

HILLSBOROUGH TOWNSHIP PLANNING BOARD

PUBLIC MEETING MINUTES

April 10, 2014

Chairman Sireci called the Planning Board Public Meeting of April 10, 2014, to order at 7:33 p.m. All stood for the Pledge of Allegiance. The meeting took place in the Courtroom of the Municipal Complex.

Chairman Sireci announced the meeting had been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law").

ROLL CALL

Deputy Mayor Greg Burchette - *Present*

Michael Merdinger - *Present*

Committeeman Frank DelCore – *Arrives at 7:42 p.m.*

Steve Cohen, *Vice Chairman - Present*

Tod Mershon, *Secretary - Present*

Neil Julian - *Present*

Sam Conard - *Present*

Steven Sireci, Jr., *Chairman - Present*

Robert Wagner, Jr. - *Present*

Daniel Marulli (Alt. #1) – *Present*

Robert Peason (Alt. #2) – *Present*

Also present: Bruce Rydel, P.P., AICP, Planning Director; Eric Bernstein, Esq., Board Attorney (Eric M. Bernstein & Associates); William H. R. White, III, PE, Board Engineer (Maser Consulting, P.A.); Lucille Grozinski, C.C.R. and Caz Bielen, Videographer (Premier Media, LLC).

DISPOSITION OF MINUTES

April 03, 2014

A motion to approve was made by Deputy Mayor Burchette, seconded by Mr. Mershon.

Roll Call: Mr. Wagner – yes; Mr. Julian – yes; Mr. Mershon – yes; Mr. Conard – yes; Mr. Merdinger – yes; Mr. Peason – yes; Vice Chairman Cohen – yes; Deputy Mayor Burchette – yes; Chairman Dr. Sireci – yes. Motion carries.

DISPOSITION OF RESOLUTIONS

None

PLANNING BOARD BUSINESS

None

BUSINESS FROM THE FLOOR

None

CORRESPONDENCE

SCPB – Spring Breakfast Forum

PUBLIC HEARING – SUBDIVISION/SITE PLAN APPLICATIONS

Chairman Sireci announced the application scheduled for hearing:

Glen-Gery Corporation – File 14-PB-01-MR – Block 182, Lots 10, 11, 12, 45, 46 – 45 Hamilton Road. Applicant seeking Minor Subdivision Approval to reconfigure the lot lines by subdividing Lots 11 and 46 and merging the remaining 3 lots to create a new lot configuration that would allow the sale of the eastern section of the property. No development is proposed at this time, on property in the M District. (*EC Review: 02-24-14*). ***REVISED PLANS received. Adjourned from March 13, 2014 without further notice.***

Joseph Sordillo, Esq. of McElroy, Deutsch, Mulvaney & Carpenter, LLP, representing the Applicant, introduced the application as a minor subdivision, characterized as a lot line adjustment; a merger of 5 lot lines into 2 new lots. He said there is no development proposed at this time. This subdivision is part of our Industrial Site Recovery Act (ISRA) compliance which we are working with a Licensed Site Remediation Professional (LSRP) for. We will have two witnesses tonight; one from Glen Gery Corporation, the other being the Applicant's Engineer.

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Eric Vorgity, Corporate Comptroller for Glen Gerry Corporation, was sworn in and provided the following testimony:

Mr. Vorgity said the Glen Gery Corporation is currently headquartered in Wyomissing, Pennsylvania. Glen Gery currently operates nine brick plants located in Virginia, Pennsylvania, Ohio, Illinois and Iowa, as well as a man-made stone plant in Kentucky. We also operate nine retail centers in that same geographic area.

The company was established 124 years ago in Reading, Pennsylvania. We are currently a subsidiary of Old Castle Inc. which is a large building materials operation, headquartered in Atlanta, Georgia. In 1988, Glen Gery acquired the New Jersey Brick Shale and Tile Corporation which was established sometime in the 1950's. The property located in Hillsborough is north of Hamilton Road and east and west of the railroad line.

