



TOWN OF CEDAR LAKE – PLAN COMMISSION SPECIAL PUBLIC MEETING MINUTES October 24, 2019 – 6:30 P.M.

Call to Order (Time): 6:32 p.m.

Pledge to Flag

Roll Call:

Present Heather Dessauer

Present Chuck Becker

Present John Kiepora

Present John Foreman

Present Richard Sharpe

Absent Jerry Wilkening

Present Greg Parker

Present Donald Oliphant, Town Engineer – CBBEL

Present David Austgen, Town Attorney

Present Tim Kubiak, Director of Operations

Present Michelle Bakker, Building Administrator

Present Sarah Rutschmann, Recording Secretary

1. Monastery Woods South LOC

Jack Slager with Schilling Development was present tonight representing Monastery Woods. He thanked the board for coming out tonight to discuss items spoken about last week. Slager stated he took information back from the meeting to the Schillings and they were disappointed in the decision made. He stated the Schillings felt since they were not the original developer, they should not be held responsible for repairing and replacing items they did not put in. They are more than willing to replace and repair items they put in. He stated they have always maintained what they put in and not trying to avoid what is their responsibility; they just do not feel it is their responsibility. Parker asked Slager if any of the infrastructure when Schillings purchased it was accepted by the Town. Slager stated that was a good question, that homes were being built and that according to what he has researched and put into a timeline (see attachment provided to board members), McFarland had started development as the developer under the name of MWD Development LLC in 2006 and put in Phase 1 with no final asphalt installed on Phase 1. Slager stated he assumed that sewers had been accepted during the building permitting process. He said the water tap was not an issue as they were not part of the Town. Oliphant indicated the first letter of credit was posted in December of 2006.

Parker and Slager agreed on this being a unique situation. Parker stated Schillings purchased the development knowing its challenges and hiccups. Slager indicated he had driven through the subdivision today and there was nothing there that was falling apart. He stated there were not potholes in the streets, sidewalks crumbling or falling apart, and is the normal expected wear and tear over 13 years. He stated they have always maintained their developments but when they obtained the list of items totaling \$130,000, they felt it was excessive. Slager stated Schillings tries to give back to the town, has businesses in town, one of the Schilling brothers owns a home in town, and they try to go above and beyond in the developments by putting in nice landscaping, decorative lighting, and nice entrances. He stated if they felt responsible for it, they would gladly do it. He does not feel it is right and they feel they have been taken advantage of. Kiepora asked if Slager was against the total punch list or just certain items. Slager stated what he offered in his original letter was anything they put in and anything they developed, they would fix, denoting anything beyond that initial phase would be fixed. Slager said he estimated at the meeting last week the cost to be about half. Oliphant indicated he had broken the cost down into two separate Opinions of Probable Cost (see attachments provided to board members). Becker asked Slager how it would be fixed in five days. Slager stated they could not at this point but was willing to come up with an agreement. Slager said it would be difficult to renew a bond or get an extension on a bond in 4 or 5 days, but if an agreement is comfortably met, they could deliver a certified check to the Town. Slager asked if the \$130,000 check is taken, how it would be utilized. Foreman asked Austgen if it had to be used for that subdivision. Austgen agreed with Foreman and said it would have to be for items on the list. Oliphant asked if the \$130,000 was pulled and the cost to do the repairs was less, would they get the refund. Austgen stated they should. Slager stated if that occurred, it would not be in the next 5

