

A meeting of the Township of Hamilton Planning Board was held on the above date with Chairman Gordon Dahl presiding. Members present were Michael Biglin, Jack Carson, William Christman, Chris Jensen, Joseph Nickels, John Percy, Charles Pritchard and David Wigglesworth. Alternate members present were Joan Dumoff and Liz Parlett. Also present were Joseph Adamson, Landscape Architect Consultant; John Rosenberger, Solicitor; Robert Watkins, representing James Mott, Planner Consultant; Steve Mazur, representing Kevin Dixon, Alternate Traffic Engineer Consultant; and Doug White, representing Chris Rehmann, Engineer Consultant.

Compliance with the Open Public Meetings Law was acknowledged.

Michael Kelly – Michael Kelly was present.

Mr. Kelly stated that he was proposing to create four, conforming lots from an existing 5.487 acre lot in the Mizpah Village Zone, to be located on a street that he had previously improved in order to develop other lots. Mr. Kelly stated he is the owner of the tract, as well as the applicant.

Mr. Percy moved, seconded by Mr. Biglin, to deem complete for review Application #2008-008.01, Block 535, Lot 2.03, submitted by Michael Kelly, conditioned upon compliance with the recommendations contained within the report of Ronald Curcio, dated April 11, 2008.. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”M, NO “NAY”, NO “ABSTAIN”.

Mr. White referred to Ronald Curcio’s report, and Mr. Kelly agreed to comply with the recommendations contained therein.

Board members asked questions regarding roadway width, roadway construction, septic systems and property location, to which responses were provided.

Mr. Rosenberger reminded the Applicant of the Ordinance provision that requires an in-lieu contribution for recreation, and Mr. Kelly stated he was aware of it.

Mr. Biglin moved, seconded by Mr. Carson, to grant minor subdivision approval to Michael Kelly, Block 535, Lot 2.03, Application #2008-008.01, conditioned upon compliance with the recommendations contained within the report of Ronald Curcio, dated April 11, 2008, and submission of an in-lieu contribution for recreation in the amount of \$4,000.00 per lot, prior to recordation of the subdivision.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Biglin – Aye

Mr. Carson – Aye

Mr. Christman – Aye

Mr. Jensen – Aye

Mr. Nickels - Aye

Mr. Percy - Aye

Mr. Pritchard - Aye

Mr. Wigglesworth – Aye

Mr. Dahl – Aye

SAID MOTION CARRIED.

Vacation of Portion of West Jersey Avenue (Recommendation to Township Committee) – Leland Stanford, Attorney, and Debra Kraus were present.

Mr. Stanford informed the Board that he represented Roland Kraus and Debra Kraus, who have requested that Township Committee reduce the portion of West Jersey Avenue that abuts Lots 1 and 2 in Block 401, owned by Mr. and Mrs. Kraus, from one hundred feet wide to fifty feet wide in order that they may incorporate the former right-of-way area with their lots to increase the acreage. He pointed out that the right-of-way would still exist subsequent to the reduction.

Mr. Stanford stated that an existing gas line is located within an easement, within the area that is the subject of the vacation request. He advised as to the status of that easement, and expressed the opinion that the easement issue would be addressed by Township Committee and its Solicitor at the time the matter is before that body.

Mr. Watkins expressed the opinion that the entire right-of-way reduction should be considered, and he offered to submit a proposal to evaluate the effect of the reduction as there were other properties and other street intersections impacted. Mr. Stanford stated that his clients would not want to be responsible for the cost of the study, as they were asking that just a portion be reduced.

Board members asked questions and made comments with regard to the potential to landlock property, gas line easement and the effect of reducing the right-of-way in its entirety to fifty feet.

Mr. Percy moved, seconded by Mr. Nickels, to recommend to Township Committee that the portion of West Jersey Avenue be vacated and reduced as requested by Ronald Kraus and Debra Kraus, and that Township Committee consider reducing West Jersey Avenue from its existing one hundred foot width to fifty feet, in its entirety, and that the Board would be willing to authorize its Planner to evaluate reducing the roadway in its entirety if so directed by Township Committee.

