

The Planning Board of the Town of Cicero held a meeting on **Monday, February 28, 2011** at **7:00 p.m.** in the Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Agenda:

- Pledge of Allegiance
- Approval of the Planning Board minutes from 2.14.11 (**approved with one correction**)
- Site Plan, Tim Horton's, 5600 Bartel Road, Proposed drive-thru, Mirabito Holdings, Inc. (**approved**)
- PUD Review & Recommendation, The Landings at Maple Bay (MLSC Development), 8514-8518 Lakeshore Road, Proposed 13 Units Residential PUD, Ianuzi & Romans (**recommended**)

Board Members Present: Mark Marzullo (Chairman), Joe Ruscitto, Greg Card, Pat Honors, Chuck Abbey, Bob Smith and Sharon May

Others Present: Wayne Dean (Director of Planning & Development), Neal Germain (Esquire, Germain & Germain), Mark Parrish (P.E., O'Brien & Gere) and Tonia Mosley (Clerk)

The meeting was opened with the Pledge of Allegiance.

Mr. Marzullo noted the locations of the three emergency exits and asked those present to turn off their cell phones.

APPROVAL OF THE PLANNING BOARD MINUTES FROM 2.14.11

Mr. Marzullo made a motion to approve the Planning Board minutes from February 14, 2011. Mr. Smith noted the approval of the Wallington Meadows subdivision application on page 6 should be clarified as Wallington Meadows Section 7A. **Mrs. May seconded the motion with the correction stated above.** The motion was **approved** by the following vote:

Mr. Ruscitto:	Yes
Mr. Card:	Abstain
Mr. Honors:	Yes
Mr. Abbey:	Abstain
Mr. Smith:	Yes
Mrs. May:	Yes
Mr. Marzullo:	Yes

**SITE PLAN, TIM HORTON'S
5600 BARTEL ROAD, PROPOSED DRIVE-THRU
MIRABITO HOLDINGS, INC.**

Representative: Jerry Bracken, Facilities & Compliance Director, Mirabito Holdings, Inc.

Mr. Bracken introduced himself noting we are looking to change our coffee program from the Mirabito's S&K brand to Tim Horton's. In so doing, we also wish to add a drive-thru window to our site. There is no change of use. Basically, we want to add a drive up window for customer convenience.

Mrs. May asked if other Tim Horton's food items would be offered such as sandwiches, etc.

Mr. Bracken responded there would be a full Tim Horton's offering.

Mr. Smith asked if there would be an increase in staff.

Mr. Bracken answered minimally; one person to man the Tim Horton's. So we might go from 2.5 people to 3.5 people. Currently, we have some pizza and take out offerings.

Mr. Smith asked if the drive-thru would be open 24/7.

Mr. Bracken: That is the initial intent per Tim Horton's request. From my past experiences, it never lasts that long. In the past we have shut down around midnight and opened at five. We have been operating as an 18 hour store for the past couple of years.

Mr. Card asked if there would be additional signage and if there would be sit-down seating.

Mr. Bracken: No sit-down, no additional signage. Any signage requested by Tim Horton's will be swapped out with existing signs which will include their logo.

Mr. Card: You will be able to buy other foods inside too?

Mr. Bracken: Correct. Basically it would be pizza.

Mr. Marzullo: Any lighting changes, exterior lighting?

Mr. Bracken: None what so ever.

Mr. Smith: You have a kerosene pump off the back corner of the building. Are you doing anything to protect that? You have two things to protect it from vehicles coming head on, but what about here?

Mr. Bracken: Absolutely. There is curbing, but we would be more than happy to add another bollard in that area.

Mr. Honors: Do you intend to move the air pump located on the back right corner of the building? It would not be all that accessible.

Mr. Bracken: The air pump and the ice dispenser have already been re-located to the west side.

Mrs. May: Will the menu board be lit internally?

Mr. Bracken: Yes, minimally. It is not an invasive type of lighting.

Mrs. May: Will you stripe that? Are there directional signs?

Mr. Bracken: Absolutely. There is also one directional sign on the Miller Road side.

The Board asked if there were any comments from the engineer.

Mr. Parrish: It could get a little awkward on the site with the stacking. There was some discussion about possibly removing one of the Miller Road entrances but I think it might help to have both. Typically we like to limit curb cuts, but in this case I think two gives them the benefit of a little more flexibility. There is a 15' width there for a by-pass. Again the only really issue I can see is the potential clogging up of the west side of the site. But, that is somewhat remote from where the rest of the activity goes on.