(Showing the display) He continued by saying, Regional Area "A" which is the subject of this hearing, is 239 acres which contains the manufacturing facility, warehousing and the principal quarry area. He said, we are asking for a 67 acre subdivision of that 239 acres. We also have two other properties which are east of the railroad tracks, both having access to Hamilton Road which will remain "as is".

Mr. Vorgity said the proposed 67 acre subdivision would receive a restricted use designation by the LSRP as part of the ISRA process. The remaining acreage would receive an unrestricted designation from the LSRP. This subdivision was done at the suggestion of the LSRP so that the 67 acres would never be developed. To clean up the situation for the rest of the property in the future, it was felt that it was best to just subdivide that parcel off.

Mr. Bernstein noted the arrival of Committeeman DelCore at 7:42 p.m.

Mr. White asked what contaminants are in this area that the LSRP is concerned about in the 67 acres?

Mr. Vorgity said we, as Glen Gery, have never tested the site under our ownership. We have never been required to do so by the State or never had a permit to conduct testing.

Mr. White said, so you do not have a Phase I or Phase II Environmental Assessment of the property.

Mr. Vorgity confirmed no such report was done and said, we are going for an unrestricted designation; I do not know that to be a requirement of a subdivision request.

Mr. White said since you stated the subdivision is being made at the suggestion of your LSRP, I am curious as to why this portion is being selected.

Mr. Vorgity responded, it is because there is significant wetlands and significant flood plain which makes it an undevelopable area. It could be used for a soccer field, baseball field or some other recreational subsurface use.

Mr. White asked if the 68 acres was part of the manufacturing area.

Mr. Vorgity replied it was never mined and effectively unused by Glen Gery. There had been some storage of material there but had no mining, warehousing or manufacturing by Glen Gery or by the previous owners.

Mr. White asked how they know the PCB impacts of the area.

Mr. Vorgity explained, the PCBs you are referring to were a result of gas and oil stains on the concrete under the plant and warehouse area which was on the other side of the property. The concrete of the plant floor was broken up and taken away. The land was then tested using the required standards of the State and fully dealt with. However, there was not much reclamation done there.

Mr. Rydel asked for clarification. He said, when looking at Exhibit Sheet 4 of 9, it appears the structure you are referring to is on the property which you are retaining and wish to develop at some future time.

Mr. Vorgity stated it is on the property which would be given an unrestricted use by the LSRP. We,

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ourselves, will never come before you to develop this area.

Mr. Rydel said the PCBs or whatever contaminants are present exist on the acreage you are looking to sell, not on the 67 acres.

Mr. Vorgity agreed and said there was never any manufacturing done on that portion of the property. As I understand it, PCBs are the result of oil, gas and other petroleum products. Mr. Vorgity gave examples.

Mr. Merdinger corrected Mr. Vorgity and stated there are no PCBs in the gasoline you fill your car with. PCBs are from transformers and special heat transfer oils and things like that; PCB is an oil.

Chairman Sireci informed Mr. Vorgity that Mr. Merdinger is an environmental engineer.

Open to the public

No questions for this witness.

Robert Zederbaum, P.E., of RBZ Enterprises, Inc. engineer for the Applicant, was sworn in, reviewed his credentials, was accepted by the Board and gave the following testimony:

Mr. Zederbaum reviewed Sheet 4 of the Display saying this plan shows the entire parcel which is the conglomerate of the 5 existing lots; Lots 10, 11, 12, 45 and 46. The gross acreage of all 5 lots is 238.744 acres. Lot 10 is a fully landlocked parcel which exists within Lot 46. We are looking to clean up this existing situation by putting all 5 lots together and then subdividing off the approximate 68 acre parcel. We have come up with a fairly straight line of subdivision, taking the lot at least past the lot presently owned by Hillsborough Township, should it ever be needed for any kind of access to this lot. We have also left frontage on Hamilton Road to allow for proper access.

