

The 2024 Village of Montebello held a meeting on Tuesday, July 9, 2024 at the Dr. Jeffrey Oppenheim Community Center, 350 Haverstraw Road, Montebello, NY. Chairman Caridi called the meeting to order at **7:00 p.m.** and led everyone in the Pledge of Allegiance.

PRESENT

Anthony Caridi, Chairman  
Ari Aufgang, Member  
Joan Materna, Member  
Stan Shipley, Member  
Marlo Dickman, Member  
Nancy Doon, Ad Hoc Member

OTHERS

Alyse Terhune, Asst. Village Attorney  
Jonathan Lockman, Village Planner  
Martin Spence, Village Engineer  
Regina Rivera, Planning/Zoning Clerk

ABSENT

**Minutes Approval**

Member Materna made a motion to approve the minutes from the June 11, 2024 meeting, seconded by member Aufgang and upon vote all were in favor.

**Stonehedge Heights Corporation—PUBLIC HEARING continued  
Subdivision/Site Plan—220 Spook Rock Road, Montebello, NY**

Application of Stonehedge Heights Corporation, 130 East Route 59, Spring Valley, NY for re-approval of a 12-Lot Subdivision entitled “Stonehedge Farm.” The property is located on the east side of Spook Rock Road approximately 500 feet south of Topaz Court in the village of Montebello which is known and designated on the Ramapo Tax Map as Section 49.13, Block 1, Lot 13 in Zone ER-80.

Present was the Applicant Marsel Amona and his engineer Steve Sparaco of Sparaco & Youngblood, PLLC. Mr. Sparaco explained that they were hoping the Board would, at the very least, issue a Neg Dec at this meeting, noting that they made the recommended changes discussed at the June meeting and were ready to move forward.

Mr. Lockman summarized his July 3<sup>rd</sup> memo and stated that things are progressing and if the Board directed him to do so, he would draft a Neg Dec for adoption at the next meeting. The Applicant is not requesting any overrides of the June 28<sup>th</sup> GML, and they agreed to install two extra fire hydrants at each cul-de-sac per Tallman Fire Department’s recommendation. Mr. Lockman said he was happy with the Applicant’s decision to create an HOA to maintain the detention pond on lot 12, rather than compelling the owner of that lot to perform all maintenance themselves, and that the HOA documents must be submitted prior to plat signing. The Applicant wishes to perform all improvements prior to plat signature in-lieu-of submitting a Letter of Credit and no lot can be sold prior to signing. Mr. Lockman stated that the Application will likely need one more meeting to resolve all outstanding issues.

Mr. Spence reviewed his memo dated July 8<sup>th</sup> and stated that the subdivision layout is consistent with the previous approval. All items are complete save for some fine-tuning of the drainage system. He asked Mr. Sparaco if he had questions. Mr. Sparaco said that he relocated some of the drywells to the upper portion of the site and Mr. Spence said that was acceptable.

Chairman Caridi asked Mr. Spence if the Stormwater Protection Plan (SWPP) was acceptable and Mr. Spence said it was, aside for some forms that need to be signed.

Chairman Caridi opened the public hearing.

Jeff Sapir, 10 Topaz Court, Montebello, NY asked the purpose of the pond. Chairman Caridi said that the DEC changed their drainage regulations and the pond was added to regulate the flow of stormwater into the municipal drainage system. Mr. Sapir asked what would happen if the pond overflowed? Mr. Spence said it would flow into the drainage system as well and then beyond that, into the pipe system through the wetlands.

Mr. Lockman said that silt that is carried by storm runoff will be swept into the pond where it will settle to the bottom instead of flowing into the wetlands, and added that this is a progressive regulation by the DEC. Mr. Sapir asked if the pond water would be stagnant. Mr. Spence said that it moves slowly and then discharges into the drainage system. The water will seep into the ground over time. Ms. Terhune said the HOA will ensure the pond is dredged and maintained, and that the final plat will not be signed until the final HOA documents are approved and signed.