days and Austgen stated the Town did not have to. Parker stated there is quite a bit of bad road infrastructure in the town and the costs end up with the tax payers of the Town. He said that is the biggest reason why he has the opinion that he has because he felt that when he bought the development, they bought the problems and the letter of credit was posted. He said until the Town accepts those streets and that infrastructure, it is the responsibility of them. Slager said that when they purchased the development, it was 2012. They had fixed the punch list then and asked how many times they should be required to fix items. Parker stated the ordinance/statute indicates the developer is responsible until the Town accepts it. Parker stated what should have been done was back then it be partially accepted into the Town. Kubiak stated that is commonly happening now, giving example to Beacon Pointe doing their development in phases. Oliphant stated it is the developer's choice to plat and how they want to plat. Becker stated it is even more of a reason to hold them accountable now so that it sets a precedent for future developments that may have similar circumstances. He stated he could not justify making the tax payers pay for the problem. Slager stated that in reference to the tax payers, there were several homes and duplexes that had been in the subdivision for 13 years and paying their property taxes to the town, while Schillings has been plowing the streets for 8 years, replacing street lights, and paving. Parker stated it was because it had not been accepted by the Town. Becker asked who put the final coat on; Slager stated "we did." He said before the final coat had been put on, should the items not have been fixed before then; Slager stated it was. Foreman asked Oliphant what the normal lifespan was of a road. Oliphant stated that with the current standards, it should have a 20 year lifespan. Foreman asked what it was of the old pavement standard, Oliphant stated far less, but was uncertain of exact time. He stated back then it was a 1" surface and now is 3". Foreman asked what that would have been listed under on Oliphant's list. Oliphant focused on items listed under #4 and #10. Foreman asked Oliphant if he felt those were the most important items on the list. Oliphant stated those items were the major roadway items. Foreman asked Slager if they would be willing to do some of the items on the list. Oliphant reminded Foreman that when selecting certain items, the quote was based on the large project total. Slager felt the most expensive item was the curb and sidewalk repair/replace. Multiple discussions occurred regarding the list and costs provided by Oliphant.

Parker asked Oliphant what he had new since the last meeting. Oliphant stated he looked into the history of the development more. V3 did the final plat and turned items over to McFarland when road construction was done in 2006. He stated that was the original letter of credit in the amount of \$1.3 million on November 5, 2006 by an entity owned by McFarland. Over the years, it was reduced as infrastructure was installed and accepted and remained in varying amounts. Slager stated the bank contacted Schilling and told them the development was about to be foreclosed. The bank asked them if they wanted to purchase it. Schillings purchased and was notified the letter of credit was hanging out there that needed replaced. Oliphant asked Slager what his discussions with McFarland were at the time since they were the primary builder and developer. Oliphant indicated that when the letter of credit was taken over, it was for the same amount and was reduced three years ago to the \$130,000 came from. Slager stated when they obtained the first letter of credit it was in excess of \$700,000 and should have covered the rest of the development, which was severely lacking, and they in turn invested over \$2 million. Oliphant stated the original letter of credit never was pulled on and has remained an active letter of credit with Parker interjecting it was because it was never accepted by the Town. Multiple discussions took place on how Monastery was divided into North and South and the LOC was split.

Parker asked Kubiak if he had anything new since last week's meeting. Kubiak said they looked into a couple of the B-Box situations that were buried, noting quite a few of them were found under the grass. He stated that now they mark the B-Box at the curbs and during the final inspections, the B-Box is uncovered and visible. Oliphant said that knowing that, the sidewalk concrete was higher because of that and because of the sanitary issue that is leaking and 13 feet deep under the sidewalk. It is believed it is leaking from a service line.

Parker asked for any comments from the Commissioners. Foreman thanked Oliphant for breaking the costs down. He expressed his feeling that this situation was dynamic and noted this builder is established and not one he would anticipate leaving town. He felt it to be a policy call and if Slager would be willing to help with some of the items, an agreement could be made. He stated he had driven through the subdivision recently and felt it was the nicest subdivision around. Sharpe stated he drove through and said that was exactly what he was thinking as well. Slager reiterated there was nothing there that was considered unsafe, no potholes, no sidewalks unsafe, and nothing that