Exhibit A-1 represents Sheet 4 of the plan provided with the overlay of the wetland buffer which was established as per the Letter of Interpretation (LOI) from the State for this property which extends through 2015. When looking to establish the proposed lot lines, we had to make sure the lands were protected. All of the environmentally sensitive areas will be protected from development. This is a fully compliant subdivision with no variances required. However, several waivers have been requested.

Mr. Zederbaum reviewed various comments made in the Environmental Commission report. He stated the erosion noted is normal from the harsh winter we have had. As soon as the things are completely dry, we will have someone work on it. Also, a copy of required reports will be provided to the Township as they become available.

The engineering report from Maser Engineering was reviewed. Mr. Zederbaum said, as I had reviewed with Mr. White, we were hoping to be able to use the old topography available at least for this portion of the project since we are essentially not looking to do anything more than move around the lot lines at this time. Should any development be proposed in the future, I believe the topography will need to be updated. We have complied with Item #2; for Item #3, we will be filing by deed, not by map.

Mr. Sordillo said we have already noted we will provide the final report of the LSRP to the Township and will be confirming any lot designations with the Township Tax Assessor. He further noted that the Somerset County Planning Board has issued an incomplete letter as they were unsure of what the term "green space" meant with regards to our application. I have been in touch with the SCPB on this matter but have not received our final approval letter yet. It should be a condition of approval. He stated all issues in the Planner's report have been addressed.

Mr. Rydel said the Applicant, being the owner of the property, has an obligation to find out what is going on with regards to the monitoring wells. I do not think we should rely upon the information provided by PSE&G, as Mr. Zederbaum has suggested. Mr. Rydel asked that the comments from The Raritan & Millstone River Flood Control Commission be addressed.

Mr. Zederbaum reviewed the comments from the Flood Control Commission which indicated there had been some concern from the residents of Manville that this property has contributed to flooding in their town. He stated, I do not know if that is well founded or not. However, the application before the Board

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is not exacerbating the condition one way or the other. I think that is something that needs to be looked at in the future should any development be proposed on either of these lots.

Mr. Sordillo reviewed that while the monitoring wells are still on site, they are no longer monitored nor required by the NJDEP. A copy of the letter revoking the requirement was then presented to Chairman Sireci.

Mr. Rydel asked for clarification on what the Applicant describes as “green space”.

Mr. Vorgity said the property in its entirety is under a sales agreement with another party and going through a preliminary review process. At this point it would be inappropriate to comment on what they may or may not intend. That party will be coming before the boards of the Township in the near future. We have had very brief discussions with the Township about the possibility of having that property donated to the Township for green space such as walking paths, sports fields, and the like. Further discussions will be had should there be interest by the Township.

Mr. Merdinger asked for further discussion on the landfill, as noted in the Environmental Commission report. He stated, this has to be part of the ISRA process.

Mr. Vorgity disagreed with Mr. Merdinger’s comment. He said it is only being designated as “restricted use”; no testing was done there. Our understanding is starting in the 60’s and going through the early 70’s, the Township of Hillsborough used the property as a landfill.

Mr. Merdinger informed Mr. Vorgity that Hillsborough Township has never collected its own garbage. He said, your own people have told me they have never seen a township truck going in there in the 70’s; it closed in 1973. There are bricks on the side of your landfill which are stacked 10 to 20 feet high. You have to address this not as a municipal landfill site but as a landfill on your property. It is common for people to refer to the material that goes into a landfill as MSW, “Municipal Solid Waste”, but it does not mean that the township dumped it.

Chairman Sireci reiterated that “municipal” in this case refers to the type of trash and scale of the landfill. It does not designate that the trash originates from municipal government. Chairman Sireci, reminding Mr. Vorgity that he was still under oath, asked whether he knew with certainty that the Township of Hillsborough dumped trash on the site.