No one else wishing to speak, Member Dickman made a motion to close the public hearing, seconded by Mr. Aufgang. Upon vote the motion was carried unanimously.

Member Shipley made a motion to authorize Mr. Lockman to draft a Neg Dec for the August meeting. The motion was seconded by Member Dickman and upon vote, all were in favor.

Member Dickman made a motion to authorize Ms. Terhune to draft an approval resolution for the August meeting. The motion was seconded by Member Materna and upon vote all were in favor.

### **FilBen Montebello Propco, LLC**

#### **Amended Site Plan—250 Lafayette Avenue, Montebello, NY**

Application of FilBen Montebello, Propco, LLC, 201 Borad Street, 5<sup>th</sup> Floor, Stamford, CT 06901 for an amended site, location of The Braemar assisted living facility currently under construction, to construct a temporary access road to State Route 59. The parcel is located on the north side of Lafayette Avenue, 1000 feet west of the intersection of Hemion Road in the Village of Montebello which is known and designated on the Ramapo Tax Map as Section 55.10-1-2.1 in the RTE59DD zone.

Present was the Applicant and owner, Richard Filaski, of FilBen Propco LLC, his attorney Lynn Weinig, Brian Brooker of Brooker Engineering PLLC and traffic engineer Ron Reiman of Colliers Engineering.

Ms. Weinig presented, explaining that this project was approved with two points of access, one off of Hemion Road, the other from Route 59. This application requests that the Planning Board amend the site plan to modify the two points of access on a temporary basis as follows: 1. Permission to use the Hemion Road access as the sole access road temporarily, and 2. The Route 59 access, until it is constructed, will be used as a construction and emergency access. It is really a matter of time since the building will be completed in September 2024, when the owner will apply for a Certificate of Occupancy. The crux of the problem, she continued, is the fact that it is unknown when the new owners of lots 2 and 3, Montebello Development, will build the access road from Route 59. As we understand, the DOT permit, save for the submission of insurance and bonding, is ready to be issued, and the Hemion Road access is slated to be

completed this month. If the owner cannot get the CO as expected in September, it will significantly affect the viability of the project with devastating economic consequences, she said.

Ms. Weinig explained that when FilBen purchased the lot, they understood that the owner of the other two lots was compelled to complete the road and other improvements on a timely basis. Multiple demands for the prior owner to complete the road have been made to no success, and we are here because time is of the essence, she said.

Ms. Weinig said they believe this application is a Type II action under SEQR because it is a “minor temporary use of land having negligible or no impact on the environment.” Mr. Brooker explained the proposal and said that Mr. Reiman negotiated with the DOT for many months and received approval for the design of the road to Rte. 59, the sidewalk along the front and new turning lanes. The only thing that changed on the approved site plan, he said, is the center island, which was subsequently reduced in size.

He showed the area to be paved as proposed, explaining that the plan is to complete the road right up to the Route 59 ROW including the curbing and drains. There is already a gravel connection and a gate, but the DOT will not allow a formal paved entrance until the rest of the improvements are complete. FilBen is in the process now of choosing a contractor to do the temporary paving, and they must be selected, bonded, licensed and insured in order to be approved by the DOT.

Mr. Reiman explained that because they are not building the originally approved CVS and small office building, there will be no additional traffic generation, and compared to the original traffic study, there will be five more trips in the morning and 50 less trips in the evening. Chairman Caridi said none of this should matter because the site plan included an approved pharmacy and medical office building and that is how it stands for now. Mr. Lockman said that he was still awaiting the Village Traffic consultant’s review of the Colliers’ study.

Member Shipley asked how long they plan to use the temporary access road. Ms. Weinig said it all hinges on the owners of the front two lots, who are about to apply to the Village Board to amend what was approved originally and there is no way to know when they will build the road. Regarding the traffic, Ms. Weinig said the new traffic study should be used to determine whether the temporary access is permissible.

