

Township of Hamilton, NJ  
December 2, 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, Rob Kealey, Ariane Newman and Rocco Policarpo. Also present was Randolph Lafferty, Solicitor.

Compliance with the Open Public Meetings Law was acknowledged.

Approval of Minutes - Ms. Newman moved, seconded by Mr. Fichetola, to approve the minutes of the meeting of November 4, 2009, as published. SAID MOTION CARRIED WITH FIVE MEMBERS VOTING "AYE" NO "NAY", ONE "ABSTAIN".

Magic Sports and Health Complex, LLC – Alexander Barrera, Attorney, Jon Meloy, Architect, and Ronald Nametko were present.

Mr. RaVell stated that the request of Magic Sports and Health Complex, LLC, for a three month extension of its Agreement of Sale, would be discussed in open session if no objection was presented by the Contract Purchaser's representatives; but if the discussion became such that there was a need to do so, the discussion would be continued in executive session. No objection to proceeding in the manner set forth by Mr. RaVell was presented.

Mr. Craig recused himself from participation in the matter.

Mr. Lafferty referred to Christopher Baylinson's letter, dated December 1, 2009, within which Mr. Baylinson requested an additional ninety-day extension of the Agreement of Sale, and advised that Magic Sports would be moving forward with revising its plans in order to apply to the Planning Board for final approval now that the forty-five day appeal period for appealing the Board's decision with regard to preliminary approval had expired. Mr. Baylinson's letter, also, stated that Magic Sports' Engineer Consultant had submitted the documentation necessary to the Pinelands Commission for that Agency to make a determination that the approved plan complies with the Pinelands Comprehensive Management Plan.

Mr. Barrera stated that Magic Sports had waited until the forty-five day appeal period had expired before proceeding with plan revisions, which commenced following publication of the Planning Board's decision on October 2, 2009, following adoption of the memorializing resolution on October 1, 2009, as there had been objectors to the project who had publically stated that an appeal would be filed.

Mr. Barrera stated that they are now moving forward and will have financing for the project in place.

Mr. Nametko stated that plans for Phase II approval would be submitted to the Planning Board in January and they anticipated submitting an application for final approval for Phase I, also, in January.

Mr. Nametko advised that a \$660,000,000.00 insurance binder had been extended on the twenty-fourth of November for construction of both the Mays Landing and Millville sites.

Mr. Meloy noted that a cost estimate had been prepared for the site work, and that the \$660,000,000.00 addresses both the site work and construction of the buildings.

Mr. Meloy stated that he was working on the design of construction drawings and revisions to the plans, based on comments of the Planning Board professional consultants.

In response to a question of Mr. Policarpo with regard to financing, Mr. Nametko stated that all the requested documentation had been submitted, and he hoped to have a signed commitment this month, but he would not be able to reveal the funding source. He promised to provide to the Commission's Secretary whatever information he could.

Mr. Meloy stated that it is anticipated that an application for a footing and foundation permit would be submitted, subsequent to final approval being granted by the Board, while work on the other plans are in progress.

Mr. Nametko stated that he hoped he would not have to request an additional extension.

Mr. Lafferty referred to certain sections of the Agreement and pointed out that the \$25,000.00 payment for the extension is non-refundable. Mr. RaVell added that the money was intended to be compensation for keeping the property off the market.

Mr. Lafferty advised the Commission that it had to make a determination that the "Buyer was "diligently pursuing the Approvals" in order to grant the extension.

Mr. Fichetola moved, seconded by Mr. Policarpo, to grant a ninety day extension of the Agreement of Sale between Magic Sports and Health Complex, LLC, to purchase Lots 3, 23.01, 28, 33 and 34 in Block 991, conditioned upon presenting a non-refundable payment in the amount of \$25,000.00, pursuant to Sections 3.4 of the Agreement.

**ROLL CALL VOTE ON THE ABOVE MOTION:**

Mr. Aiken – Aye  
Mr. Craig – Recused  
Mr. Fichetola – Aye

Mr. Kealey – Not present  
Ms. Newman - Aye  
Mr. Policarpo – Aye  
Mr. RaVell – Aye

**SAID MOTION CARRIED.**

Mr. Craig resumed his place with the Commission.

Summit Associates – Mr. Lafferty informed Commission members that Summit Associates had requested a three month extension of its Agreement of Sale to purchase Phase II, pursuant to the terms contained within Section 3. (c) (i) of the Sixth Addendum to Agreement of Sale, and he read the Section to the Commission.

Mr. Lafferty advised that the discussion would be appropriate for Executive Session.

Mr. RaVell opened the meeting to public comment before proceeding with Executive Session.

Public Comment - Mr. RaVell acknowledged the presence of persons in the audience and asked if they would like to comment.