Mr. Vorgity stated, Glen Gery purchased the property in 1988 and was made aware through various documents, that the landfill was closed in 1973. A portion of that property, being Block 182, Lot 7A which had belonged to PSE&G, and a portion being Block 182, Lot 11, had belonged to the Brick and Shale’s Company. Again, the landfill was closed prior to our ownership of the site. We are willing to try to get additional documents from PSE&G.

Mr. Sordillo added, those inquiries have already been made with PSE&G and title searches have begun. At this time we do not have all documentation in, only some letters from 1985 that reference that the landfill had operated on these two properties.

Committeeman DelCore asked why the matter of the landfill was not fully researched prior to the application being filed.

Mr. Sordillo responded saying, we did not think that was something we had to address at this time being that this application only involves changes in lot lines.

Chairman Sireci stated when you make representation that perhaps the Township may take the piece of land, it is important to discuss what is on the land for the interest of the tax payers. The Township does not want to take on a financial obligation in order to clean up the landfill.

Mr. Merdinger said the word “closed” was used. In landfill terms there is a proper closure to landfill. He said from what I can tell, that has never been done, although it may not have been used anymore after 1973. Mr. Merdinger briefly explained some of the detail on the proper way to “close” a landfill. Mr. Merdinger said this is something you are going to have to address.

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Mr. Sordillo agreed. The idea of granting this property to the Township is just that; one of the options. Mr. Bernstein read the NJDEP letter, dated February 6, 1990 regarding the monitoring wells, provided as part of the application.

Mr. Julian, Planning Board member and representative member of the Environmental Commission (EC) to the Board, stated the permit has nothing to do with the landfill closure. Mr. Julian reviewed comments from the meeting at which the application was presented to the Commission and the EC site walk of the property. He said the EC would like to see updated test methods of the groundwater monitoring. When redelimiting lot lines, it is difficult to see where the pollution is flowing to.

Deputy Mayor Burchette stated for the record, we do not know at this time if there is any pollution on the site.

Chairman Sireci asked Mr. Bernstein whether there is relevance with regards to the application for subdivision.

Mr. Bernstein stated that any action the Board takes subject to this subdivision application does not necessarily prejudice nor impact upon any site plan application that may come before the board in the future. However, the Board does have the right to request some of the reports and materials in whichever form they exist, prior to anyone submitting and application for any development of this property. Anyone who buys this property has to be under the knowledge that we will need to have the information prior to any hearing for development.

Mr. Bernstein continued, the concerns raised by both the Environmental Commission and the Board Engineer, Mr. White, relative to items that need to be addressed to the extent that the Applicant can address them, or the Board needs to address it in the Approval Resolution so that the existing applicant or future applicant for this site, is made aware that it is a matter that needs to be addressed prior to any application.

Mr. Julian said we are looking at three areas of testing: sediment that was brought in from NJ American Water; ground water monitoring wells for the landfill; and any test results for the upcoming ISRA, as well as any PCB contamination.

Deputy Mayor Burchette asked if that would all be covered under the LSRP.

Mr. Julian said being the Applicant is looking to have this property deed restricted; I am not certain what type of testing will be required under the LSRP.

Chairman Sireci stated the representation made earlier was that it is not being done now precisely because the lot that this is on is being deed restricted.

Members of the Board briefly discussed "LSRP".

Mr. Julian said before we move a lot line for the purpose of deed restricting a piece of property, I would like some qualified information as to what is on that property, which in this case, we do not have. That is the point of the Environmental Commission.

Mr. Bernstein said, it has been highlighted by the fact that the Applicant has indicated the reason they are moving the lot lines and deed restricting the property is because there are environmental issues on the property which they want to avoid, for lack of a better phrase, "contaminating" the clean property for purposes of this subdivision and/or a future sale.

Deputy Mayor Burchette questioned the use of the term "contaminated".