would fall apart in the next year. His concern was if they take a year to do the repairs, will the list grow that there will be more to contend with and possibly more cost. Becker and Kubiak discussed the constant repair of dips in the road with drainage and old pavement standards used back then versus the new pavement standards of today. Kubiak stated that there are more checks and balances with developers and inspections than back then as well. He also stated Public Works never did inspections back then like they do now. Foreman proposed a few different costs and formulas to the board and Slager to include Phases 2-4 plus extracted amounts from Phase 1. Multiple discussion took place regarding the proposed formulas/costs. Dessauer asked for the formula used so that when something like this comes up again it can be used to set precedent. Foreman stated each situation would be unique. Becker gave example noting similarity that if he bought a foreclosed home, he would be responsible for the repairs and investment, not the Town. Slager asked if there were any old bonds from subdivisions that were in the similar scenario of 10+ years; Bakker stated no. Parker agreed with Dessauer that it will happen again and expressed his concerns for what the attorneys do for when a precedent is set. Austgen stated it is a foundational basis for winning and told the board that the Town has drawn on letters of credit in the past. Multiple discussions took place on examples of other subdivisions in the Town that had letters of credit drawn. Slager felt the Town saw the \$130,000 check as an opportunity to create a list to spend it. Parker said he saw it as repairs, that the taxpayers should not have to pay for it, and it was not about the money but rather the subdivisions being fixed. Kiepora felt Slager's comment regarding the Town's desire to spend a \$130,000 check was uncalled for. Kiepora asked who owns the roads. Austgen and Kubiak stated the Town accepted the roads three years ago. Oliphant explained that the Town accepted the roads but they were in the three year maintenance period. He stated we accept them after performance and they go into a warranty period essentially where the developer is still responsible for them functioning. Oliphant stated the Town plows them, but they were not responsible during that period for maintaining them. Kubiak explained it was similar to having a car warranty. Becker stated the warranty would be over by October 29, 2019, so the tax payers would then be responsible since the warranty would be up. Foreman stated that as a group, they have a policy call that if they wanted to exercise, they can. He said that based off of common sense and logic, he felt it was fair if he could get Schilling to partake in some of the things they did not put in but were willing to, knowing we want them to continue to do developments in the multiple areas of Town.

John Foreman made a motion, seconded by Richard Sharpe, that the developer do the repairs or that we pull on the letter of credit in the amount of \$80,000 based on Oliphant's list; then amended to state to move the Maintenance Letter of Credit for the amount of \$80,000 based upon Oliphant's schedules related to those improvements.

Discussion: Kubiak suggested they make the \$80,000 in repairs, we inspect it and move on. He did not want Oliphant and himself to have to arrange the repairs. Multiple discussions took place regarding surety bonds, engineering and legal fees, and the process.

Foreman amended the motion to complete the list of units 2-4 of \$47,496 as well as an additional \$32,500 towards phase 1 based on priority item list provided by Oliphant; seconded by Richard Sharpe.

Discussion: Becker asked why the Town keeps conforming to the developer instead of the developer conforming to the Town's rules. Foreman stated he felt this was a special circumstance. Austgen asked Oliphant to state why he creates the list and what it means for the board. Oliphant said they create a list based on things they notice in the field that are considered to be abnormal for that period of time, stating it is not necessarily considered failing, but certainly not normal and has the potential to fail in the future. Dessauer asked if they took the list and it was fixed today for Phase 1, if it were two more years, would the figure go up; Oliphant stated yes. Oliphant stated the conditions will only get worse with conditions of freezing and thawing. Austgen asked Oliphant with the list that was created, it was based on objective criteria and generally accepted standards by this Town; Oliphant replied yes.

Town of Cedar Lake – Plan Commission
 October 24, 2019
 Special Public Meeting Minutes

Motion: John Foreman --1st Richard Sharpe --2nd

Heather Dessauer	Chuck Becker	Jerry Wilkening	John Kiepora	Richard Sharpe	John Foreman	Greg Parker	Vote
NO	NO	Absent	YES	YES	YES	NO	3-3

Because of the tie, no action was taken. Parker asked if there was another motion.

Chuck Becker made a motion, seconded by Heather Dessauer, to pull the letter of credit.

Motion: Chuck Becker --1st Heather Dessauer --2nd

Heather Dessauer	Chuck Becker	Jerry Wilkening	John Kiepora	Richard Sharpe	John Foreman	Greg Parker	Vote
YES	YES	Absent	NO	NO	NO	YES	3-3

Because of the tie, no action was taken and nothing has changed since the last meeting. Foreman asked for clarification on action from the decision. Austgen state it means that no action has changed from the previous action. Since the board is comprised of 7 members, it would require 4 votes to have action.

