

**MINUTES OF A MEETING OF THE
VILLAGE OF AVON PLANNING BOARD
TUESDAY, JANUARY 19, 2021
7:00 PM; VILLAGE HALL**

I. ATTENDANCE

Paul M. Drozdziel, Chairman
Marilyn Borkhuis
John Gibson (remotely)
Robert C. Hayes
William J. Wall

STAFF

Lance Brabant, Sr. Planning Associate, MRB Group
Anthony J. Cappello, Code Enforcement Officer
Patrick McCormick, Village Board Liaison

GUESTS (in-person and remote)

James Biondolillo, 340 North Avenue
David Botts, 172 D'Angelo Parkway
Sarah K. Freeman Botts, 172 D'Angelo Parkway
Cheryl S. Bovard, 151 D'Angelo Parkway
Catherine M. Clancy, 127 D'Angelo Parkway
Patrick Clancy, 127 D'Angelo Parkway
Ashley Freeman Comeau, 166 D'Angelo Pkwy
Mark C. Emminghausen, 148 D'Angelo Parkway
Dolores Gunther, 133 D'Angelo Parkway
Janice E. Hayes, 109 D'Angelo Parkway
Robert E. Hayes, 109 D'Angelo Parkway
Keith D. Herman, 4295 Lake Rd, Williamson
Cynthia J. Kostraba, 126 D'Angelo Parkway
Patrick J. Kostraba, 126 D'Angelo Parkway
Richard E. Martin, 22 River Street
John McCaffrey, 154 D'Angelo Parkway
Robert Mellen, 175 D'Angelo Parkway
Kurt Meyer, 290 North Avenue
Lynne C. Mignemi, 112 D'Angelo Parkway
Thomas A. Mignemi, 112 D'Angelo Parkway
Christa E. Minnehan, 169 D'Angelo Parkway
James Perkins, 115 D'Angelo Parkway
Kathleen Rizzolo, 139 D'Angelo Parkway
Michael Rizzolo, 139 D'Angelo Parkway
Atty. Anthony Scalia, 1844 Penfield Rd, Penfield
Bruce Wolfanger, 145 D'Angelo Parkway
Constance Wolfanger, 145 D'Angelo Parkway

III. OLD BUSINESS

B. Martin-Pole Bridge Road Subdivision, Section 3

283 East Main St (behind Wahl's Restaurant)
5.836 res, zoned Agricultural (AG)
Keith D. Herman of Williamson, applicant

Drozdziel read the public hearing notice then opened the hearing. No comments were received. Drozdziel announced the hearing would remain open while the Board addressed other agenda items.

II. APPROVAL OF THE MINUTES

MOTION: Borkhuis moved for approval of the minutes the meeting of December 15, 2020, seconded by Wall. Voting in favor were: Drozdziel, Borkhuis, Hayes and Wall. Voting against were: none (Gibson hadn't announced his remote presence).

CARRIED, 4 Ayes, 0 Nays

III. OLD BUSINESS

**A. North Avenue Heights Subdivision
Sidewalk Relocation**

Public Hearing Continuation

The Planning Board had opened a public hearing on the location of sidewalks in the 25-lot North Avenue Heights Subdivision, more commonly referred to as D'Angelo Parkway, October 20, 2020. The original subdivision plan had called for sidewalks to be laid on the inside loop. The Planning Board could grant variances and waivers, if extraordinary and unnecessary hardships would result from strict compliance with subdivision regulations. The Village Board had applied for such consideration. The October 20 hearing had been left open and was scheduled for continuation this night.

**More Utilities, More Cost,
Greater Affect on Outside Loop**

**Bruce Wolfanger (outside loop)
145 D'Angelo Parkway**

A retired home builder, Wolfanger claimed he'd built half the homes on D'Angelo Parkway. He himself had lived on the Parkway for 20 years.

D'Angelo Parkway was a "*planned neighborhood*," Wolfanger began. They'd figured where streetlights and utilities would go and those decisions hadn't been a matter of opinion, they'd been based on what had been considered the best use of the land, Wolfanger told Board members.

Now, the Village wanted to move the sidewalks from the inside to the outside loop, where he lived, claiming there were fewer utilities there, but that simply wasn't true, Wolfanger said. All the transformers were on the outside loop, he pointed out.

