

Township of Hamilton, NJ
June 3, 2009

A meeting of the Township of Hamilton Industrial Commission was held on the above date with Chairman Robert RaVell presiding. Members present were Eric Aiken, Gordon Craig, Carmen Fichetola, Robin Kealey, Ariane Newman and Rocco Policarpo. Also present were Randolph Lafferty, Solicitor, and Tony DiDio, Real Estate Agent.

Compliance with the Open Public Meetings Law was acknowledged.

New Member – Mr. Aiken was welcomed as the newest member to the Commission and Mr. Lafferty administered the oath of office.

Approval of Minutes – Mr. Fichetola moved, seconded by Ms. Newman, to approve the minutes of the meeting of April 1, 2009, as published. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Mr. RaVell referred to Lynne Kesselman’s letter within which she requested that the minutes of the meeting of March 9, 2009, be corrected to accurately reflect the question she had asked during public comment.

Ms. Kesselman was present and Mr. RaVell pointed out that the minutes are a summary of the meeting, and not a transcript where people are quoted.

The matter was discussed and Mr. RaVell stated that the minutes of the meeting of March 9, 2009, would not be amended, but the minutes of this meeting would clarify that, at the meeting of March 9, 2009, during public comment, Ms. Kesselman had questioned whether people making presentations before the Commission are sworn in. Mr. RaVell noted that the answer was still “no”.

Magic Sports and Health Complex, LLC – Richard Mairone, Attorney, and Ronald Nametko were present.

Mr. Craig recused himself due to his association with Mr. Mairone’s law firm.

Mr. Mairone requested that the Commission grant a ninety day extension of the Agreement of sale with Magic Sports and Health Complex, LLC, to provide additional time to secure approvals. He advised as to the status of the project before the Planning Board, noting that the hearing would probably be continued for one or two more meetings, after tomorrow night’s hearing, before the Board would be in a position to render a decision.

Mr. Mairone expressed the opinion that Magic Sports has been diligently pursuing its approvals, and he stated that the required \$25,000.00 would be posted either on or before June 18, 2009, if the Commission grants the extension

Mr. RaVell noted that the Commission could discuss the matter in executive session, but he asked members to consider the request in open session.

Mr. Lafferty advised as to the terms of the Agreement and noted that the \$25,000.00 payment is non-refundable, and that, at this point in time, the extension would be at the discretion of the Commission . Mr. Lafferty advised that all commercial contracts in New Jersey have an implied covenant of good faith and fair dealing, and, if that's extended to the provision of the subject contract, it essentially interposes a requirement that consent not be unreasonably withheld.

Mr. RaVell questioned whether the Commission would be basing its decision solely on whether the contract purchaser has been moving diligently forward with the approval process, and Mr. Lafferty stated that that would be his position.

Ms. Newman asked if Magic Sports' presentation before the Planning Board had been concluded and all that was taking place presently was public comment. Mr. Mairone explained what had taken place to date and what he anticipated would take place before the conclusion of the hearing.

In response to a question of Mr. RaVell, Mr. Mairone stated that consultants retained by Magic Sports have been at all of the hearings before the Planning Board, and would continue to be present, at great expense to his client.

Ms. Newman moved, seconded by Mr. Kealey, to grant a ninety day extension of the Agreement of Sale with Magic Sports and Health Complex, LLC, to purchase Lots 3, 23.01, 28, 33 and 34 in Block 991, pursuant to Section 3.3 and Section 3.4 o the Agreement.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Aiken – Abstain
Mr. Craig – Recused
Mr. Fichetola – Aye
Mr. Kealey – Aye
Ms. Newman – Aye
Mr. Policarpo – Aye
Mr. RaVell – Aye

SAID MOTION CARRIED.

Mr. Craig resumed his place with the Commission.

Vouchers – Mr. Craig moved, seconded by Mr. Policarpo, to authorize payment of the vouchers submitted, in the amount of \$753.59. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Business Park Entrance Maintenance – Mr. Fichetola reported that Mr. Puggi has informed the Secretary he would be power washing the entrance walls and fence next week.