Mr. Smith noted SOCPA's referral request for a traffic count. I think that it is unnecessary.

Mr. Parrish: The County has asked for a trip generation report. The Board would need an approval of a majority plus one to not comply with SOCPA's requirement and give a reason why you don't feel that it is necessary.

How many additional vehicles do you expect?

Mr. Bracken: I have written a letter based upon what we expect to see. Based upon an 18 hour day, I project we will have approximately 170 additional sales per day. That is about an additional nine cars per hour. Obviously, that would not be distributed evenly over any particular period.

Mr. Parrish: Typically the rule of thumb I have seen used by the County DOT is if the site generates over 100 vehicles per hour they request some sort of analysis be done. I don't think you are approaching that.

More discussion occurred.

Mrs. May made a motion regarding SEQR. She read: Be it further resolved that the Planning Board of the Town of Cicero hereby determines that the proposed action will not have a significant effect on the environment and that this resolution shall constitute a negative declaration for the purposes of Article 8 of the Environmental Conservation Law of the State of New York. **Mr. Smith seconded the motion.** The motion was **approved** with the following vote:

Mr. Ruscitto:	Yes
Mr. Card:	Yes
Mr. Honors:	Yes
Mr. Abbey:	Yes
Mr. Smith:	Yes
Mrs. May:	Yes
Mr. Marzullo:	Yes

Mr. Smith made a motion to approve the site plan dated January 31, 2011 for the Mirabito/Tim Horton's project on Bartel Road conditioned upon the addition of a bollard adjacent to the kerosene pump. **Mrs. May seconded the motion.** The motion was **approved** with the

following vote:

Mr. Ruscitto:	Yes
Mr. Card:	Yes
Mr. Honors:	Yes
Mr. Abbey:	Yes
Mr. Smith:	Yes
Mrs. May:	Yes
Mr. Marzullo:	Yes

Mr. Bracken apologized for not being present at the last meeting. The Board wished him good luck.

**PUD REVIEW & RECOMMENDATION
THE LANDINGS AT MAPLE BAY (MLSC DEVELOPMENT)
8514-8518 LAKESHORE ROAD
PROPOSED 13 UNITS RESIDENTIAL PUD
IANUZI & ROMANS**

Representatives: Hal Romans, Surveyor and Planner, Ianuzi & Romans
Albert M. Mercury, Esquire, Phillips Lytle LLP
Michael Lopresti, Developer, MLSC Development, LLC

Mr. Romans introduced himself and the other representatives. Sheet 3 shows the minor changes that I have made. I have a note on the plan stating this will be a natural beach. It will not have any imported materials. The idea is it will be natural. Grass will be cut down, etc. It would be kept clean on a weekly basis.

The one dock we had proposed going out into the bay itself has been removed. We have a note stating the other dock here will be repaired. The next area here is for drop offs and pick ups.

I re-did the docking in the marina itself. Each dock is numbered for a unit so there are 13 docks. There are two over-night visitor docks located here. There are approximately six smaller docks for row boats and jet skis that would be used on an as needed basis by the units.

For your review, I have also sent up the financial package, the budget that Michael Lopresti came up with containing quotes from actual companies. I have also provided the declaration.

Mrs. May asked for clarification on the number of docks.

Mr. Romans explained the number on page 3, 22 docks is the correct number. I will have the engineer's sheet brought up to speed.

The main docks are about 16'-17' apart and about 22' long.

Mr. Card: According to your plan, these docks will be removed in the winter?

Mr. Romans: Yes. I believe that Mike has that set up in the budget—removal and re-installation.

More discussion occurred regarding docks.

Mr. Marzullo: Is there a permit in place for dredging?

Mr. Romans: No, we are in the process of getting that.

Mr. Marzullo: How often does that need to be done?

Mr. Romans: I believe it is set up within the maintenance plan based upon a 20 year cycle.

Mr. Card: On one of your original proposals for demolition you said that you would remove the gas pumps. Are there any fuel tanks?

Mr. Romans: No. He had a Phase I done on the property.

Mr. Honors: The property used to have an above ground tank that was removed a while ago.

Mrs. May: There will be no fuel at this marina?

