

A meeting of the Township of Hamilton Planning Board was held on the above date with Chairman David Wigglesworth presiding. Other members present were Harry Bilicki, Charles Cain, Richard Cheek, Aline Dix, Wayne Choyce, John Percy and Heather Tomasello. Alternate member present was Harry Rogers. Also present were Christopher Carey, Landscape Architect Consultant; Steven Filippone, Engineer Consultant; and John Rosenberger, Solicitor.

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes – Mr. Cain moved, seconded by Mr. Percy, to approve the minutes of the meeting of April 18, 2013, as published. SAID MOTION CARRIED WITH EIGHT MEMBERS VOTING “AYE”, NO “NAY”, ONE “ABSTAIN”.

Thomas Lacovara (Minor Subdivision hearing) – Jack Plackter, Attorney; Andrew Schaeffer, P.E., and Thomas Lacovara were present.

Mr. Plackter informed those present that Thomas Lacovara was seeking minor subdivision approval to create two conforming lots.

Mr. Plackter referred to a previous approval granted by the Zoning Board of Adjustment for the subject property that had involved a commercial project, and stated that the approval was being abandoned.

Mr. Plackter referred to Steven Filippone’s report, and requested that the Board grant an exception to the requirement for curb and sidewalk. He advised that an exception from the requirement for street lights would not be needed because they already exist, and it was pointed out that the street light locations had not been shown on the plan that was submitted.

Mr. Schaeffer testified that he had visited the site, and it was his opinion that there was no reason to require installation of curb and sidewalk at that location, as none exists in the area, and the development pattern is the same.

Mr. Schaeffer advised as to the location of the existing street lights, and testified that there were no wetlands within a reasonable distance to the site, based on the available information provided by the State.

Mr. Filippone recommended that the requirement for an NJDEP Wetlands Letter of Interpretation be waived, and that the application be deemed complete, as there were no wetlands in the area based on the information he had reviewed.

Mr. Percy moved, seconded by Mrs. Dix, to deem complete for review Application No. 2013-002, submitted by Thomas Lacovara, with a waiver granted from the requirement for submission of a letter from NJDEP indicating that the subdivision does not require wetlands delineation, conditioned upon compliance with the comments contained within the report of Steven Filippone, dated April 24, 2013.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Adams – Not present
Mr. Bilicki – Aye
Mr. Cain – Aye
Mr. Cheek – Aye
Mrs. Dix – Aye
Mr. Choyce – Aye
Mr. Kurtz – Not present
Mr. Percy – Aye
Mr. Rogers – Aye
Ms. Tomasello – Aye
Mr. Wigglesworth – Aye

SAID MOTION CARRIED.

Mr. Filippone referred to his report, and questioned what the Applicant's intent was with regard to the existing curb and driveway locations at the site.

Mr. Schaeffer advised that both existing curb cuts were located on one of the proposed lots, and Mr. Filippone advised that the new driveways would need to be constructed in compliance with Ordinance No. 1707-2011.

Mr. Cain noted that all of the properties on either side of the subject property had been developed with homes for a long period of time, with no sidewalk along the frontage, and he felt it was unlikely that future development, with sidewalk, would occur. It was Mr. Cain's opinion that granting the exception would be warranted.

It was pointed out that homes had been developed in the area during recent years without the installation of sidewalk and curb.

Mr. Choyce questioned how the granting of the subdivision approval would affect the previous approval granted by the Zoning Board of Adjustment. Mr. Rosenberger advised that the effectiveness of the approval would expire upon recordation of the subdivision with the County Clerk's Office, and he noted that Mr. Plackter had advised that the Applicant was abandoning that approval.

In response to a question of Mrs. Dix, Mr. Rosenberger advised that the Applicant would need to provide curbing if required by the County, even if the Board grants the exception, as the site is located on a County right-of-way.

