

**VILLAGE OF HARTLAND
MINUTES FOR THE JOINT MEETING OF THE
JOINT ARCHITECTURAL BOARD/PLAN COMMISSION AND VILLAGE BOARD
WEDNESDAY, APRIL 3, 2024 ▪ 6:30 PM
BOARD ROOM, MUNICIPAL BUILDING, 210 COTTONWOOD**

Call to Order of the Joint Architectural Board/Plan Commission at 6:31 pm

Roll Call – Jeffrey Pfannerstill, Chip Schneeberger, Tim Hallquist, Jeff Bierman

Excused: David DeCourcy- Bauer, Dino Xykis, Ann Wallschlager

Others Present: Village Manager Bailey, Village Inspector Scott Hussinger, Trustee Truttschel, Trustee Pfeiffer, Trustee Conner, Village Engineer Ryan Amtmann, Attorney Hector de la Mora, Village Clerk Policello, Jon Ford-Three Leaf Development (via Zoom), Derek Taylor-Three Leaf Development

Public Comments: Please be advised the Joint Architectural Board/Plan Commission will receive comments from the public related to any item(s) for a three-minute time period per person, with time extensions per the Chair’s discretion. This meeting will be recorded and will be available online through the Village’s website. There was no public comment.

1. Plan Commission review and consideration of Hartland Quarry, a proposed PUD development (“Project”) whose approval and rezoning is being sought by Three Leaf Partners LLC on property tax keys HAV0730981, HAV0730985, HAV0730986 and HAV0730987 located at 700, 701 W. Capitol Drive. The Plan Commission will review and consider:
 - a. Proposed rezoning and PUD Agreement for the Project

Village Manager Bailey said everything has been approved by the Plan Commission with the exception of the Planned Unit Development. This has been worked on for several months.

Ryan Amtmann said the slope management plan has been adequately addressed with a long-term maintenance plan; Capitol Drive improvements are being worked on with Kwik Trip; he has worked extensively with the group regarding the 18 exhibits attached to the PUD and he feels confident they are in good order.

Scott Hussinger said the underlying RM1 zoning supports this project with the PUD overlayed on top of it.

Attorney de la Mora told the Commission that he does not have any major legal issues to bring to their attention, however, he drew their attention to a policy decision they should consider. He referred them to the PUD lines 880 through the end of that section. He read this section, his understanding in the negotiations was that Three Leaf was in it for the duration, that it would build this out. He said at the 11th hour the request was made for their ability to transfer ownership interest before it was completed. He said this is not a legal issue, but it is a policy issue. What has

been difficult to analyze is whether this is a reasonable step to allow, given the complexity of this project. Attorney de la Mora read:

Transfer Restriction. Until the occurrence of Substantial Completion of the Apartment Project (defined as issuance of certificates of occupancy for buildings representing at least one hundred thirty-four (134) units of the Apartment Project), Developer will not sell, transfer, or assign the Apartment Project asset or the membership interests in Developer for the Apartment Project asset unless (a) to another owner, investor, developer, real estate investment trust, real estate manager, general contractor, or similar real estate operator or company which owns or has owned, developed or constructed multifamily apartment properties aggregating to at least two hundred sixty-seven (267) units or owns, is a primary investor in, or manages multifamily apartment properties aggregating to at least one thousand (1000) units, as to be certified in writing by Developer to the Village or (b) as required by federal, state, bankruptcy, or other law applicable to Developer or as otherwise required by Developer's construction lender's or other lender(s)' loan documents for the Apartment Project or membership interests in Developer serving as collateral for loan(s) made to finance the Apartment Project. For the avoidance of doubt, Developer will not be required to disclose the identity of the potential acquirer of the Apartment Project asset or the membership interests in Developer for the Apartment Project asset as part of Developer's written certification to the Village. Following either Substantial Completion or written certification from Developer to the Village described in this Section XVIII(A), at such time, this restriction shall automatically terminate without any further action required of the Village or Developer.