Mr. Biglin suggested that the recommendation be deferred to provide more time to evaluate the issues, and it was pointed out that Township Committee would be looking into all of the related issues before making a decision.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Biglin – Nay, because he felt the Board should be taking action and not just deferring to Township Committee, and that it shouldn't be vacating a street just to create a buildable lot.

Mr. Carson – Aye

Mr. Christman – Aye

Mr. Jensen – Aye

Mr. Nickels – Aye

Mr. Percy – Aye

Mr. Pritchard – Aye

Mr. Wigglesworth – Aye

Mr. Dahl – Aye

SAID MOTION CARRIED.

Wal-Mart Stores, Inc. (Continued Public Hearing) – Stephen Nehmad, Attorney; Deanna Drumm, Traffic Engineer; Peter J. Dolcy, P.E.; Cheri Thomas, Real Estate Manager for Wal-Mart; Ronald Fogg, Store Manager; and William McManus, P.P., L.S., were present, representing Wal-Mart Stores, Inc.

Ronald Gasiorowski, introduced Gordon Gemma, a licensed planner, who would be testifying as an expert in the field of planning.

Mr. Gasiorowski stated that he represents Constance Van Seeters, who wasn't present.

Mr. Gasiorowski started questioning Mr. Dolcy, as to whether the application submitted was an amended application, as previously stated by Mr. Nehmad, or whether the application was a new application.

Mr. Rosenberger stated that he has opined that the application would be treated as a new application, and the only plan that was being reviewed is that which is on file as part of the present application.

Mr. Gasiorowski asked questions of Mr. Dolcy with regard to storm water provisions when the plan was originally approved; present storm water regulations; storm water basin design; storm water basin maintenance; area of basin; proposed storm water basin improvements;

whether consideration was given as to the impact development of adjacent property would have; traffic circulation; change to pad sites created on the Wal-Mart property; differences from 1992 approval from that which was presently before the Board; parking; size of building; wetlands; open space; what uses the previous approval allowed; truck movements; and delivery frequency;

Mr. Dolcy responded to Mr. Gasiorowski's questions and Mr. Nehmad, occasionally objected to certain things.

After a break in the meeting, Mr. Rosenberger advised Mr. Gasiorowski that the Board would like him to explain who his client is, what concerns his client has and what the focus of his cross examination would be in order that it understands how all the properties and approvals interrelate to each other. Mr. Rosenberger further advised Mr. Gasiorowski that the concern of the Board is accentuated by the correspondence it received that was addressed to the Zoning Board of Adjustment, referencing the name of a different client, and it would like to understand the procedural setting in the context of the application.

Mr. Gasiorowski stated he would outline his client's concerns, and he attempted to advise as to what he found troubling at the first hearing with regard to submission of an Environmental Impact Statement.

Mr. Rosenberger interrupted Mr. Gasiorowski and asked that, before he proceeded, that he identify his client and introduce her if she's present; explain why she is present or why she is not present; explain why she hasn't responded to a subpoena; explain what his client's concerns are that has caused her to retain him with regard to the application before the Board, so his client's concerns can be addressed and given the weight and consideration they are entitled to receive.

In response to Mr. Rosenberger's request that an opening statement be presented, Mr. Gasiorowski stated that he had represented to the Board that he would be presenting an objector's case and was in the process of cross examination.

Mr. Rosenberger cautioned Mr. Gasiorowski that he would suggest to the Board that they may have the right to not let him participate if he were disinclined to follow the request of the Board.

Mr. Gasiorowski agreed to give some opening comments. He stated that he has read all of the transcripts of the hearings, opening comments of Mr. Nehmad and the earliest matter dealing with the completeness hearing during which the Board made a determination, on advice of counsel, that compliance with the Ordinance with regard to the Environmental Impact Statement was not necessary.

