “Village”) for special use permits for a multi-family residential development with other appurtenances and a restaurant (the “Project”) on property located at 75 Monroe Avenue in the Village (the “Property”); and

WHEREAS, in December 18, 2012, after a thorough and comprehensive review, the Village of Pittsford Board of Trustees (the “Board”) issued Special Use Permits and a Regulating Plan (the “Special Permits”) for the Project; and

WHEREAS, the Special Permit recognized the jurisdiction and authority of the Village of Pittsford Architectural Preservation and Review Board (the “APRB”) with respect to the size, mass, and scale of the Project, pursuant to the Village of Pittsford Code; and

WHEREAS, review of the Project under the New York State Environmental Quality Review Act (“SEQRA”) was based upon the Project’s proposed features that were before the Board in 2012, including the size, number, and location of buildings, location of the restaurant, green space, traffic and parking arrangements, visual scale of buildings, number and location of full-size deciduous trees, and specific design features; and

WHEREAS, these design components were fundamental in the Board’s decision to issue the Special Permits with respect to the Project; and

WHEREAS, Friends of Pittsford Village, Inc. (“FOPV”) commenced an Article 78 proceeding against the Board and PCP challenging, among other things, the Special Permits on various grounds, including that PCP failed to complete the required coastal assessment form with its application, thus preventing a proper review under the Village of Pittsford’s Local Waterfront Consistency Law (Chapter 121 of the Village Code); and

WHEREAS, the Board defended its issuance of the Special Permits in the Article 78 proceeding; and

WHEREAS, in a Decision and Order dated October 27, 2015, Supreme Court, Monroe County (Ark, J.) determined that the coastal assessment form, required to be prepared and submitted by PCP pursuant to Village Code § 121-5(B), was not in the record, was never completed, and thus “[t]he Village Board did not make a proper determination of consistency with [the] LWRP [Local Waterfront Revitalization Program]”; and
WHEREAS, the Court held that it is for the Village Director of Public Works and/or the Village Attorney (Hodgson Russ LLP for all matters concerning the Project) to pursue enforcement of this failure pursuant to Village Code §§ 121-6 and 121-7; and

WHEREAS, the Court noted that upon the Board’s failure to pursue enforcement, FOPV “may notify th[e] Court for further determination”; and

WHEREAS, pursuant to the Court’s directive, the Board issued a resolution providing that no building permit shall be issued for the Project nor shall any construction work be undertaken pursuant to the Special Permits until such time as a proper review is completed pursuant to Chapter 121 of the Village Code and authorized the Village’s special counsel to pursue enforcement; and

WHEREAS, the Planning Board has determined that the Project, as proposed, is inconsistent with the Village’s LWRP, and that matter is subject to pending litigation; and

WHEREAS, following a hearing on FOPV’s Open Meetings Law claims within the Article 78 proceeding, the Court, by Decision, Findings of Fact, and Order dated December 20, 2018, Supreme Court, Monroe County (Ark, J.) remanded the Special Permits back to the Board for reconsideration; and

WHEREAS, the Court directed that the Board hold a meeting, during which FOPV’s representatives could present information about its claimed available Brownfield Cleanup Program tax credits and LWRP grant moneys for the Project, including information about a reasonable rate of return as it relates to Project size; and

WHEREAS, the Board complied with the Court’s directive, accepted written submissions and reports from FOPV and PCP, held the referenced special meeting on May 22, 2019, provided an opportunity for the public to submit written comments, received post-meeting submissions from FOPV and PCP, and has considered all relevant information and submittals, which are incorporated herein as part of the record; and

WHEREAS, pursuant to the Court’s directive, the Board issues this final determination regarding the Project;

NOW THEREFORE BE IT RESOLVED by the Board of Trustees of the Village of Pittsford that:

1. In regard to the Brownfield Cleanup Program tax credits and LWRP grant funds, the Board confirms the admissions of FOPV at the hearing and in its submissions that:

(a) such information was not presented to the Board at any time during the review of PCP’s application, and therefore it was impossible for the Board to have considered such information in issuing the Special Permits and Regulating Plan;
(b) that the Village of Pittsford Code allows an as-of-right density level significantly above the density permitted by the Special Permits, and thus it was the mass and scale of the Project that guided the Board’s determination, not the financial return of PCP;

(c) that at no time did FOPV ever submit a written FOIL request for the alleged proprietary information of PCP reviewed by the Board until a few weeks before the May 22, 2019 meeting, at which time of first asking it was immediately provided to FOPV;

(d) at no time did FOPV ever submit a written FOIL request challenging the determination of the Village Attorney that proprietary information provided by PCP could be reviewed confidentially by the Village, confirming that the Board acted reasonably, even if (without admitting the same) incorrectly, in following the advice of its attorney on the proper review of the financial information;

(e) that the return on investment information was not and is not a factor in determining the proper mass and scale of a project, and therefore any claim of Open Meetings Law violations related to that information was and is irrelevant to the Board’s issuance of the Special Use Permits and the Regulating Plan.