Attorney de la Mora said with the current language, even before they get the occupancy permit for half of the units that they are supposed to build, they could transfer ownership to another party if they fit the requirements. It is one thing to allow for the transfer, it's another thing to not have to disclose to the Village who they are transferring it to. He understands their not wanting the possible transfer of the project to be frustrated by the Village speculating who the buyer is, but this language does not obligate them to disclose who ultimately is the party that has the beneficial interest in this particular project. Again, this is not a legal concern of his, but is a concern with regard to the assignment he was given in undertaking representation of the village.

President Pfannerstill asked for an analogy of what could happen where you could say why this was a concern. Attorney de la Mora said this is a complicated project where we have brought in more consultants than we have ever involved in the past. If the developer has a party that is unsophisticated or pays the premium price for this project, he believes there will be a built-in incentive to try to economize in the continuation of the construction of the project. In this situation, we have insisted on and they have agreed, to put up cash or a letter of credit to address any problems associated with the slopes, to the tune of \$100,000, however, that is only good for 30 months and we have a provision that basically says that if there is a default by the developer, we cannot force them to go through with the construction. In other words, we have given up specific performance as a contract remedy. We did build in some mechanisms where we could impose a special charge, but that involves us chasing them and proving the amount, that it was reasonable, that it was for their benefit and there's a delay in recovery of those funds. At the same time, you have to weigh that there have been other potential developers that have looked at this project, have gone to certain stages and have backed off. That to me says that this is a difficult project and it takes the right kind of entity to manage it; he believes through Three Leaf's exposure

to the challenges by working with their designers and engineers, they are in the best position to deliver the project that the Village has been hoping for. And if they step out of those shoes, there is nothing in this agreement that assures us that the technical know-how, sophistication, or ability to marshal workforce is going to be in place.

Commissioner Bierman asked if all the technical improvements had to be done on the site; is that all to be put in before the first units are built, or is it to be done in phases? Attorney de la Mora said it will be done in phases. They are going to start with the demolition, the grading and the infrastructure installation. He understands they will do the first buildings and units and as they move on, they will move towards the back of the pit. Ryan Amtmann confirmed this.

Commissioner Hallquist asked if the comments in the margin of the PUD have been addressed. Attorney de la Mora said practically all of them have been addressed; the ones that haven't been addressed await the closing of the transaction, i.e. insurance.

Derek Taylor from Three Leaf Development appeared in person. Jon Ford from Three Leaf appeared via Zoom. Ford said they have 100% intent to develop this development. All they ask for from a legal standpoint in the PUD agreement is that, not unlike any other developer, they don't want to be restricted or handcuffed in economic times. They have agreed, in the section Attorney de la Mora referenced, that they have restriction until they have 50% of the units delivered. They would suggest that no one has ever agreed to this much of a restriction previously, which in addition to that, a future buyer would need to meet certain requirements and that should give the Village very much comfort in the sophistication of who that could be. He reiterated that Three Leaf has 100% intent to see this development through the end. They started this process in February of 2023. They have worked tirelessly throughout the last year with the Village and all Village staff and all of the consultants. They have done extra analysis, additional borings, to provide a design that is completely safe and will generate that impact for the Hartland Community. Mr. Ford thanked Village Manager Bailey and the Village staff for their collaborative efforts. He said Ryan Amtmann with Ruckert Mielke has been instrumental in the process, as well as Greg Johnson from Ehlers from a TIF standpoint, and certainly Attorney de la Mora as well. Mr. Ford said they continue to see very challenging economic times in the overall market. While he can't provide an exact date when they will commence construction, what he can say is that they continue to see strong interest and make very good progress on a variety of fronts to get to a point where they can commence construction. Earlier this year they closed on the land; last week they received DNR approval; from a design standpoint construction documents are well underway over the last couple months and progressing nicely. They are in regular communication with a general contractor that has budget priced this project; they have the 50% CD out for budget pricing now that they will have in the next week or two. They have had multiple debt lenders to the site with active conversations with them, as well as institutional and very large equity potential interested parties. Their goal is to close on financing this summer and commence site work immediately thereafter. Approval of the PUD tonight will afford the project another major step towards commencing that construction.