Mr. Jensen interrupted Mr. Gasiorowski and asked if he were going to answer the Board's questions before he proceeds. Mr. Gasiorowski stated he was presenting an opening statement, and Mr. Jensen responded that he was not answering the questions that were asked of him. Mr. Gasiorowski stated he would do all of that.

Mr. Gasiorowski stated that his client was not an attorney, and she had retained him to bring an objection to the case and was relying upon him and his expert witnesses to outline the problems.

Mr. Gasiorowski stated that his first concern was the use of the property, and he referred to the notice and the application prepared by Mr. Nehmad, which did not refer to an amended application but did identify it as a new application, which was different from that which was approved in 1992. He pointed out that a new application would be subject today's Ordinance requirements and all of the regulations that are in place today with regard to other agencies.

Mr. Gasiorowski advised of the issues he would be raising with regard to the drainage basin, Pinelands Commission approval, traffic, variances, adequacy of notice, effect of supermarket use and pad sites, and stated that he intends to cross examine the applicant's other witnesses, including questions related to the appeal to the Zoning Board and whether certain uses are permitted. He advised that he had already informed the Board of his appeal to the Zoning Board of Adjustment, that he represented William Sumas and Constance Van Setters with regard to that appeal, and that at least one of those persons has been present at every meeting.

Mr. Nehmad objected to Mr. Gasiorowski referring to the appeal before the Zoning Board, stating that it was not germane to what is before the Board, as Mr. Rosenberger had already ruled with regard to that issue.

In response to questions of Board members, Mr. Gasiorowski stated that Mr. Sumas did not reside within the Township, that he owned a business in the adjoining municipality and that he had a right to be present.

Mr. Rosenberger asked Mr. Gasiorowski to identify the legal issues that would be argued in a courtroom and put them aside, and to just focus on legitimate site plan concerns.

Mr. Rosenberger asked Mr. Gasiorowski why his client did not honor the subpoena issued by the Board. Mr. Gasiorowski responded that, under the terms of the Municipal Land Use Law, his client cannot be compelled to appear to testify. He further stated that, as a result of her not appearing, her credibility, his credibility and the credibility of his witnesses can be questioned, but Mr. Nehmad did not have a right to call Ms. Van Seeters as his witness.

In response to a statement made by Mr. Gasiorowski, Mr. Rosenberger made it clear that Mr. Gasiorowski's objector's case was being conducted in the public comment portion of the hearing.

Mr. Rosenberger addressed the issues raised by Mr. Gasiorowski, separating the legal issues from that which were site plan issues. With regard to the completeness issue, Mr. Rosenberger stated that the Board has determined the application is complete. With regard to whether additional Pinelands review is necessary, Mr. Rosenberger advised that any approval would be conditioned upon other agency approvals. With regard to whether supermarkets are a permitted use, Mr. Rosenberger stated that the Board has interpreted over the last twenty years that such uses are permitted. With regard to the issue involving the adequacy of the legal notices, Mr. Rosenberger stated that issue is a legal one that could be pursued in a courtroom. With regard to design concerns, Mr. Rosenberger stated that they are legitimate concerns that can be entertained by the Board. With regard to the issue involving the tire and lube center not being a permitted use, Mr. Rosenberger stated that it could be flushed out on the record. With regard to certain ordinance violations, Mr. Rosenberger stated that those violations were subject to enforcement under the Township's police power, but they could be brought to the attention of the Board. With regard to traffic related issues, variances, misleading statements, comparison of supercenters here and elsewhere, loading dock, holding and storage, methodology of the operation of the supermarket, property maintenance and drainage basin function, Mr. Rosenberger stated that they site plan concerns the Board can consider.