Mr. Romans: No, it is not that type of marina. It is really just for the people here who want to go out and back. It is like having a dock in front of your house.

Mr. Smith: Will they be able to rent these? For example if I were in Unit 4 and I don't have a boat or have any desire to have a boat, could I sub-lease my dock space to someone else out side of the Unit group?

Mr. Mercury: No, that is not the intention of the developer. The document that you have talks about renting the units. I had not thought about that but will add it to the documents. We will add that to the restrictions.

There is a provision where the developer reserves the right to allow people across the street to come down at some future point. So those people would be using the area. But they would be other homeowners that would contribute to the maintenance of the area.

Mr. Smith: That would be a separate condominium association, correct?

Mr. Mercury: Yes.

Mr. Smith: This cannot be expanded.

Mr. Mercury: This cannot be expanded. You will never have more than 13 Units. But, if they allow people across the street to have water access and use the marina, the people across the street would have to contribute to that portion of the budget. If you noticed, the budget is broken out between the homes and the marina so they would have to contribute to the marina portion. That is fairly common among adjoining associations.

Mr. Card: In regards to the fencing, on one side you have chain link fence. Is that staying?

Mr. Romans: Actually, that is not on our property so our intent was to leave that. Our fence would go on our side of the property line as shown on the plan.

Mr. Card: Isn't there some regulation about the height of the fence along the water?

Mr. Dean: Yes, It can't be placed within 30' of the water.

Mr. Ruscitto: And it cannot obstruct a neighbor's view of the water, correct?

Mr. Dean: That is not a part of the Code.

Mr. Card: Is the proposed fence within Code?

Mr. Dean: Yes, it is six feet high.

Mr. Romans: And it is further back than 30'.

Mrs. May: I heard a comment earlier that when you are driving down Lakeshore Road and you look over at this project, all you are going to see are buildings. You will not be able to see any of the lake. That may obstruct the view of visitors that come into the area that want to see a view of the lake.

Mr. Romans: I know currently there are two existing buildings on the property. There is probably a limited view of the lake from the road now. The property does drop off significantly in this area, but it probably will be pretty close to that. There will be some views. The idea was that people within the association and its' units would all enjoy some view of the lake.

Mr. Marzullo: The landscaping that you show here and here—what are your thoughts about bringing it all the way along the fence area. I was thinking that fencing would be a good barrier for noise.

Mr. Romans: That could be added.

Mr. Marzullo: I don't want you to add it if you don't think that it will help. I saw that your engineer had it on his drawing.

Mr. Abbey: In regards to the possible development across the road and whatever number of units that might possibly end up there, would those units be included in the assessment?

Mr. Mercury: That would be a completely separate association. It would have nothing to do with the assessment of this property.

Mr. Abbey: In regards to the marina part, the intent would be to charge them for marina usage? If they had boats where would they put them?

Mr. Mercury: The people that live in Units 1-13 have docks assigned to them, similar to a garage in some projects. The people across the street would have to use the couple of day spots or if they have jet skis, use the jet ski area. They would not be able to use the docks numbered 1-13 that are reserved for the Unit owners of this project.

There is no expansion of this marina. That is all that there is.

Mr. Romans: There is no area for launching, public or private. If people want to launch their boats they will have to go to a public marina or a public launch. There was not a launch here to begin with. Basically, all we are doing is rehabbing the existing marina.

As far as docking, if that was to ever change, it would have to come back to this Board. I am not a marina expert. To me, two over night docks is realistic.

Mr. Abbey: Based upon that, this side road really would not have any extra usage from anyone on the other side?

Mr. Romans: It is really a convenience thing. If someone had a lot of stuff to take down and was going out for the day, they would be able to drive it down.

Mr. Mercury: There is not going to be that much for the people across the street. A lot of it will just be lake access. They can come down on a little path that is not for cars. We are thinking about limiting it to the area on the east side of the marina---if it ever comes to that. They would be able to go down, see the lake, maybe have a picnic, etc. The people living within the 13 Units would have 90+% of the docking area.

Mr. Smith: The proposed 12' gate, would that be put in at the beginning of the project? We don't want people parking along Lakeshore Road, driving their snowmobiles off trailers and

going down the road.

Mr. Romans: We show it on there. We can even say when the first Unit's construction is started that the fence will go in.