Member Shipley said he was concerned that the new owners may never build the road. Ms. Weinig said that, should the owners of the front lots abandon the property, then the Village Board can call on the letter of credit and build it themselves. She explained that by the time the CO is applied for, everything will be built up to the property line of Route 59. Mr. Brooker said that the DOT does not want to open the access to traffic until the signage and the turn lane is completed. Ms. Weinig said they applied to the DOT for a construction access and emergency vehicle access, which is one of the concerns of the CDRC, which will be issued in a couple of weeks.

Member Shipley asked why the Village doesn’t just call in the LOC and build the road since the DOT permit is nearly in place. Mr. Lockman explained that it is a long, circuitous process to call in an LOC. A lengthy discussion ensued about that and the DOT permitting process. Ms. Terhune asked Ms. Weinig to explain clearly what is pending vis-à-vis the DOT permit. Ms. Weinig said the insurance and bonding was pending, both of which must be provided to the DOT, and Mr. Brooker is in the process of obtaining these on behalf of Montebello Development.

Ms. Terhune noted that the LOC is held by the former owner, Montebello Crossing, not Montebello Development, which is a problem. She agreed with Mr. Lockman that it is not easy to call a letter of credit

and that there will be a lot of push back from the bank. There is another layer of complexity in that this Board approved a three-lot subdivision of one parcel that was owned by Montebello Crossing, and the Village Board approved the bulk for that parcel. Now Montebello Development will go before the Board of Trustees asking for changes to the Route 59 Development District (RTE59DD). Even though there are easements throughout, she continued, Montebello Development is not technically a part of this project and perhaps we need a letter from them stating that they have no problem with The Braemar's plan, she said.

Member Shipley wanted to know what would happen if a Temporary Certificate of Occupancy (TCO) were issued for one year, but nothing gets built in that time by Montebello Development. Ms. Terhune added that even if Montebello Development receives their amended site plan approval, they may sell the property, plunging everyone into even more uncertainty.

Mr. Filasky said that the only tool they have to ensure that the work is performed, whether it be Montebello Development or some future entity, is the LOC. He said he understands that calling it in is a lengthy process, which is the reason for asking for the Plan B access. This is the only tool that can enforce that, he added.

Chairman Caridi noted that this a legal morass and there is risk to the Village in granting a one-year TCO if nothing is resolved in that time. Ms. Weinig suggested they return in one year for a renewal if nothing is resolved. Chairman Caridi said in that case, they may be returning every year, and added that the Village will not be a part of this unless it is held harmless.

Chairman Caridi asked the status of the Route 59 Road. Mr. Spence said the travel lane is built, the drainage installed, and the curbing is being worked on. There are no improvements on Lots 2 and 3, he added, all performed by FilBen. Member Aufgang wondered why they couldn't just complete the permanent road. Ms. Weinig said it is prohibitively expensive, especially since they have to provide bonding to the village and to the DOT. Member Materna asked if the pending DOT permit was for the permanent commercial road or for temporary access. Ms. Weinig explained that there are two permits, one that was applied for by Montebello Development for the road connecting to Route 59, and the second, applied for by FilBen, for the temporary access and for emergency vehicles.

The Board wanted to know the details of the DOT approvals, what is still needed for the permit to be issued, and what the DOT physically gave to Mr. Reiman regarding the approval. Mr. Reiman said that the DOT sent an email stating that the plan is approved and asking for the contractors' name, insurance and bond, and that the permit will be issued upon receipt.

Ms. Weinig said that Montebello Development refuses to give a timeline of when they will submit to the DOT. Chairman Caridi and Member Shipley bristled at the fact that the Village is being caught in the middle of a situation between two corporate entities. Chairman Caridi said that the village is very sympathetic to their plight, but reiterated his request that the Village be held harmless in all scenarios.