Pfannerstill said the Board would like to see Three Leaf handle the project through its conclusion. He asked what type of scenario would cause Three Leaf to turn it over to another party and not tell the Village who is actually doing it. Ford deferred to Taylor why disclosure can't be realistic. Ford said they don't want to restrict or handcuff their investors. He said from an economic

standpoint, if they are approached and if it's the best benefit to their investors, they need to make that decision. This is a challenging development. The restrictions they have agreed to should show the Board that they can't even sell it until it is 50% developed and 50% of the units have been delivered. Taylor said Three Leaf is committed to Hartland. They have actually brought another project forward to the community, and they have developed here before Three Leaf Partners came into existence, so they are very committed to the community. Taylor said they cannot disclose to the Village of Hartland who a potential buyer or buyers are without entering into the public domain and FOIA requests, which would wreck the market. They are bound to confidentiality when they engage, so to disclose that would waive that confidentiality with them and they wouldn't engage in a process if their identity was put out into the public domain. They fully intend to build this project; this is what they have sold to their investors. They are going to sign on for about \$80 million in debt and equity between the lender and their investors, so it would not be in their interest to transfer this development prior to completion. They never asked to sell it prior to completion; they were asked if they would agree that they can't transfer or sell until stabilization. What they have drafted is to the Village's benefit. No other community that they are doing TIF in right now has asked for this, so Hartland is getting something more than anybody else that they have done TIF developments with.

Trustee Truttschel said it seems like there are a lot of cross checks on this PUD. He is in approval of the PUD. Truttschel left the meeting at this point.

Taylor said the PUD will be recorded in its entirety and run with the land. If someone did ever buy the development before completion or before stabilization, or even after, they will still be bound the agreements in the PUD and the exhibits that will be recorded. He confirmed that after a sale, the buyer would be disclosed to the Village, in fact, once they had an agreement and they start to work on closing on the acquisition, they will probably ask for some sort of an estoppel from the Village about some of the things in the agreement that may not be relevant anymore. They can't be the ones that disclose the buyer; the buyer would need to come forward.

Attorney de la Mora said the most recent agreement he has done for another municipality is the Mandel School Sisters project in Elm Grove and that is an \$87 million downstroke. What you are not told by Mr. Taylor is that in that recorded agreement, there is a personal guarantee by Barry Mandel that the structure, which they pegged at a minimum value of \$40 million for purposes of assessment to generate the revenue needed to pay off obligations of the Village of Elm Grove, were personally guaranteed. Nobody is guaranteeing anything here. They don't have an obligation to disclose it to you. What Mr. Taylor fails to tell you is that under Wisconsin public records law, certain confidentiality agreements can be entered into on a but for basis. If you read the language that's been proposed for this section, there's no obligation on their part. He is concerned about the Village not ever knowing and conceivably under that language, they could sell memberships in the LLC and on the legal surface nothing changes from the perspective of the Village, except that the operating arrangements can be drastically modified. That's the concern that he has. The language reads that if they complete 50% or if they find a buyer that qualifies in terms of having developed 267 units or owns an interest in 1000 units, they could take that route. Profit could motivate them to do this and there is nothing wrong with that. But the thing that holds him back is they talk about an \$80 million equity in investment; \$16 million of those dollars are coming from the taxpayers, the people who will not see the tax revenue for 27 years. Their

desire to have the option to transfer is not in any way inappropriate or undesirable, it's just that the people that we have been dealing with could be gone.

Mr. Bailey is in agreement with this PUD. He said the Village of Elm Grove is fronting the developer, Mandel, \$8.466 million, so without a personal guarantee from Barry Mandel, they could walk from the \$8.4 million and not develop and never get that money back. They are also doing \$3.9 million of long-term debt, \$865,000 of infrastructure costs. Here, this is 100% pay go TIF, so by this development they will have their three condo buildings developed, their rec center developed and 134 units of apartments developed. There is no money outlay for the Village, except for the \$868,000, which if that is developed, we will get all of that back. We get the first crack at the first \$35,000. This is a pay go TIF. What you are doing compared to what Elm Grove did is much safer. Elm Grove gave \$9 million up front, plus \$9.8 million in pay go, they are giving \$23.2 million in TIF. Some of that is upfront, some of that is pay go. Ours is 100% pay go. Bailey said he is 100% in agreement with this PUD.