Public Comment – Mr. RaVell opened the meeting to public comment.

Bruce Strigh, residing at 551 North Street, Mays Landing, New Jersey, asked if there was any concern on the part the Commission as to whether Magic Sports would be able to comply with the construction time constraints within the Agreement.

Mr. RaVell responded that, over the years, the Commission has always been concerned with regard to contract purchasers' compliance with the terms of the agreements, and he noted the problems associated with control over what happens once the property has been conveyed. Mr. RaVell pointed to other properties within the Business Park that had been conveyed but not developed for various reasons.

Mr. Policarpo and Mr. RaVell recalled that the Commission had asked Magic Sports to produce proof of financing before it entered into the Amended Agreement of Sale, and the Commission had been satisfied with the proof presented at the time.

Mr. Lafferty advised that Article Thirteen contains the warranty of construction and remedies and Article Twenty-Eight contains a survival provision relative to warranties and representations.

Mr. RaVell emphasized that very little has been raised by others that the Commission hadn't considered, and he commented that the Commission does not enter into agreements lightly. Mr. RaVell noted that the Commission does all that it can do to make sure land isn't sold to speculators, and that many potential purchasers have been unsuccessful in getting the Commission to sell land to them.

Mr. Strigh informed the Commission that the Planning Board was considering a parking variance that had been requested by Magic Sports, and he pointed out there are no "no parking signs" along the streets within the Business Park. Mr. Lafferty stated that it is his understanding that the streets are dedicated, public streets, over which the Governing Body would have jurisdiction and not the Commission. It was noted that the issue could be addressed at any time, if street parking becomes a problem.

Charles Cain questioned when the proof of financing had been presented, and expressed the opinion that the contract purchaser should have been made to present evidence that he can close on the property before each extension request is granted. Mr. Cain stated that Magic Sports had asked the Planning Board for a ten-year build-out, while the contract provides for the site to be developed within twenty-one months, and he expressed the opinion that that would be land speculation, as he would not need that much time unless he was flipping the property to someone else. Mr. Cain commented that Magic Sports has tied the property up for seven year and is still paying the same price. Mr. Cain expressed the opinion that the Commission has an obligation to the residents to verify that Magic Sports is not speculating on land in the Business Park.

Mr. RaVell pointed out that the Commission has been advised that the only thing it can consider when granting the extension requests is whether the contract purchaser has been diligently moving forward with the project. He stated that the Commission has to be guided by contract law, as it does not want to expose the taxpayers to a lawsuit. Mr. RaVell noted that it would be known at the time of settlement whether the contract purchaser has the financial ability to take possession of the property.

Mr. Cain asked for a determination from the Solicitor if the Commission is permitted to ask Magic Sports if it has the financial ability to proceed

Mr. RaVell responded that he had already asked the question, and Mr. Cain asked that the answer be stated for the record. Mr. RaVell stated he would not ask the Solicitor to respond presently, but he asked Mr. Lafferty to research case law and prepare an opinion as to what the Commission's obligations and restrictions are relative as to whether the Commission has the right to question whether the contract purchaser has the financial ability to construct the project within the timeline stated for completion of the project. Mr. Cain asked that the opinion be specific to the extension requests. Mr. Lafferty stated he would have a report ready by the next meeting.

Mr. Cain asked if there had been any interest expressed by others to purchase land in the Business Park, and if anyone has expressed interest in purchasing the property if Magic Sports fails to take possession. Mr. RaVell advised that all expressions of interest are referred to Tony DiDio, the Commission's real estate agent, who attempts to find a way to accommodate them. Mr. DiDio stated that there have been inquires in the past, but there have not been interest in larger parcels of land anywhere in the State within the last twelve months. Mr. DiDio noted that the Park has been on the market for a long period of time, with opportunity to purchase all during that time.

Mr. Cain commented that he hadn't seen any Commission members at a Planning Board meeting, and Mr. RaVell responded that he and the other members have intentionally refrained from attending the hearings

Adjournment - There being no further business, the meeting was adjourned.

Respectfully submitted,

Nancy Rainbow, Secretary