2. FOPV alleges that the purpose of the density determination at the heart of its Open Meetings Law claim was in response to the threat of a takings claim, in which the goal of the Board’s review is to determine the minimum number of units that would permit PCP to receive a reasonable return on its investment. FOPV claims that the minimum number is 90 units, while the Board determined it was 167. Since the purpose of the review — according to FOPV — was to avoid a takings claim, and nothing in the Village Code limits any developer to the minimum reasonable return, any density number greater than 90 units would therefore provide at least a reasonable return, not constituting an illegal taking. Therefore, even if FOPV’s financial assertions are valid, FOPV has done nothing more than demonstrate that the Board’s permitted density permits a constitutionally sufficient return on investment.

3. FOPV has acknowledged that the density permitted by the Board is below the as-of-right maximum density permitted in the Village of Pittsford Code. FOPV has not presented any evidence that the Board’s deviation from the as-of-right maximum density was for any reason other than to limit the Project to the appropriate mass and scale at the Canalside Property, or that information supposedly discussed in private had any role in determining the proper mass and scale of the Project, the criteria used by the Board in approving the Special Use Permits and the Regulating Plan. While the post-hearing submission of FOPV attempts to undo its admissions and conflate the discussion of the financial information with the much later, eventual approvals, the actual record demonstrates the Special Use Permits and Regulating Plan were based solely on the concerns laid out in the Village Code after extensive public debate and review, and for the reasons discussed in detail below. FOPV cannot be heard to assert on the one hand that the review was to avoid a takings claim and then pivot, absent evidence and in direct contradiction to the record, and allege it was to determine the mass and scale of the Project, particularly when FOPV admits that the issue of reasonable return is not a factor to be considered.
4. FOPV’s submitted financial information ignored the restaurant. Even after this was pointed out, FOPV ignored the restaurant in post-hearing submissions, along with certain amenities. Thus, FOPV has not provided information addressing the Project actually before the Board, and its information, even if valid, does not assist the Board in its review.

5. The Board finds Mr. Adams to have provided viable information, except to the extent he asserts the Project has an infinite rate of return under certain scenarios. The Board notes that in many respects PCP and FOPV relied on similar facts, and that the differences represent legitimate differences of opinion between real estate development professionals. The Board has therefore accepted and considered the information submitted by FOPV and Mr. Adams on Brownfield Tax Credits and LWRP Grants as part of the record in making the determinations in this Resolution.

6. The Special Permits and Regulating Plan are hereby reaffirmed and reissued\(^1\) for the following reasons, subject to the following conditions: During the meeting on May 22, 2019, both FOPV and PCP admitted that a reasonable rate of return analysis is not relevant to a special use permit determination. The Board agrees. The relevant considerations include, but are not limited to, the character of the neighborhood, adverse environmental impacts from the proposed use, and the imposition of necessary conditions to ensure that the proposed use fits in with the neighborhood or community. These considerations are particularly important in the Village, which has been entirely designated as a local historic district since 1971, with almost the entire Village listed in the National Register of Historic Places. The Erie Canal, which abuts the length of the Project site, has been designated a National Historic Landmark, our nation’s highest classification of historic significance. This is why the Board worked so hard on a comprehensive and detailed Special Permit with regulating plan that spelled out the unique characteristics of the Project and the important mitigation measures that were incorporated therein and allowed the issuance of a SEQRA negative declaration. While the APRB did not agree, the Board determined to allow the Project to move forward, but on very specific and detailed terms, while confirming the APRB’s jurisdiction. The Special Permits and Regulating Plan provided specific features that are required to be followed. As mandated by the Village of Pittsford Code, “[d]evelopment of parcels shall conform to the site’s regulating plan and design guidelines, as set forth by the Village of Pittsford.” § 210-19.4. Those include, as compared to the Final Site Plan conditionally approved by the Planning Board:

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\(^1\) The Board notes the unusual procedural posture that the Project is now in. Supreme Court, Monroe County (Ark, J.) determined that the LWRP consistency determination was not properly completed, which is a mandatory prerequisite to obtaining any approval from any board. PCP went back to seek such a determination, and the Village of Pittsford Planning Board (the “Planning Board”) determined that the Project, as proposed, was not consistent with the Village’s LWRP. Ordinarily, this would require a denial and/or rescission of the Special Permits. Nonetheless, given that the Board is considering this matter on remand and due to the extensive litigation that has already occurred, and in light of the Board’s unwavering position that the Special Permits Regulating Plan, as previously approved, were appropriate and should be followed, the Board is determining to reissue the Special Permits. It will be up to the Court to evaluate the effect of LWRP non-compliance on the Special Permits, which should be resolved in any final judgment. However, the Board’s prior determination to prohibit the issuance of any building permit due to LWRP non-compliance stands as it was never challenged by PCP and is consistent with the Court’s prior October 2015 Decision and Order.
(a) Individual Building Sizes Must Be Reduced And Broken Up, As Set Forth In The Approved Special Permit And Regulating Plan. Village Code § 210-19.2(B)(3)(c)(2) requires the applicant to demonstrate that “[t]he proposed development will be compatible, in terms of scale, massing, orientation, and architectural design, with the visual character of the Village and will not alter the essential character of the neighborhood nor be detrimental to the residents thereof.” Village Code § 210-19.2(B)(3)(c)(7) requires that “[p]roposed buildings . . . be unique and varied in design with a residential scale and architectural articulation that relates to the Village of Pittsford’s building traditions.” These requirements are design-specific and the Board’s determination to issue the Special Permit for the Project was based upon what was presented to it in the original application. The increase in size, massing, and bulk of the buildings represents a significant change from what was presented; this is demonstrated by the modified site plan PCP submitted to the Planning Board. PCP modified the Project to build fewer, larger buildings that are more rectangular and more box-like in appearance than those contemplated by the original plans; these changes are not compatible with the “Canal Commercial” design, which was central to the Board’s 2012 decision to grant the Special Permit. The reduction in the number of buildings, while maintaining approximately the same square footage for the Project, resulted in widened, box-like structures and the elimination of proposed usable green space and buffering. Fewer buildings means less variation in design, structure, and overall appearance. The wider buildings also are grossly out of proportion with the existing village historic vernacular architecture. PCP abandoned the “Canal Commercial” design that was the predicate for the Special Permit, Regulating Plan, and Negative Declaration. The larger big-box buildings are less compatible with the historic setting of the Village and Canal. The Board of Trustees’ review of PCP’s original application discussed potentially significant impact areas including aesthetic resources, historic resources, and community character. The Project’s compatibility with existing community character was central to the review, and was based upon the then-existing design.

(b) The Restaurant Must Be Returned To Its Approved Location, As Set Forth In The Special Permit And Regulating Plan. Village Code § 210-19.2(B)(3)(c)(4) requires that “[p]ublic access and amenities are provided along the canal shoreline abutting the project.” The Project, as originally proposed and approved by the Board in 2012, satisfied this requirement by locating the proposed restaurant along the Canal. But after the Board issued the Special Permit, PCP changed the plan and moved the restaurant away from the shoreline and closer to adjoining residences. Relocation of the restaurant to the Monroe Avenue frontage undercut one of the bases for the Board’s determination. Moving a commercial use to a completely different location on a Project site represents a significant deviation and is not permitted. Although PCP acknowledged the need for the Board to revise the Special Permits and Regulating Plan before such a substantial material change could occur, PCP has never requested the Village Board undertake such a review, nor has the public ever been given the opportunity to comment on such revision. The change in location of this commercial use, in a residential zoning district, presents different impacts that have not been evaluated and compliance with the requirements of the zoning code has not been established. For example, Village Code §
210-19.2(B)(2)(b) allows restaurants, but mandates compliance with Village Code § 210-74(B)(3)(a) through (f) and (h). Pursuant to those sections, an applicant must demonstrate (a) access to the site and the size of the site are adequate for the proposed use; (b) the proposed use will not adversely affect the orderly pattern of development in the area; (c) the nature, duration and intensity of the operations which are involved in or conducted in connection with the proposed use will be in harmony with nearby uses and will not alter the essential character of the neighborhood nor be detrimental to the residents thereof; (d) the proposed use will not create a hazard to health, safety or the general welfare; (e) the proposed use will not be detrimental to the flow of traffic in the vicinity; (f) the proposed use will not place an excessive burden on public improvements, facilities, services or utilities; and (h) the proposed use will not create noise, late-night activity, extended hours of operation, odors, noise from mechanical equipment or other conditions that may be detrimental to either the quality of life of nearby residents and businesses or to the general welfare of nearby residential neighborhoods. The record does not support the restaurant relocation. Moving the restaurant to Monroe Avenue diminishes the proposed public attraction and relocates the noise, odor, and visual impacts to a location which was not contemplated in the original approvals or during the SEQRA review.

(c) **The Monroe Avenue Streetscape Must Be Returned To The Design Parameters Set Forth In The Special Permits And Regulating Plan.** The visual treatment of the Monroe Avenue frontage and streetscape were critical issues in the original SEQRA review and issuance of the Special Permits and Regulating Plan. PCP’s modifications are hereby rejected as not in compliance with the Board’s approval.