Foreman asked Parker, being a builder himself, what things on the list he felt were critical. Parker indicated there was never a time he would have ever asked what he could get by without, whether he had the money or not to finish the project and there were times it was tight. He said back then houses were not worth what they are now and there were times he lost money. Slager said he has always wanted a partnership with the Town; not the Town versus the developer. Dessauer stated this expires in four days and she wished they would have had it months ago. Bakker told the board this has been on the agenda since August 7, 2019. Oliphant stated the initial letter went out on September 9, 2019. Slager stated it was disappointing and they want to take the money and reinvest it in this Town and the next development to make it better than what was required. Parker stated for 12 years, he has wanted to take the taxpayers money, put it in the infrastructure and give them something to care about rather than taking money away from projects to fix other items.

Foreman asked Slager if there was something Schilling would contribute. Slager stated he agreed to something like Foreman's original motion, which was more than what was expected. He felt phases 2, 3 and 4 along \$80,000 being willing for the \$30,000. He does not feel most of that needs repaired.

Multiple members had discussion regarding precedent being set.

John Foreman made a motion under the same terms in the amount of \$85,000 with the same surety check and same deadline timeframe, seconded by Richard Sharpe.

Motion: John Foreman --1st Richard Sharpe --2nd

Heather Dessauer	Chuck Becker	Jerry Wilkening	John Kiepora	Richard Sharpe	John Foreman	Greg Parker	Vote
NO	NO	Absent	YES	YES	YES	NO	3-3

Town of Cedar Lake – Plan Commission
October 24, 2019
Special Public Meeting Minutes

Heather Dessauer made a motion, seconded by Chuck Becker, to adjourn the meeting.

Motion: Heather Dessauer --1st Chuck Becker --2nd

Heather Dessauer	Chuck Becker	Jerry Wilkening	John Kiepura	Richard Sharpe	John Foreman	Greg Parker	Vote
YES	YES	Absent	YES	YES	YES	YES	6-0

Adjournment: Meeting adjourned at 7:35 pm

Chuck Becker

Heather Dessauer

John Foreman

Greg Parker

John Kiepura

Richard Sharpe

Jerry Wilkening

Attest: Sarah Rutschmann, Recording Secretary

The Town of Cedar Lake is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding accessibility of the meeting or the facilities, please contact the Town Hall at (219) 374-7400

Exhibit: Monastery Woods South Timeline (provided by Jack Slager)

Monastery Woods South

Approximate Timeline

- | | |
|------------|--|
| 2005 -2006 | Engineering and approvals obtained by V3 Engineering. Entire plat is recorded at once with \$1.3 million Performance Bond |
| 2006 | McFarland Homes purchases “entitled” development from V3 and begins development of “Phase 1” under the name “MWD Development, LLC.” No final asphalt installed on Phase 1. |
| 2006-2009 | McFarland Homes builds several duplexes in “Phase 1” of the development |
| 2009-2012 | Development stagnates due to recession. No homes built? |
| Late 2012 | Schillings purchase several vacant lots and remaining undeveloped acreage from Bank under the name “Monastery Woods Development, LLC.”. Schillings replace old performance bond with their own for \$758,150.93. |
| 2013 | Some building begins on existing vacant lots. |
| 2014 | Schillings develop Phase 2 and repair all of Phase 1 per Town punch list, including asphalt binder replacement, curb repairs and replacement and surface asphalt on all. |
| 2015-2016 | Schillings continue to develop remainder of subdivision. Performance bond reduced to minimum 10% and converted to maintenance bond of \$130,172.97. Schillings continue to maintain subdivision including plowing and salting streets and replacing street lights. |
| 2017 | Final lots are built on and sold in Monastery South. |
| 2019 | Pending expiration of Maintenance Bond prompts Inspection which creates a punch list requiring numerous repairs to all phases of development . |

Town of Cedar Lake – Plan Commission
October 24, 2019
Special Public Meeting Minutes

Exhibit: Engineer's Opinion of Probable Cost – Phase 1 (provided by Don Oliphant)

PROJECT: Monastery Woods, South ("Phase 1")