Mr. Rosenberger asked Mr. Gasiorowski to proceed with developing those issues that are site plan related, and preserve the legal issues, that have been made a part of the record, for a judge to make a decision as to whether the Board is enforcing its ordinance appropriately.

Mr. Gasiorowski stated that believed he has a right before this Board to certain factual consideration to determine whether he has a basis for seeking an appeal or an interpretation. Mr. Rosenberger agreed.

Mr. Rosenberger stated that the Board asked him to make Mr. Gasiorowski aware that, with regard to the adjoining properties, there are approvals and plans that encompass a roadway system that extends to Cologne Avenue that would address some of the traffic concerns he had raised.

Mr. Gasiorowski continued his cross examination of Mr. Dolcy, and asked him questions regarding building setback; other expert consultations during plan development; and noise considerations.

Mr. Nehmad objected to Mr. Gasiorowski's questions regarding noise control, pointing out that the Township's Land Use Ordinance provides for no performance standards, there is no mandatory requirement within the Municipal Land Use Ordinance for noise control; and the Township has a separate ordinance governing noise, which has to be certified by the NJDEP. Mr. Rosenberger stated that Mr. Nehmad was correct, that noise is an enforcement issue, that

there are State standards that govern noise, and that the witness being questioned by Mr. Gasiorowski is unqualified to answer his questions.

Mr. Gasiorowski referenced section 203-197 of the Township's Land Use Ordinance, and then withdrew his question before any discussion concerning that section took place. Mr. Nehmad agreed to withdraw his objection after Mr. Rosenberger stated he would deal with the issue if it arose again.

Mr. Gasiorowski asked Mr. Dolcy if he had given any consideration at all, when preparing the plan, to the noise generated by truck traffic, truck loading, truck unloading and truck idling on the westerly side of the property. Mr. Dolcy replied that there was no requirement for a noise study, but he made sure that all components of the building were within the required setback. Pointing to a plan, Mr. Dolcy advised as to what the applicant had proposed to screen the loading area.

Mr. Gasiorowski continued to ask questions of Mr. Dolcy regarding disposition of garbage and waste; noise generated from disposal facility; noise related to air conditioners; loading dock activity; and sound barriers.

Mr. Dolcy responded to the questions.

Due to the lateness of the hour and some other business the Board had to conduct, Mr. Dahl ask that the questioning be concluded until the hearing is continued.

Mr. Dahl announced that the hearing would be continued on May 1, 2008, and that no additional, formal notice would have to be provided.

Mr. Gasiorowski stated that his expert witness would not be available on that date, and he requested that Donald Daines be permitted to proceed with his expert witnesses on May 1, and he would proceed with his case at a later date.

Mr. Daines advised that he would be addressing storm water management and environmental issues.

A question arose as to how long it would take to conclude the testimony, as other Board business was not being addressed, and it was decided to try to arrange for a special meeting to expedite the matter. Ms. Rainbow was directed to determine when the meeting room was available and to arrange for a special meeting accordingly.

Public Comment - Mr. Dahl opened the meeting to public comment.

Charles Cain, a resident living on Gravelly Run Road, referred to a statement on the Township's web site, and made comments and asked questions with regard to the process involved with adoption of Ordinance #1584-2007 and Land Use Ordinance provisions with regard to height.

Lynn Kesselman, a resident living on Clarkstown Road, asked questions and offered comments with regard to the process involved with the adoption of Ordinance #1584-2007; the effect of Ordinance #1584-2007's height provision; and wetlands within the Hamilton Business Park.

Bruce Strigh, a resident living on North Street, offered comments and asked questions with regard to development of the Hamilton Business Park; impact of certain provisions of Ordinance #1584-2007; existing roadway conditions; and repeal of Ordinance #1584-2007.

Mr. Biglin moved, seconded by Mr. Percy, to close the public portion of the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Adjournment – Mr. Biglin moved, seconded by Mr. Percy, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Respectfully submitted,

Nancy Rainbow,
Planning Board Administrator