Furthermore, the outside loop was 150 feet longer than the inside loop, making it the more expensive route. There were 10 lots on the inside loop versus 13 on the outside loop – more people would be affected there - , he noted. The Village, he reasoned, should be looking for the "*least*" impact.

Wolfanger told Board members he was a 30-year contractor. Realistically, he conceded, there were problems on both sides of the road, but another aspect the Village should consider was "*legal liability*." Everyone had known where the sidewalks were going to go.

Residents had selected their lots based on where things would go then they'd gone ahead and invested thousands in landscaping and sprinkler systems and, if the Village pursued a sidewalk course around the outside loop, they'd be affecting 23 percent more people than on the inside, Wolfanger claimed.

In other subdivisions, such as Village View and Anderson Meadows, sidewalks didn't wind around streetlight poles or go up and down banks. D'Angelo Parkway, Wolfanger said, should look like the "*planned neighborhood*" it was meant to be, that's what the residents wanted and that's what they deserved.

**Application Inadequate
Recommend Sidewalks Not Be Moved**

**Atty. Anthony Scalia
1844 Penfield Rd; Penfield**

He represented Michael and Kathleen Rizzolo (outside loop), Scalia declared. The first thing to note was the Village Board's APPLICATION TO (THE) VILLAGE PLANNING BOARD for relief – that was the only thing on which the Board should rely.

And, that application fell far short on a factual basis, Scalia asserted. Why should the Village move the sidewalks? he asked. The application should have been amended and bolstered. The application referenced the October 20, 2020 Planning Board meeting, he noted, so, obviously, it had been prepared after that meeting.

Scalia had submitted a request under the Freedom of Information Law (FOIL), but the results had had left more questions than it had answered. The Village did have a responsibility to put in sidewalks, the attorney conceded, but added they should go where they had been promised to go.

The Village had put this problem in their own lap, Scalia continued. The Village had “fooled around” with sidewalk location for 15 years. The Village Board’s APPLICATION TO (THE) VILLAGE PLANNING BOARD should have been labeled “inadequate.”

To recommend moving the sidewalks from where they ‘d been sited in the original subdivision plan would open the Village up, Scalia believed, adding it would be doing the wrong thing to do. The Planning Board, he concluded, should recommend the sidewalks not be moved.

**Hope This Has Nothing to Do
With Our Most Recent Residents**

**Robert E. Hayes (outside loop)
109 D’Angelo Parkway**

Hayes said he appreciated being there . . . despite the pandemic . . . considering nothing had been done with D’Angelo Parkway sidewalks for the past 17 years. He hoped the timing had nothing to do with the Parkway’s three most recent residents: David & Sarah Freeman Botts. Stephen & Ashley Freeman Comeau and Thomas & Katherine May Freeman.

If it were within the Planning Board’s discretion, Hayes said he’d recommend no sidewalks at all. They’d always had young children on the Parkway. As for riding their bicycles on sidewalks, Hayes pointed out that was illegal. Then, he recalled, five or six youngsters tobogganing down the street when they’d had five inches of snow a month ago.

As for truck traffic, Hayes said he’d been up and down Valley Lane. There were no sidewalks there and they’d had Fed-Ex, Amazon and Postal trucks making deliveries - with no-way out – the trucks had to turn around and retrace their routes to get out, he said.

Hayes asked the Planning Board to reconsider the need for sidewalks. If sidewalks were installed, he urged the Board to have them installed where their original contract with Sam D’Angelo would have put them - on the inside loop. And, as for the cost, he urged the Board to consider what that might be after legal fees.

Hayes attempted to direct questions towards MRB consultant, Lance Brabant, but Drozdziel over-ruled, pointing out the hearing was meant for them to receive comment not as a question-and-answer session.

Hayes showed an older site plan, saying that was the sidewalk location Sam D’Angelo had originally offered. Now, residents were being asked to comment on an aerial view with a yellow line showing where the Village wanted the sidewalk to go now.

Was that yellow line the final plan? Hayes wondered. Had Code Enforcement Officer Anthony J. Cappello, Mayor Thomas W. Freeman or the Village’s engineering consulting firm, the MRB Group, signed off on it? This is what you expect us to live with? Hayes asked.