Engineer's Opinion of Probable Cost					
Item#	Description	Quantity	Unit	Unit Price	Extension
1	Mobilization / Demobilization	1	LS	\$3,000.00	\$ 3,000.00
2	Curb and Gutter Removal	104	LFT	\$15.00	\$ 1,552.50
3	Concrete Removal	300	SYS	\$20.00	\$ 6,000.00
4	Milling, Asphalt, 3-IN	169	SYS	\$13.00	\$ 2,197.00
5	Curb and Gutter, Concrete, Roll Curb	104	LFT	\$30.00	\$ 3,105.00
6	Curb and Gutter, Route and Seal	160	LFT	\$5.00	\$ 800.00
7	Sidewalk, Concrete, 4-IN	300	SYS	\$60.00	\$ 18,000.00
8	Curb Ramp, Concrete	5	SYS	\$300.00	\$ 1,500.00
9	Compacted Aggregate No. 53, Undercut, Undistributed	25	TON	\$60.00	\$ 1,500.00
10	HMA, Surface, Type B (3-IN)	30	TON	\$200.00	\$ 6,000.00
11	Casting, Adjust to Grade	21	EA	\$600.00	\$ 12,600.00
12	B-Box Replacement and adjust to grade	8	EA	\$1,000.00	\$ 8,000.00
13	Asphalt Crack Sealing	4,000	LFT	\$1.00	\$ 4,000.00
14	Stop Sign Replacement	1	EA	\$200.00	\$ 200.00
15	Hydrant Flags	7	EA	\$25.00	\$ 175.00
16	Structure Repair	6	EA	\$500.00	\$ 3,000.00
17	Sanitary Lateral Repair	1	EA	\$3,000.00	\$ 3,000.00
18	Manhole - Install Steps	2	EA	\$500.00	\$ 1,000.00
19	Restoration / Topsoil & Seeding	1	LS	\$1,500.00	\$ 1,500.00
	Sub-Total				\$ 77,129.50
	Contingency (10%)				\$ 7,712.95
	TOTAL				\$ 84,842.45

Exhibit: Engineer's Opinion of Probable Cost – Phases 2-4 (provided by Don Oliphant)

PROJECT: Monastery Woods, South ("Phases 2-4")

Engineer's Opinion of Probable Cost					
Item#	Description	Quantity	Unit	Unit Price	Extension
1	Mobilization / Demobilization	1	LS	\$3,000.00	\$ 3,000.00
2	Curb and Gutter Removal	85	LFT	\$15.00	\$ 1,275.00
3	Concrete Removal	189	SYS	\$20.00	\$ 3,780.00
4	Milling, Asphalt, 3-IN	193	SYS	\$13.00	\$ 2,509.00
5	Curb and Gutter, Concrete, Roll Curb	85	LFT	\$30.00	\$ 2,550.00
6	Curb and Gutter, Route and Seal	340	LFT	\$5.00	\$ 1,700.00
7	Sidewalk, Concrete, 4-IN	129	SYS	\$60.00	\$ 7,740.00
8	Curb Ramp, Concrete	2	SYS	\$300.00	\$ 600.00
9	Compacted Aggregate No. 53, Undercut, Undistributed	25	TON	\$60.00	\$ 1,500.00
10	HMA, Surface, Type B (3-IN)	32	TON	\$200.00	\$ 6,400.00
11	Casting, Adjust to Grade	4	EA	\$600.00	\$ 2,400.00
12	B-Box Replacement and adjust to grade	0	EA	\$1,000.00	\$ -
13	Asphalt Crack Sealing	4,000	LFT	\$1.00	\$ 4,000.00
14	Stop Sign Replacement	0	EA	\$200.00	\$ -
15	Hydrant Flags	9	EA	\$25.00	\$ 225.00
16	Structure Repair	6	EA	\$500.00	\$ 3,000.00
17	Sanitary Lateral Repair	0	EA	\$3,000.00	\$ -
18	Manhole - Install Steps	2	EA	\$500.00	\$ 1,000.00
19	Restoration / Topsoil & Seeding	1	LS	\$1,500.00	\$ 1,500.00
	Sub-Total				\$ 43,179.00
	Contingency (10%)				\$ 4,317.90
	TOTAL				\$ 47,496.90