Ms. Terhune said the Village is not likely not call the LOC. There is a proposed change to lots 2 and 3, which hasn't yet been reviewed or granted. No one on this Board wants The Braemar to go to ruin, but if a temporary access is allowed, it will be conditioned upon holding us harmless, she said. Don't tell us to call the letter of credit, rather, get something from Montebello Development stating they do not have a problem with this application. This Board will expect The Braemar to do something to improve the Route 59 access if this is not resolved after a year. If you have to go to the DOT, then you will. We must plan for the event that Montebello Development does nothing, she said.

Mr. Lockman noted the symbiotic relationship between the two entities, Montebello Development and The Braemar, and said that they should be co-applicants for their respective amended site plans. Ms. Weinig said they have an easement that allows the owner to do anything to provide access.

Member Dickman asked if FilBen has any leverage to compel Montebello Development to fulfill this obligation. Ms. Weinig said she has no access to any agreements between Montebello Crossing and Montebello Development. It was not expected that the prior owner would sell, and we have made demands to no avail, she said. Ms. Weinig said she appreciated the Village's desire to be held harmless but reiterated that FilBen has no leverage here. Montebello Development asked for consent to apply for this amended site plan which they granted in good faith. She said she asked their attorney for similar consent, and was told that it wasn't necessary.

Ms. Terhune instructed Ms. Weinig to tell Montebello Development's attorney that their consent is absolutely needed. Mr. Lockman said that somehow both parties should be present as this is all one project. Ms. Terhune repeated that Montebello Development should give their consent.

A discussion ensued regarding the conditions under which the property was sold, what the buyer is obligated to do, and the logistics of the LOC. Ms. Terhune said that the LOC can be canceled on notice by the bank, but there is a notice period that they missed. Ms. Weinig was worried that the owner of the LOC could refuse to pay the premium and the bank in turn would refuse to renew the LOC. There was more discussion on the expiration of the site plan, the transference of the LOC to new ownership and possible violations of the site plan.

Mr. Filasky said that if this Board refuses this application, the fallout will be financially catastrophic. The asset will fail, it will not get sold because of the surrounding issues and it will be an absolute disaster.

Ms. Terhune asked Ms. Weinig if, under the contract with Montebello Crossing, there is any successor clause that is binding. If that is the case, FilBen could sue for breach. Ms. Weinig said that suing could take up to ten years in court. She agreed to ask Montebello Development for consent, and to submit a hold harmless agreement to the Village. If we can't get their consent, she said, perhaps this Board can find a way to hold them in violation of their site plan.

The Board and consultants engaged in a discussion on the various ways Montebello Development could be held to their obligation to build the road, such as conditioning their amended site plan on construction of access to Route 59.

Mr. Spence asked Mr. Brooker if the DOT understood that the road will be paved, and wondered why they require a stone wheel tracking pad. Mr. Brooker said they don't want people to use it as the de facto driveway. Mr. Spence said that one of the concerns is that it will be difficult to maintain. Mr. Reiman confirmed that the DOT will accept nothing else until the permanent road is built.

No one having further comments, Chairman Caridi reiterated that the Applicant get a consent form from Montebello Development. Ms. Terhune said that at the very least, the consent form will protect the Village should the Board issue a TCO and Montebello Development objects.

The Board next discussed whether there should be a public hearing for this application. Chairman Caridi was adamant that there need not be a public hearing because the layout is not changed and the application is considering a temporary use. Ms. Terhune said she always considered it an amendment to a site plan

which necessitates a public hearing. However, she said she would consider the Chairman's stance. After further discussion it was decided that a public hearing was not necessary for this application.

Ms. Weinig thanked the Board for their consideration this evening and said she hoped for an approval at the next meeting.

Member Dickman made a motion to adjourn the application to the August meet, seconded by Member Shipley and upon vote, the motion passed unanimously.

Member Dickman made a motion to adjourn the meeting at 8:53 pm. The motion was seconded by Member Materna and upon vote all were in favor.