Pfannerstill said our attorney is not hired to make sure that the developer is protected or to be their friend, he is hired to make sure that Hartland is in the best situation under any situation that we go with. Attorney de la Mora said he yields to Mr. Bailey's analysis and that was the mechanism that was used to cover Elm Grove's exposure. Pfannerstill asked Attorney de la Mora if later in the project a developer could change the materials. Scott Hussinger said they are obligated to develop the projected per the approved site and building plans. Taylor said those plans and specifications are explicitly referenced in the PUD agreement. Taylor said line 883 protects the Village from membership in the LLC being sold. Taylor said lines 578 through 581 where prior to them getting a building permit they will show the Village that they have executed a completion guarantee with their lender. He said this is their number one project and top of mind for them.

Attorney de la Mora said they do have to show us paperwork about their loan, but if they sell, it doesn't say in the PUD that the same financing arrangements continue or are transferrable to their buyer, that could be a separate arrangement. If they transfer, there is uncertainty.

Trustee Pfeiffer referred to line 883. He asked about the word "unless" which would not force the developer to build 134 units before they sell if the buyer met the criteria in (a) or (b). Bailey suggested putting a period after the word "project" in line 882. Taylor said they carefully went through this language. To protect the Village they added the language that the buyer would need to have developed a project of this size or they own or invest in 1000+ units to assure the Village that the buyer would be a sophisticated buyer. He said if they were required to divest in the property due to bankruptcy or their lender makes them because they are not paying them, they have to have the ability to do that. Bailey said line 884 says "owner" and not "developer", so they could sell it to another owner. Taylor said they could strike in (a) all possible buyers and limit it to "developer". Attorney de la Mora agreed that changing the comma to a period and the elimination of passive owners in that sentence, that it would get us closer to the situation that we would like to be in.

Pfannerstill understands both sides of this. Taylor said it would make it illegal to replace the comma with a period. They could further qualify (a) about who the developer is. If they were limited in selling the development, it would make it worse for the Village.

Attorney de la Mora recommends inserting the period and delete the reference to the federal law – a federal court can nullify the contract and sell it; the trustee in bankruptcy can sell it to whoever it nominates.

Hussinger and Amtmann both said that they support the project.

Pfannerstill said this property sat for a long time. It would be wonderful to see it developed. There is limited risk because of the pay go. As with anything of this magnitude there is risk on both sides.

Bailey asked Taylor if in line 884 they got rid of “owner investor” – what other language would he get rid of? Pfeiffer said he would only keep “developer” in (a). Taylor said he would be comfortable in (a) if they had it say “to another comparable developer who has developed ...”

Trustee Conner said if a period were put after “project”, this would not be a complete sentence. Bailey said in 884 it would say “for the Apartment Project asset unless (a) to another comparable developer who has owned, developed or constructed ...” Bailey asked if Taylor was ok with that. Taylor said they would be okay with that, so it would say “... to another comparable developer which owns or has owned, developed or constructed ...”

Pfannerstill wants to be sure that the word is right and it is on the record.

Pfeiffer asked if they want to limit it to “developer” rather than include a “developer who owns or has owned” ...

Bailey said if we get to a motion, we want to be sure that we clean up the language.

Pfannerstill said it may seem like he is pushing for the developer, but it does continue to read and says “which owns or has owned, developed or constructed multifamily apartment properties aggregating to at least 267 units or owns, is a primary investor in, or manages multifamily apartment properties aggregating to at least 1,000 units ...” Pfannerstill says he feels with this wording the buyer would have the money to complete the project.

Taylor said he made adjustments – “unless (a) to another comparable developer which has developed multifamily apartment properties aggregating to at least 267 units or another owner, investor, developer, real estate investment trust, real estate manager, general contractor, or similar real estate operator or company which owns, is a primary investor in, or manages multifamily apartment properties aggregating to at least 1,000 units ...”

Pfeiffer said he likes the first half of it better than the second half. He doesn't like that the “owner, investor, real estate investment trust, real estate manager” back into the language. Taylor said those are the types of companies that would not be developers, but own 1000+ units. Pfeiffer said that's not who they want to take over a project that is incomplete. Bailey said this is even talking about once it's completed. Taylor said MLG Capitol owns billions of dollars of multi-family and they have never developed. But if they said they were going to develop this, they would be qualified to do it, perhaps more qualified than Three Leaf, because of who they are.