Mr. Smith: There is a little bit of a real estate issue currently within the market. I would like to get an idea about what happens if God forbid, this does not make it. We do have private roads within the Town. We have too many. We don't do private roads anymore. If this does not make it, who owns the sewers, the water lines, etc? If Units 6-8 which are at the end of this private road are occupied and this project does not make it, the Town will have a moral obligation---not a legal obligation. What kind of burden would that put on the Town?

Mr. Germain: It is my understanding that the sewers would be private.

Mr. Romans: We are thinking public. We originally we were thinking private but I show an easement around the sewers. The sewers mains will be public.

Mr. Marzullo: I thought that they were going to be private.

Mr. Germain: My understanding from the last meeting was that they were going to be private. If they are private and the condominium association fails, at that point the Town would not be under a legal obligation to take it over but you are absolutely correct; if you did have people in the Units and they were paying taxes, there would be a moral, but not a legal obligation for the Town to go in and plow the road. The same thing applies to the private improvements.

Mr. Marzullo: The road is not being built to Town specifications correct? You would need a turn-around, etc.

Mr. Parrish: Correct. It would need a number of things. But ultimately, yes I think that it could be made to work.

Mr. Marzullo: If it were a Town road would we approve it like that?

Mr. Parrish: Probably not.

More discussion occurred regarding sewers.

Mr. Parrish: If you feel differently, in your recommendation to the Town Board you can suggest that they be private. You don't have to accept the plan as it is being presented. When you make your recommendation you can make any conditions/suggestions/recommendations that you feel are appropriate. So, when the motion is made and if you feel that they should be private, you could include a recommendation that the Town Board approve this with the sanitary sewers being a private facility.

More discussion occurred.

Mr. Parrish: The maintenance of this is minimal. Realistically, very little is done on the maintenance of sanitary sewers systems other than flushing them out. Realistically, that will probably only be done when there is a problem such as a blockage. The real problems come in when you need to do repairs. But again, the life cycle on something like this is 20-40 years before you need to worry about those repairs. That is when you run into real costs.

Assuming you set a nominal fee for replacement of the sewers over their lifetime, it should not be that big of an issue. You do need to plan for it. You do need to put up a reserve fund and have some sort of dollars in place for when it does become time to replace them.

There should be some amount put in the budget for a capitol type of improvement to replace the sewers at the end of their lifetime.

Mr. Romans: If you are questioning if we would design something cheaper, we would not. Main line sewer is main line sewer. If you recommend to the Town Board that it should be private no design changes would happen. That line item would then be added to this budget. If the Town Board says no we think that it should be public---the property will pay into the sewer district anyway. They will pay into the sewer district whether it is private or not.

One of the reasons we went public is because OCWA said that they wanted water to be public. It seemed to make sense to make them both public. If the adjacent properties ever needed to tie into it, it would be public already and accommodations could be made.

Mr. Smith: Have we had any comments from the adjacent land owner?

Mr. Dean: He has been in to look at the project, but he has not really expressed any strong feelings against or for it.

Mr. Romans: I have spoken with the Peterson and Leone families. I do remember Wayne getting a letter when we first began from Mr. Cooper.

Mr. Card: The Board's engineer has brought up the 100 year flood plan. Are these areas in accordance with the Town's flood damage prevention code?

Mr. Romans: Yes. I have checked with the FEMA maps. The property drops off significantly from this point here. The whole idea is not to change the elevation much. We show a couple of retaining walls on our grading plan.

Mrs. May: Will the public be allowed use of the beach area?

Mr. Romans: No, not any more than they are now. It would be private property. It is private property now. Mr. Mercury already noted the potential area to possibly be used by future residents from across the street.

Mr. Card: Who would give permission for those potential homeowners from across the street to use this property?

Mr. Mercury: If and/or when the property across the street begins its planning stages and the 13 Units here are up and running, the developer will make a proposal to this Board and figure out what the limits to access will be and what contributions will be made to this association. Then those rights can be granted.

More discussion occurred regarding cost sharing agreements, easement access, controlling interests, etc.

Mr. Smith had a question about the proposed fire pit.

Mr. Dean: Small recreational fires are allowed by the State, but there are restrictions on them regarding size, containment, how far they are from a building, supervision, etc. Anything larger is not allowed. Our Town has more than 20,000 people. No burning is allowed by the DEC in a Town with more than 20,000 people. It is a DEC violation. They have written people up for it.