His having to assume responsibility for his 200 feet of frontage represented an extraordinary and unnecessary hardship. And, Hayes added, he’d checked and the Village had a 5-foot-wide, V-plow for sidewalks and, if the Village installed 4-foot-wide sidewalks, they’d be tearing up 6-inches of sod on either side of the sidewalk every time they plowed.

(the Village planned on installing 5-foot wide sidewalks as per Section 4, Subsection 4.12.7, of the Development Regulations)

I'm not letting this go, Hayes vowed. If you pass this *"ridiculous plan,"* I'll litigate it in court and I'll prevail.

**Cost is a Major Concern
Everyone Would Pay for What No One Wants**

**Patrick Clancy (outside loop)
127 D'Angelo Parkway**

Cost was a major concern, Clancy cautioned Board members (at the December 15 meeting, Hayes had estimated it would cost \$185,000 to lay sidewalks around the outside loop and \$150,000 around the inside). Every taxpayer in the Village would wind up paying for something D'Angelo Parkway residents didn't even want.

Extra catch basins would have to be installed to deal with the run-off, Clancy asserted. If there had to be a sidewalk, it should be the one originally agreed upon (inside loop), he concluded.

**North Avenue Sidewalks
In Violation of Americans With Disabilities Act**

**Robert E. Hayes (outside loop)
109 D'Angelo Parkway**

The Village had recently installed sidewalks on the east side of North Avenue from Reed Street to D'Angelo Parkway's north entrance. Hayes claimed parts of that walk were three and four feet wide and that they were in violation of the Americans with Disabilities Act.

HEARING CLOSED

MOTION: Hayes moved to close the public hearing, seconded by Borkhuis. Voting in favor were: Drozdziel, Borkhuis, Hayes and Wall. Voting against were: none (Gibson had still not announced his remote presence).

CARRIED, 4 Ayes, 0 Nays

**Sidewalks: Right Thing to Do, But the
Location, Cost & Engineering Should Be Village Board Issues**

Drozdziel, Chairman

The location of the sidewalks was a matter that had been around since 2002, Drozdziel remarked. The Planning Board couldn't correct the past. Drozdziel said he couldn't see not recommending sidewalks. Sidewalks had been a part of the Comprehensive Plan (adopted in 2011 and updated in 2017), he noted.

(Article VI IMPLEMENTATION, Section H-3, of the Comprehensive Plan stated, "Create a connective network of trails, sidewalks, and streets to provide pedestrian and bicycle connections between new and existing neighborhoods, the central business district, parks, and educational facilities.)

This (the Village Board's APPLICATION TO THE VILLAGE PLANNING BOARD) hadn't fallen on deaf ears or been a farce, Hayes remarked. The task at hand was that application. North Avenue Heights was no different than any other street in the Village, High Street or River Street. Making the Village walkable was central to many studies including the Comprehensive Plan, he pointed out.

On a conceptual level, Drozdziel said he couldn't comment on the dollar-amount associated with putting the sidewalk on the right or left side of D'Angelo Parkway. He said he'd like to get the location issue back into the Village Board's hands.

Hayes agreed, adding that was where he felt it belonged.

Summarizing the Board's position, Brabant said members wanted sidewalks to go in, but should advise the Village Board to make the location determination.

Wall agreed 100 percent.

The Board had three options, as Hayes saw it: approve the Village Board's application, disapprove it or take no action on it.

Drozdziel didn't know how much discussion they could have with the information they had.

There were points in the application that didn't make a lot of sense, Borkhuis observed. She couldn't approve the application, but she could say whether or not there should be sidewalks.

They could tell the Village Board they had taken it as far as they could with the information they'd been given, Drozdziel said. They all agreed they should have sidewalks on D'Angelo Parkway.

The Village should never get in this position again, Drozdziel declared. Sidewalks should go in as planned at the start of a development. The Village shouldn't be playing developer. Drozdziel felt the Planning Board had been put in a no-win situation.

MOTION; The Planning Board recognized the merit of sidewalks and had reviewed the location question with due diligence, but could take no action on the Village Board's APPLICATION TO (THE) VILLAGE PLANNING BOARD for relief of the subdivision regulations. Seconded by Wall. Voting in favor were: Drozdziel, Borkhuis, Hayes and Wall. Voting against were: none (Gibson had still not announced his remote presence).