Mr. Cheek moved, seconded by Mr. Percy, to grant minor subdivision approval to Thomas Lacovara, Block 968, Lot 51, Application 2013-002, with exceptions granted from the requirement to provide curb, sidewalk and lighting, conditioned upon compliance with the recommendations contained within the report of Steven Filippone, dated April 24, 2013.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Adams – Not present

Mr. Bilicki – Aye. He commented that the application was straight-forward, with no variances.

Mr. Cain – Aye. He commented that the subdivision is the highest and best use for the property and fits in with the surrounding neighborhood.

Mr. Cheek – Aye

Mrs. Dix – Aye. She concurred with Mr. Cain's statement, and expressed the opinion that it was a much better use for the neighborhood than that which was approved by the Zoning Board.

Mr. Choyce – Aye. He voiced the opinion that the proposed residential lots would be more fitting with the Township's Master Plan.

Mr. Kurtz – Not present

Mr. Percy – Aye

Mr. Rogers – Aye. He referred to the hearing when the Applicant appeared before the Zoning Board, and commented that the subdivision was a much better use for the property.

Ms. Tomasello – Aye. She commented that it would be nice to see something done with the property and to have two residences located there.

Mr. Wigglesworth – Aye. He stated he was delighted to entertain the subdivision application, and felt that the proposed residential use was appropriate for the neighborhood.

SAID MOTION CARRIED.

Hamilton Mall, LLC (Approval Modification) – Keith Davis, Attorney; Timothy Edmonds, P.E.; Lisa Pliskin, KRAVCO Chief Operating Officer, and Hope Dunlap were present.

Mr. Davis briefly reviewed the background of the project, and referred to the condition that required remediation of the storm water management system on site. He described the problems encountered that caused delays in completing the remediation; what had been completed to date; and what still needed to be addressed.

Mr. Davis referred to the Applicant's appearance in January, when the Board permitted Certificates of Occupancy to be issued for the two restaurants before the remediation work was completed.

Mr. Davis informed the Board that the two junior anchor stores had expedited their construction schedules and would be in a position to request certificates of occupancy sooner than originally anticipated. He asked that they be permitted to open before the remediation work is completed, and expressed the opinion that the stores' opening was good news, both for the Municipality and the Applicant, as the Mall would be more vibrant.

Mr. Davis stated that the Applicant would continue to work aggressively to remediate the basins, as it had been doing, and that it was anticipated the work would be fully completed over the next few weeks.

Mr. Davis referred to Basin #6, where an unexpected problem had been encountered when the Applicant recently became aware that a pipe was emptying storm water from the adjacent Atlantic City Race Course property into the basin. He stated that the condition had rendered the basin a "wet" basin, and not a "dry" basin, as designed, and the basin would be remediated so it would function properly, but it would not be "dry". Mr. Davis pointed out that the basin had functioned during the recent super storm, "Sandy", and did not overflow, and he stated that it is the Applicant's expectation that the basin would continue to so properly function on a going-forth basis.

Mr. Cheek expressed concern that Basin No. Six would have standing water most of the year, particularly since it hadn't been approved as a "wet" basin, and he offered suggestions and questioned whether certain things could be done to address the issue.

Mr. Edmonds explained what had been done to the basin; how and when the problem had been discovered; and what the basin was designed to do.

Mr. Filippone stated that Basin No. Six had been the best-draining basin on site before the remediation project commenced, but two pipes had been discovered from which some of the storm water and silts are flowing into the basin from the Race Track property, over which the Applicant has no control. It was Mr. Filippone's opinion that the basin would be working to some level of acceptable functioning if the Applicant puts forth the effort of remediation it has pledged to do. He noted that the performance guarantee was in place, with no reductions, and that the Applicant would be maintaining Basin No. 6, long term, as well as the other basins on site.

Mr. Choyce asked if Basin No. 6 existed in some fashion prior to the Mall being constructed and was part of the Race Track property, and Mr. Filippone replied in the affirmative.

In response to Mr. Choyce's question as to whether the pipes could be removed or closed off, Mr. Filippone stated he couldn't answer that question, as it may be a legal issue.

With regard to Mr. Cheek's suggestion to connect Basin No. Six with the basin behind Books A Million, Mr. Filippone stated that it could not be done due to the elevation.