Mr. Bernstein pointed out the term was first used by the Applicant, not the Board. It may turn out that there is no contamination but it is in the best interest of the Board to at least put everyone on notice that when this goes forward, as apparently it is, that applicant needs to understand what issues this Board is going to want to learn about in advance, to the extent that the material exists. It is more of a precautionary

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situation since the Applicant is not here simply moving lot lines solely for that purpose. The Applicant has clearly indicated as part of the application that the request comes for purposes of a subsequent sale and development by a third party yet to be determined.

After some discussion amongst board members regarding the purpose of the subdivision, Mr. Bernstein presented the question raised by Deputy Mayor Burchette as to why the Applicant is looking to subdivide the property in the manner requested.

Mr. Vorgity said, as stated up front, the entire 67 acres are undevelopable due to wetlands, flood plain and an area established sometime in the past as a landfill.

Chairman Sireci pointed out as a matter of the record that the landfill was not mentioned during Mr. Vorgity's original presentation.

Mr. Vorgity responded that it had been discussed a number of times since. He said, even if the landfill was not on it, it would be undevelopable. To simplify matters, the LSRP suggested to designate the whole area as restricted use and segregate it off.

Committeeman DelCore asked, if you are under contract for the entire parcel, why do the subdivision now?

Mr. Vorgity said it is part of the ISRA process. Mr. Vorgity briefly reviewed again what has been done under the ISRA process.

Deputy Mayor Burchette said we have had many applications before us with problem areas but the property is addressed as one site; they are not segregated off. Why not have this be one site?

Mr. Vorgity said it is because you would not then get an "unrestricted use" designation to the west. Again, the entire 67 acres are undevelopable.

Deputy Mayor Burchette shared his concern with separating the 67 acres off should there turn out to be any problems with that property.

Mr. Julian added we have never seen the IRSA report which specifically recommended that delineation in terms of the flood plain and wetlands.

Committeeman DelCore said the implication is that this subdivision request is in compliance with what the LSRP wants. However, we do not know what is in the LSRP report so why would we move forward without knowing the full implications of the report.

Vice Chairman Cohen asked Mr. Vorgity if there is any agreement with the prospective buyer that the sale of the property is contingent upon the subdivision of the 67 acres.

Mr. Vorgity said there is nothing in writing or verbal. The sale agreement is for the entire 348 acres.

Chairman Sireci said the concern is that when we next see this property, the 67 acre parcel will not be part of it; you will never see it again.

Vice Chairman Cohen further expressed his concerns.

Mr. Bernstein pointed out that the major issue as to why the Board is concerned is the basis on which this application has been made. You stated in your application as well as in testimony that the reason for this lot line change is because you have been advised by your LSRP that this is the way to go. No report has been presented from the LSRP which states the basis for the subdivision, rather the Applicant has simply represented that the LSRP has requested it so we are therefore asking that it be granted. Based on that request, I think the Board does have the right to know how that request came about for purposes of the lot lines.

Chairman Sireci suggested that another developer wanting to develop a property with wetlands would design the project around the environmental constraints. He asked Mr. Merdinger why an LSRP would say

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an entire sight is restricted because part of it is wet.

Mr. Bernstein advised Mr. Merdinger not answer the question, not that he is not qualified but because it is not his to answer.

Chairman Sireci then addressed his question to the Applicant.

Mr. Vorgity said if I did not make myself clear initially, I will make myself clear now. He then restated his comments regarding the wetlands, flood plain and landfill on those 67 acres and that it is at the recommendation of the LSRP that this subdivision request is made.

Chairman Sireci said the concern is not that the 67 acres is undevelopable but rather that the 67 acres is being asked to be divided out. The logical reason is that if it is not divided, it would make the entire parcel restricted. What is there about that piece of land that would make the entire parcel restricted such that it needs to be divided out in order to contain the restriction?

Mr. Vorgity again said even if the landfill was not there, the entire 67 acres is undevelopable.

Chairman Sireci asked, if the landfill was not there, would those 67 acres make the entire site "restricted".