Charles Cain thanked Mr. Policarpo for the questions he asked during the Magic Sports and Health Complex, LLC, discussion and commented that the questions were to the point and very professional.

Harvey Kesselman asked why the Commission had not asked the representatives of Magic Sports and Health Complex questions related to its project in Millville. It was Dr. Kesselman's opinion that the project located in the Township of Hamilton would work only if the project goes forward in Millville. He stated that the questions should have been asked when considering the financial extension.

Mr. RaVell pointed out that the Commission was not granting a financial extension, that it was granting an extension of the Agreement to purchase the property. He stated that the Commission was acting to protect the taxpayers of the Municipality by proceeding cautiously in an effort not to find the Township in Court. Mr. RaVell noted that the Commission members had voiced the same concerns that residents had expressed, but there exists a binding contract, and the contract purchaser has been pursuing the approvals.

Mr. RaVell further stated that the Commission did not know whether the Millville site would be key to the success of the Township of Hamilton site, but it was limiting its concern to whether Magic Sports was performing pursuant to the Agreement of Sale.

Mr. Lafferty advised that there was nothing in the Contract that required a showing of due diligence on any related site, but if completion of the project was contingent upon something else, it may be something the Commission would want to know.

Dr. Kesselman asked if Mr. Lafferty could seek an answer to that question, and Mr. RaVell stated he would be reluctant to authorize the Solicitor to pursue it.

Bruce Strigh expressed the desire to clarify a statement made by Magic Sports' legal representative, and he stated that the objectors never publically stated they would be appealing the decision of the Planning Board.

Mr. RaVell commented that it would not be prudent of the Applicant to proceed until the appeal period had expired, whether or not there had been a public announcement that an appeal would be filed.

Mr. Strigh questioned what Magic Sports would be providing to the Commission on December 18, and whether there would be proof of project funding at that time.

Mr. RaVell stated that Mr. Nametko had expressed the belief that he would have the funding for the project, and the Lender would decide when that funding would be forthcoming. Mr. RaVell referred to a discussion that had taken place with Magic Sports' former Attorney when he had questioned project funding.

Mr. Strigh asked questions related to the status of Phase II of the Project and the Contract with the Commission.

Mr. RaVell responded that, in spite of best intension, the Contract Purchaser was subject to actions of others; and the fact that no approval was issued for Phase II of the Project raises concern, but it does not rise to the level of default.

Executive Session – Mr. Craig moved, seconded by Mr. Aiken, to adjourn the meeting to Executive Session to discuss the Agreement of Sale between the Industrial Commission and Summit Associates. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, NO “ABSTAIN”.

Summit Associates – When Regular Session resumed, Mr. RaVell announced that the Commission had discussed the request of Hamilton Business Park Associates, LLC, (Summit Associates) for a three month extension of its Agreement of Sale and whether or not it had been diligently pursuing the approvals for Phase II, pursuant to the terms of the Contract.

He noted that Harrison Beverage was seeking approval for certain lots within Phase II, and that Summit Associates would be constructing the roadway associated with development of Harrison's project.

Mr. Policarpo moved, seconded by Mr. Craig, to grant a three month extension to Hamilton Business Park Associates, LLC, pursuant to Section 3. (c) (i) of the Agreement of Sale with the Industrial Commission.

ROLL CALL VOTE ON THE ABOVE MOTION:

Mr. Aiken – Aye

Mr. Craig – Aye, based on the discussion that took place in Executive Session and the above referenced reasons pointed out by Mr. RaVell.

Mr. Fichetola – Aye

Mr. Kealey – Aye

Ms. Newman – Aye

Mr. Policarpo – Aye

Mr. RaVell – Aye

SAID MOTION CARRIED.

2010 Budget – Mr. Policarpo agreed to help prepare the 2010 budget request that would be presented to Township Committee.

Maintenance and some minor improvement to the Business Park entrance and the Industrial Commission's sign on Route 322 were mentioned as items that may need to be included in the budget.

Industrial Commission – Mr. Lafferty advised as to what had transpired to date with regard to updating the Township's ordinance that establishes the Industrial Commission to be consistent with State law, which had been amended in 1984. He commented that the issue probably would not be addressed by Township Committee until next year.

In response to any action taken by the Commission being in jeopardy, Mr. Lafferty stated that Township Committee had adopted a resolution in 2008, ratifying all of the appointments to the Commission and all of the actions of the Commission. He commented that it had been done in accordance with Case Law.

Vouchers – Mr. Aiken moved, seconded by Mr. Policarpo, to approve the voucher submitted in the amount of \$344.46. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

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

Respectfully submitted,

Nancy Rainbow, Secretary