In response to Mr. Choyce's question as to whether the approvals would need to be modified to recognize that Basin No. Six would be a "wet" basin, Mr. Davis stated that the Board's modification to the approval in January had been sent to the Pinelands Commission, and he would be forwarding a copy of the Board's action on this application to the Pinelands Commission as well, to make sure that Agency is aware of the actual conditions on site.

Mr. Cheek questioned whether a silt dam could be constructed to collect the silts entering the basin from the Race Track site, and then place materials on the bottom of the basin so it would drain more rapidly. Mr. Filippone commented that it was an excellent idea, and stated that he was certain the Applicant's Engineer would be able to address it.

Ms. Dunlap described what had been done to Basin No. 6 to date, and a discussion ensued as to the issue of whether there had been an agreement between the Mall and the Race Track with regard to the basin. It was stated that representatives of both were talking.

Mr. Wigglesworth acknowledged the improvements that had been done to date, and expressed the opinion that public safety would be the most important issue related to the basins. A discussion ensued with regard to fencing the basin, and it was pointed out that there is presently guard rail around a portion of the basin and some fencing. Mr. Davis stated that the Applicant would provide fencing around the basin if a determination is made by its Engineer, along with the Township Engineer, that it is necessary from a safety standpoint.

There was some confusion with regard to whether the basins that were to be remediated as part of the approval included Basin No. 6, as the approval referenced five basins. Mr. Davis explained that there are six basins, five of which are controlled by the Applicant, including Basin No. 6, but the State controlled the basin at the jughandle.

In response to Mr. Cain's question as to whether he saw any scenario where Basin #6 would overflow and become a hazard if it were maintained in accordance with Ordinance requirements, Mr. Filippone replied that he did not. He described what he felt should be done to address the problem that presently existed, and expressed the opinion that it would result in a basin that would function over time. Mr. Filippone commented that he had never seen the basin overflow.

Mr. Filippone stated that the Mall would need to routinely maintain the basins, but the better the grass and vegetation is established, the less maintenance would be needed long term; and he expressed the opinion that there should be no concern about long-standing water if the Ordinance is followed.

Mr. Filippone advised as to the procedure he follows with regard to monitoring the effect of the basin remediation off site, and noted that he is in constant contact with a representative of Cape Atlantic Soil Conservation District. He noted that the Mall has been very diligent in making sure there is no water leaving the basins that would cause any degradation of any ground water downstream, even during the remediation work.

During a discussion regarding how to construct the motion, Mr. Rosenberger commented that the Certificates of Occupancy could be "pulled" if the Applicant doesn't comply with the conditions attached to permitting their issuance. Mr. Davis expressed concern with the prospect of the Certificates of Occupancy being rescinded, and stated that shutting the stores down after they had opened would be disastrous for the Mall. Mr. Davis pointed out that the Township has protection in that the performance guarantee is in place and could be drawn upon, and a violation notice could be issued setting forth that the Mall was not acting in a manner consistent with the site plan approval. He expressed the belief that there would be no need to "pull" the performance guarantee or issue a violation notice, as they were confident the basin remediation would work. Mr. Davis stated that he did not want anything contained within the resolution that would lead the Board to believe that the stores would have to shut their doors to business, which would, theoretically, place his client in breach of its lease, creating an unintended legal entanglement.

A discussion ensued, and Mr. Cain commented that the Board has faith in its Engineer, and he pointed out that Mr. Filippone had expressed confidence that the basins would function satisfactorily once the remediation work has been completed.

Mr. Choyce expressed the belief that the reason the Board had conditioned its approval upon completion of the basin remediation before issuance of a Certificate of Occupancy was to ensure that adequate work was performed on the basins. He commented that he would have to agree with comments of other Board members that the Mall's cooperation with the Township's consultants has proven, even with the constant weather-related setbacks, that the Mall is working in good faith and has the same goals as the Board.

A discussion took place as to what deadline to impose for the basin remediation, as the previous modification to the condition had imposed a deadline of July 15. It was decided to

extend the deadline to September in an effort to provide adequate time, as the remediation included five basins on site, not just Basin No. 6.