(d) **Unapproved Changes To The Canal Frontage Are Not Permitted.** With respect to the Canal frontage, the modified Project presents a number of substantive changes that were not reviewed or approved by the Board. The placement of the clubhouse, pool, and restaurant parking lot along this frontage results in a different visual appearance, as does the introduction of the large retaining wall. The length of public dock alone has been improperly reduced. This will have a visual impact and an impact in terms of public use.

(e) **Reduction In The Amount Of Open Space From The Special Permit And Regulating Plan Is Not Permitted.** The Board also evaluated the reduction in usable open space when it issued the Special Permits and regulating plan. The placement of buildings represents a major deviation from the Special Permits and Regulating Plan. Even a cursory visual comparison of the two plans reveals that the green, usable space between the proposed buildings is reduced and replaced by pavement with the only large area containing a sewage pump station.

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2 This section was modified in 2015, but reference remains to the prior section.

3 Although the Planning Board may have approved the revised location, that Board did not re-establish Lead Agency or undertake any independent environmental review.
(f) **Approved Landscaping And Screening Shall Not Be Removed.** The number of deciduous trees has been reduced from 16 to 14 and the number of other plantings from 60 to 49, just in the buffer from Monroe Avenue to the first apartment building. The significance of this change, as well as the width of the buffer strip, creates different visual impacts to the community. This touches upon one of the most critical aspects of the review of the Project: community character. These design changes are significant and were not reviewed or approved by the Board of Trustees in its approval of the Special Permits and Regulating Plan.

(g) **Location Of Buildings Shall Be Returned To Approved Building Envelopes.**

7. The Project, in its current form as modified by PCP and as shown in the current site plan, does not comply with the Special Permits and Regulating Plan. The Board determines that no building permit shall be issued until the Project meets the criteria set forth in the December 2012 Special Permits and Regulating Plan, as reaffirmed above in paragraph 6.

8. With respect to the reasonable return arguments made by FOPV and PCP, the Board determines that they do not alter the Board’s prior rationale and determination with respect to size. The Board reaffirms that its decision is in compliance with the standards established in the Village of Pittsford Code. The Board determines, and both parties have agreed, that the reasonable rate of return is not a factor to be utilized in issuing its approvals, beyond the question of whether the Project provides a constitutionally sufficient return. The Project as approved meets that minimum threshold as asserted by FOPV. PCP does not argue for a larger project or for more units.

9. This Resolution shall be effective immediately upon its adoption.

PASSED AND ADOPTED by the Board of Trustees of the Village of Pittsford on June 25, 2019.
Proclamation
June 25, 2019

WHEREAS, Pittsford Village is a diverse community that strives to be welcoming to all people, and

WHEREAS, The Village Board of Trustees believes that racism or any discrimination on the basis of race, ethnicity, national origin, religion, age, gender, gender identity, marital status, or sexual orientation is unacceptable, and

WHEREAS, Pittsford has a rich tradition of being a socially progressive place with a rich history of advocacy for social justice. Examples include Pittsford’s strong abolition activity including many Underground Railroad Stations within the Village; early achievements by Pittsford women in academia, politics and business; the community strong support of the urban suburban program, the ecumenical council; and the Pittsford Food Cupboard.

WHEREAS, for many years the Village of Pittsford has had a nondiscrimination policy updated in 2013 and 2016. The Village Policy currently states: Our Village prohibits unlawful harassment against anyone, for any reason, including, but not limited to: race; color; sex; age; disability; religion; citizenship; national origin; ancestry; military status or veteran status; marital status; familial status; gender identity and expression; sexual orientation; status as a victim of domestic violence, stalking or sex offenses; predisposing genetic characteristics; genetic information and any other status protected by law.

WHEREAS, the Village Board recognizes that living in a community comprising residents from diverse national, ethnic and religious backgrounds enriches our community culture, our lives and for each of us broadens our understanding and appreciation of the world and our place in it.

WHEREAS, in Pittsford we value our friend and neighbors for their character, regardless of their cultural background, regardless of who they love and regardless of any disability they may live with.

NOW, THEREFORE, BE IT RESOLVED, That the Village Board of Trustees, reaffirms our tradition and commitment to welcome all and to treat each person equally
with dignity and with respect, and

BE IT FURTHER RESOLVED, that as representatives of our community we will not tolerate prejudice or harassing behaviors and want all people to feel safe, valued and welcome in our Village and in the greater Pittsford Community we are a part of.

Trustee Lanphear
Trustee Galusha
Trustee Keating
Trustee Stetzer
Mayor Corby