Mr. Smith: Is it okay to have a proposed fire pit here and approve it?

Mr. Dean: Yes

Mr. Romans: It is better to have a one designated spot.

Mr. Smith asked the Board's professionals if they had a preference between private or public sewers.

Mr. Dean: I don't feel strongly one way or the other. But it is my office that will get the calls if there is a problem. I would just as soon have them public so that we can handle it and take care of it.

Mr. Parrish: The facility does not have to be public. By making it private however minimally, it does reduce the burden on the Town relative to the sanitary sewer structure. For that reason I would recommend private.

There are other issues to consider. Wayne brought up one of them. You do run into situations where you get complaints and you have to figure out who is responsible for the sewers.

Mr. Dean: For example Bayshore Apartments are private. I have only been working here for eight years and I don't remember there ever being an issue with the sewers there. That is why I don't really feel strongly one way or the other. I don't think that it is a big issue monetarily either way.

Mr. Smith: What about the storm sewers? There is maintenance there.

Mr. Parrish: All of the storm sewers along with the highway systems, the roads, are proposed to be private. They are responsible for maintaining them. Through the Town's Stormwater

Control Law the applicant should be executing an agreement with the Town. That agreement does give the Town the right to inspect and make sure that these facilities are working correctly. If they are not, the Town advises the owner to take care of it. If it is not taken care of and it is causing an issue for the Town and its' residents, the Town can go in and take care of those issues and essentially put it on the tax roll against the property.

More discussion occurred.

Mr. Marzullo: We received the Declaration of Condominiums and the by-laws today. Did anyone have a chance to go through them?

Most Board members responded no.

Mr. Smith: The condominium association has to go to the State's attorney general for approval, correct?

Mr. Germain: That is correct. It is a creature of the State. You review it for whatever purposes you have for reviewing it, but you do not approve it. They have to go to the State for that.

Mr. Smith: The condo association will maintain the exterior of the building?

Mr. Mercury: Yes.

Mr. Smith: Basically, to save on insurance, owners would just have to insure contents.

Mr. Mercury: With a master policy it makes the insurance a lot cheaper on the structures.

Mr. Smith: And if a section burns the replacement becomes the responsibility of the condo association?

Mr. Mercury: Yes, the entire structure. Everything except what is in the interior box.

Mr. Mercury gave specific details about insurances needed on the site by Unit owners.

Mrs. May made a motion regarding SEQR. She read: Be it further resolved that the Planning Board of the Town of Cicero hereby determines that the proposed action will not have a significant effect on the environment and that this resolution shall constitute a negative declaration for the purposes of Article 8 of the Environmental Conservation Law of the State of New York. **Mr. Marzullo seconded the motion.** The motion was **approved** with the following vote:

Mr. Ruscitto:	Yes
Mr. Card:	Yes
Mr. Honors:	Yes
Mr. Abbey:	Yes
Mr. Smith:	Yes
Mrs. May:	Yes
Mr. Marzullo:	Yes

Mr. Smith made a motion to make a recommendation to the Town Board in the affirmative with private ownership of all facilities excluding water (OCWA) and a strong recommendation that the Town Board put a sunset provision on how soon Mr. Lopresti gets to start this project.

Mr. Marzullo: Can the Town Board do that?

Mr. Germain: It is up to the Town Board how they will act on it.

Mr. Smith continued with the motion. I want to leave the motion as the Town Board seriously considering a sunset provision for the approval of this project. I think that two years is fair to get the project started or it has to come back in here to be looked at. Sanitary and storm sewer are private and owned by the condominium association. Mr. Germain noted the following: the engineering sheet should be revised to show 22 docks in conformity with your other sheets, a restriction on the condo plan prohibiting the sub-letting of docks by owners should be included and the gate will be fully installed when construction begins. **Mrs. May seconded the motion.** The motion was **approved** with the following vote:

Mr. Ruscitto:	Yes
Mr. Card:	Yes
Mr. Honors:	Yes
Mr. Abbey:	Yes

Mr. Smith:	Yes
Mrs. May:	Yes
Mr. Marzullo:	Yes

Mrs. May made a motion to adjourn. **Mr. Marzullo seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS
ADJOURNED AT 8:20 P.M.

Dated: March 9, 2011

Tonia Mosley, Clerk