Pfeiffer said he thinks this just moves the language and says the same exact thing. Pfannerstill said if this is half built and it is sold to someone that is worth a billion dollars, but all they do is own,

they don't develop, the Village does still have the remedy to take them to court if they don't complete the development. They still have to abide by the agreement.

Taylor referred to line 768 which deals with this. The Village can seek specific performance against their successors or assigns – the Village could go to court and say build the thing.

Attorney de la Mora said it all depends on the transfer vehicle that is used. If there is a sale of the membership, it's the same shell entity and we can't get specific performance. We are getting closer to closing the gap, but the gap is still there.

Taylor said he doesn't think there is a gap. Line 883 states they will not sell, transfer, or assign the Apartment Project asset *or the membership interests in the Developer* and your rights to enforce specific performance are to our successors and assigns.

Hallquist doesn't have a problem with the language after (a) because we are defining what (a) is underneath.

Pfannerstill feels this is an extremely valuable opportunity for the Village.

Bailey said there is risk no matter what. The risk we mitigated by a TIF. If this project gets half developed, we are not out any money. We will build the infrastructure and we will get the first pack of money back; he doesn't have concerns about that. If it is sold, we want to be sure they are qualified. Both parties will not be 100% satisfied any agreement.

Taylor repeated language - "unless (a) to another comparable developer which has developed multifamily apartment properties aggregating to at least 267 units or another owner, investor, developer, real estate investment trust, real estate manager, general contractor, or similar real estate operator or company which owns, is a primary investor in, or manages multifamily apartment properties aggregating to at least 1,000 units ..."

Pfannerstill asked that the Clerk, once the recording is transcribed, send to the Village Board and Plan Commission what was just read so everyone is on the same page. This was confirmed.

Motion (Hallquist/Schneeberger) to approve the proposed PUD agreement and rezoning sought by Three Leaf Partners LLC on property tax keys HAV 0730981, HAV 0730985, HAV 0730986 and HAV 0730987 located at 700, 701 W. Capitol Drive. This also will include the \$80,000 letter of credit and revision to the PUD line 884 (a) as stated by Mr. Taylor, and the exhibits, with final review and approval by staff and Attorney de la Mora. All were in favor, **motion carried**.

2. Adjournment of Joint Architectural Board/Plan Commission

Motion (Hallquist/Schneeberger) to adjourn. All were in favor, **motion carried**.

IMMEDIATELY FOLLOWING THE ADJOURNMENT OF THE ARCHITECTURAL BOARD/PLAN COMMISSION THE VILLAGE BOARD MEETING WILL BE CALLED TO ORDER

Roll Call: President Pfannerstill, Trustees de Boer (via Zoom), Pfeiffer, Hallquist, Conner

Excused: Trustees Truttschel and Wallschlager

1. Village Board review and consideration of Hartland Quarry, a proposed PUD development ("Project") whose approval and rezoning is being sought by Three Leaf Partners LLC on property

tax keys HAV0730981, HAV0730985, HAV0730986 and HAV0730987 located at 700, 701 W. Capitol Drive. The Village Board will review and consider:

- a. Proposed rezoning and PUD Agreement for the Project

President Pfannerstill said what the Village Board needs to review is a proposed rezoning and PUD Agreement for the Quarry Project. He added that a motion and vote of approval was taken by the Plan Commission just prior to this meeting, in which they approved the rezoning and the PUD Agreement, that the language needs to include that there is a \$80,000 letter of credit, line 884 needs to reflect the new language that was approved at the Plan Commission meeting, with exhibits, with the stipulation that staff gets a final review of the exhibits.

Motion (Conner/Hallquist) to approve Hartland Quarry, a proposed PUD development (“Project”) whose approval and rezoning is being sought by Three Leaf Partners LLC on property tax keys HAV0730981, HAV0730985, HAV0730986 and HAV0730987 located at 700, 701 W. Capitol Drive, for the proposed rezoning and PUD Agreement for the project, including a \$80,000 letter of credit, line 884 (a) as stipulated by Mr. Taylor and that exhibits are finalized and approved by staff after review. All were in favor, **motion carried.**

2. Motion (Pfeiffer/Conner) to adjourn the meeting.

Respectfully submitted,

Sandee Policello
Village Clerk