CARRIED, 4 Ayes, 0 Nays

Drozdziel appreciated the passion expressed during the hearing. The Village Board held the financial strings and bore the responsibility to the taxpayers, he contended. He hoped no one would walk out with hard feelings.

The Planning Board was asking the Village Board to obtain more information on where the sidewalks should be, Brabant said.

Borkhuis expressed support for the sidewalks, but Hayes reiterated the Board was taking no action on the Village Board's application, noting nothing in the application was supportable.

B. The Martin-Pole Bridge Road Subdivision, Sect. 3

Behind Tom Wahl's Restaurant
283 East Main Street; Avon, NY
5.836 acres, zoned Agricultural (AG)

Keith D. Herman, Applicant

4295 Lake Road, Williamson, NY

December 8, 2020, Herman had applied to subdivide 5.836 acres from a 24.75-acre parcel owned by Richard E. Martin of 22 River Street. The 5.836 acres was vacant, zoned Agricultural (AG) and located behind Tom Wahl's Restaurant. Herman represented the restaurant.

Herman had met with the Board December 15, 2020, and told members Wahl's had no plans to develop the 5.836 acres at this time. The land would be used for overflow parking for Wahl's Tuesday night, summer concert series and, possibly, for car cruise-ins.

Wahl's would, at some point, like to tie-in their rear parking lot to the access road running behind CVS Pharmacy which intersected Dream Valley Boulevard which, in turn, ran out to a signalized light on Routes 5&20. Wahl's, Herman had told Board members, had seen that as a safety factor for their patrons. Wahl's would cross part of the 5.836-acre parcel to get to the access road.

**60-foot X 518.79-foot Easement to the Village
In Exchange for Road Connecting Wahl's to the Access Road**

Herman

Since he had been there last, Herman said Wahl's had agreed to grant a 60-foot wide X 518.79 feet long easement, along the west side of the 5.836-acre parcel, to the Village to allow a future developer to put in a road – Mayor Thomas W. Freeman had thought that was important, Herman related.

The access road behind CVS didn't reach Tom Wahl's property, Herman continued. But, in exchange for the easement, the Village had agreed to bring the access road to their property.

Did the easement go up to Pole Bridge Road? Gibson asked (remotely).

No, the easement would run north and south, along the Avon Town Plaza property, Herman explained. Pole Bridge Road was roughly 600 feet to the east.

And, the Village would construct a road connecting the CVS access road to Wahl's property in exchange for the easement, Brabant verified.

The easement put the Village in a good position, it was a win/win, Drozdziel remarked. He asked Herman to have his map revised accordingly and to revise the verbiage. The Planning Board would keep the public hearing open until the plans were finalized.

Herman agreed to update the map to show the easement.

Show it on the map and have the attorneys come up with the appropriate language before the approving signatures were added, Brabant said.

Martin said Surveyor Kevin O'Donoghue could revise the description the next day, but the Board requested submission of a revised map and the corresponding verbiage a week prior to the Board's February 16 meeting so they'd be available to the public and Board members would have an opportunity to review them before approval was considered.

C. Puppy's Bar & Grill

58 West Main Street; Avon, NY
(formerly Fat Sam's)

Jesse R. Driscoll, Sr., Proprietor
A&B Equipment Corp, Owner
80 Prospect Place; Avon, NY

Driscoll was renovating the former Fat Sam's bar and grill at 58 West Main Street. Cappello told Board members he'd recently had his first inspection of the premises and found the bathrooms weren't handicapped accessible. In order to comply, Driscoll converted the men's and women's bathrooms into a large, unisex bathroom.

Square footage allowed an occupancy of 46 customers. Under COVID guidelines, 50 percent of that number would be allowed in at any given time. The State Health Department had given Driscoll permission to begin operations Wednesday, January 20, 2021

IV. NEW BUSINESS

Nothing pending.

V. ADJOURNMENT

MOTION: Hayes moved for adjournment at 8:30 PM, seconded by Borkhuis. Voting in favor were: Drozdziel, Borkhuis, Gibson, Hayes and Wall. Voting against were: none.

CARRIED, 5 Ayes, 0 Nays

Gary Margiotta
Secretary