Mr. Wigglesworth opened the hearing to public comment.

Roger Silva, Deputy Mayor, stated that before Maureen Bugdon, Atlantic City Racing Association President, left the meeting, she had conveyed to him that the Racing Association had been working with the Mall to address the issue related to Basin No. 6..

Mr. Silva referred to the failed basins at the Mall; the effort undertaken to remediate them; and the benefit to the Community, both resulting from proper functioning basins and the additions to the Mall. He encouraged the Board to make the decision in the best interest of all parties.

Fred Akers, Administrator for the Great Egg Harbor National Scenic and Recreational River Council, made reference to previous appearances before the Board, and stated that he was not objecting to the application before the Board and was pleased to see what was taking place within the Township. He distributed copies of his letter, dated May 2, 2013, with attached excerpt from a 2006 report that addressed the effect of storm water runoff from the Mall on water quality. Mr. Akers briefly described the history of the designation of the Great Egg Harbor River as a wild and scenic river, and his experiences and involvement with the study. He encouraged the Board to continue to require remediation of the Mall's storm water management system, because of its effect on the River, and expressed the belief that the problem would be further addressed when the Atlantic City Race Course is redeveloped.

Mr. Cain moved, seconded by Mr. Choyce, to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING "AYE", NO "NAY", NO "ABSTAIN".

Mr. Percy moved, seconded by Mrs. Dix, to amend the condition of approval granted to Hamilton Mall, LLC, Block 1135.01, Lot 10.01, Application No. 2011-007, that required the storm water management system remediation to be completed before issuance of a Certificate of Occupancy, to permit the issuance of Certificates of Occupancy for the two junior anchor stores, H & M and Forever 21, prior to completion of the remediation, conditioned upon the storm water management system remediation being completed by September 16, 2013; and to recognize that Basin No. 6, located at the rear of the property, adjacent to the Atlantic City Race Course property will contain water most of the year due to storm water entering the basin from the Atlantic City Race Course property via two pipes.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Adams – Not present

Mr. Bilicki – Aye. He commented that, based on his personal observation and advice from the engineers, he believes an acceptable solution would be forthcoming.

Mr. Cain – Aye

Mr. Cheek – Aye

Mrs. Dix – Aye

Mr. Choyce – Aye. He thanked the Applicant for its diligence to correct the problem that has existed for many years.

Mr. Kurtz – Not present

Mr. Percy – Aye

Mr. Rogers – Aye

Ms. Tomasello – Aye. She commented that, initially, she was against issuance of the CO's because of what had been stated in January when the Applicant presented its prior request, but she recognized the work that has taken place to date and the positive effect on the Community, and was confident that the Applicant would continue to work toward completing the remediation.

Mr. Wigglesworth – Aye

SAID MOTION CARRIED.

Public Comment – Mr. Wigglesworth opened the meeting to public comment and there was no response.

Mr. Cain moved, seconded by Mrs. Dix, to close the public comment portion of the meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Sign Ordinance – Mr. Wigglesworth referred to Philip Sartorio’s memorandum, which had been prepared in response to a request of the Board, within which Mr. Sartorio advised that the standards for signs within the Ordinance should be reviewed and potentially updated to recognize changes to technology.

Mr. Wigglesworth directed the Secretary to contact Vincent Polistina, the Board’s planner, to request that he prepare a proposal to review present standards, meet with a subcommittee of the Board and prepare any proposed ordinance revisions for the Board’s consideration.

Mr. Wigglesworth appointed Heather Tomasello, Charles Cain and Richard Cheek to serve with him on the Sign Standards Review Subcommittee.

The Secretary provided the Subcommittee members with copies of the present Ordinance provisions governing signs within the Township.

Adjournment – Mr. Cain moved, seconded by Mrs. Dix, to adjourn the meeting. SAID MOTION CARRIED WITH ALL MEMBERS PRESENT VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Respectfully submitted,

Nancy Rainbow,
Planning Board Administrator