Mr. Vorgity said he could not give a specific response.

Mr. Bernstein pointed out that the witness is not an expert in this field. Mr. Vorgity has clearly stated his qualification and what his position is. He is however, giving us what is very close to what I would call "expert testimony" on an understanding with nothing before this Board that the Board can review or question anyone about regarding such. What we do have is Exhibit A-1 which shows the designation of the wetlands by way of a permit granted by NJDEP which clearly does not indicate that the entire proposed subdivided lot is wet.

Mr. Bernstein asked Mr. Sordillo if the Applicant intends to provide documentation or a witness or both, who can testify as to why the recommendation for the subdivision has been presented to the Board, other than a representative of the company who is providing what I would determine to be "hearsay".

Mr. Sordillo asked that the application be carried to a future date in order to be able to allow the LSRP to testify.

Mr. Bernstein said, I would also suggest that in advance of his appearance before the Board, that he provide any and all documentation on which he will be basing his testimony, to the Board and professionals for review prior to testimony.

Mr. Sordillo agreed but clarified whatever documents can be presented, will be presented; some are still in draft form.

Committeeman DelCore asked that the LSRP provide his full report prior to his appearance before the Board.

Mr. Sordillo said we were told that he cannot finish his full report until we get the subdivision.

Deputy Mayor Burchette said that is my understanding of the LSRP process; he cannot testify until his report is complete.

Mr. Bernstein said if that is the case, the Board needs to know that in advance. He said the Applicant has the obligation to advise you of what he can provide, if any, and why he cannot provide what the Board is seeking. Then the Board can make a decision accordingly as to grant or deny the lot line.

Chairman Sireci pointed out that the Applicant already said they can produce the LSRP. There is a difference in producing the person and producing the final report.

Mr. Sordillo clarified that they may be able to provide the data on which the report will be based, despite

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not being able to produce the final report.

Mr. Julian said because the LSRP Program is so new, it would be valuable to have someone from the State to let us know what the LSRP can and cannot do.

A question was asked of Mr. Merdinger regarding the finalization of the LSRP report.

Mr. Bernstein instructed Mr. Merdinger, although an LSRP and expert in the field, not to answer the question. He said ultimately, the process will need to come from the board's engineer.

Mr. Merdinger said I would like to be sure that when the LSRP comes, he is able to address the second item of the EC report which addresses the fill from NJ American Water. It was already testified that clean fill is going in the area but this is a test area. As a test area, it is not "clean certified fill". The EC is asking for the testing on that area.

Mr. Vorgity and members of the Board further discussed the fill.

Mr. Bernstein stated we will see what the paperwork says.

Chairman Sireci reiterated that the LSRP will need to be able to address all of the concerns of the Environmental Commission and all requests made at this hearing.

Mr. Sordillo stated a month's time would be sufficient to prepare and collate all of the documents.

Mr. Sordillo acknowledged the Applicant was willing to sign an extension through June 30, 2014.

A motion to continue application #14-PB-01-MR to June 05, 2014 without further notice and accept the extension to June 30, 2014 was made by Deputy Mayor Burchette, seconded by Mr. Merdinger.

Roll Call: Mr. Wagner – yes; Mr. Julian – yes; Mr. Mershon – yes; Mr. Conrad – yes; Mr. Merdinger – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor Burchette – yes; Chairman Dr. Sireci – yes. Motion carries.

Mr. Rydel informed the Board there was no business scheduled to the next meetings of April 24th or May 1st.

Chairman Sireci asked for a motion to cancel the meetings of April 24, 2014 and May 1, 2014.

A motion was made by Mr. Merdinger, seconded by Mr. Conard. All were in favor; none opposed. Motion carries.

Chairman Sireci stated the next meeting will be held on May 8, 2014.

ADJOURNMENT

The meeting adjourned at 9:00 p.m.

Submitted by:
Debra Padgett
Administrative Assistant
Planning Board/Board of Adjustment Clerk