

HILLSBOROUGH TOWNSHIP PLANNING BOARD
PUBLIC MEETING MINUTES
April 07, 2016

Chairman Lipani called the Planning Board Public Meeting of April 07, 2016 to order at 7:32 p.m. All stood for the Pledge of Allegiance. The meeting took place in the Courtroom of the Hillsborough Township Municipal Complex.

Chairman Lipani 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

Mayor Frank DelCore - Present
Robert Wagner, Jr. - Present
Deputy Mayor Carl Suraci - Present
Robert Peason - Present

Sam Conard - Present
Shawn Lipani, Chairman - Present
Kenneth Hesthag - Present
Sally Becorena (Alt. #1) - Present
Stephanie Forrest (Alt. #2) - Arrived 7:33 pm

Dr. Daniel Marulli, Vice Chairman - Present
Neil Julian, Secretary - Absent

Also present: David K. Maski, PP, AICP, Township Planning Director; Eric M. Bernstein, Esq., Board Attorney (Eric M. Bernstein, & Associates); William H.R. White, III, PE, CME, Board Engineer (Maser Consulting P.A.); Lucille Grozinski, CCR, Board Court Reporter; and Caz Bielen, Board Videographer (Premier Media, LLC).

DISPOSITION OF MINUTES

□ February 25, 2016

A motion to approve was made by Mr. Peason, seconded by Vice Chairman Marulli.

Roll Call: Mr. Peason - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Ms. Forrest - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes; Chairman Lipani - yes. Motion carries.

□ March 10, 2016

A motion to approve was made by Mr. Conard, seconded by Vice Chairman Marulli.

Roll Call: Mr. Peason - yes; Mr. Conard - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Ms. Forrest - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes; Chairman Lipani - yes. Motion carries.

DISPOSITION OF RESOLUTIONS

□ 751 Highway 206 Associates, LLC File 15-PB-13-SRV (Application known as: Cornerstone Professional Center (751 Highway 206 Assoc., LLC)

A motion to approve was made by Mr. Wagner, seconded by Vice Chairman Marulli.

Roll Call: Mr. Wagner - yes; Mr. Conard - yes; Vice Chairman Dr. Marulli - yes; Mayor DelCore - yes. Motion carries.

PLANNING BOARD BUSINESS

□ Krismic Assoc., LLC - File 14-PB-21-MSR - Time of Decision Extension through September 08, 2016

Mr. Peason asked why the applicant is asking for an extension.

A motion was made, seconded by Vice Chairman Marulli.

Michael O'Grodnick, Esq., present for another application, stated he represents the Applicant. The subject property is the United Rent-all site. This application will require NJDEP approval. Unlike boards, the NJDEP does not have time limits and have not yet responded to the requests made over the past year to allow the Applicant to be included in the proposed turn-around on Route 206. The expectation is that a decision will be made by NJDEP this summer.

Roll Call: Mr. Peason - yes; Mr. Conard - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Ms. Forrest - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes; Chairman Lipani - yes. Motion carries.

SPECIAL COMMITTEE REPORTS

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None

BUSINESS FROM THE FLOOR

None

CONSIDERATION OF ORDINANCES

None

PUBLIC HEARING - SUBDIVISION/SITE PLAN APPLICATIONS

- ***Country Classics, - Phase 4A - File 07-PB-20-MJF (2016 Extension Request)*** - Block 205.50 (formerly Block 205), Lots 28, 32, 32.02 & 33.01 - Amsterdam Drive, Murphy Drive (Extension) & Galligen Drive (Extension). Applicant requesting a two year extension of time for Preliminary and Final Major Subdivision, Resolution of Approval dated January 17, 2008, on property in the RA, Residential / Agricultural District.

Chairman Lipani recused himself for this application and turned the meeting over to Vice Chairman Marulli.

Michael O'Grodnick, Esq. of Mauro, Savo, Camerino, Grant & Schalk, representing the Applicant introduced the application request. Mr. O'Grodnick said Phase 4A of this project was approved in 2008. As permitted by the Permit Extension Act, development was allowed to be delayed until June 30, 2016. The Applicant is seeking an extension through June 30, 2018. A legal memorandum, dated today, has been provided for the Board's review.

Todd Van Cleef was sworn in and gave the following testimony:

Mr. Van Cleef said Phase 4A is the final phase of Country Classics. Country Classics is currently finishing out Phase 4C and developing Phase 4D. The request comes as a result of the recession of 2008 which cut down on sales. All off-site improvements have been completed and any obligations for the entire Country Classics development have been completed.

Mr. O'Grodnick asked Mr. Van Cleef to discuss the number of available lots vs. remaining lots for the Phase 4 sections.

Mr. Van Cleef said Phase 4 B has been built out and completed; Phase 4C - 22 lots of 36 have been sold; Phase 4D - 22 lots remain. Based on their absorption, Mr. Van Cleef said he did not see Country Classics going through the remaining lots until the end of this year, beginning of next, thus the request for the delay for Phase 4A. Approximately 87% of the entire development, which is 694 of 846 lots, has been sold.

Public

No questions from the Public.

No questions/comments from the Board.

Mr. Bernstein said the Board has the right to grant a one-year or two-year extension under the statute.

Vice Chairman asked if there could be any subsequent requests after that period of time.

Mr. Bernstein said there was not. The Applicant would have to come back before the Board for a full application.

A motion to grant a two-year extension for Phase 4A was made by Mr. Conard, seconded by Mr. Peason. **Roll Call:** Mr. Peason - yes; Mr. Conard - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Ms. Forrest - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes. Motion carries.

Vice Chairman Dr. Marulli turned the Chair back over to Chairman Lipani.

- ***GLEN GERY (GG RE Co.) - File 15-PB-04-MR*** - Block 182, Lots 10, 11, 12, 45 & 46 - 95 Hamilton Road. Applicant seeking Minor Subdivision with Waivers to reconfigure lot lines by

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merging all five lots totaling 238.7 acres, then subdividing a lot in the southeasterly corner to create one lot consisting of approximately 25.494 acres (Proposed Lot 46), with the remaining lot (Proposed Lot 11) approximately 213.25 acres of remaining land, on property in the M, Mining District. (*EC Review: 03-23-15*). **Adjourned from 07-09-15 agenda.**

John Marmora, Esq. of K&L Gates LLP, representing the Applicant said the remediation report has been completed and filed with the NJDEP November, 2014. The applicant is now hoping to sell the property to a developer, which would be the subject of a subsequent application by others. The subject of this application is the lot lines.

Robert Zederbaum, PE was sworn in, reviewed his credentials, was accepted by the Board, and gave the following testimony:

Exhibit A-1 - Sheet 4 of 9 "Minor Subdivision Overall"

Mr. Zederbaum said there are no requirements in the Mining District. This application is simply to combine the five lots and subdivide them into two lots. He said in reference to the Planning review by Mr. Maski, Lot 46 can be increased to provide additional lot width. However, it seems anti-productive since it does not seem to serve any purpose. (Proposed) Lot 46 will never be anticipated for any kind of development, passive development at best. The Board will have the opportunity to rule on the development of that property at the time of a future application and if the Board chooses to grant a variance for it. He said he finds it unlikely that an application will be submitted for (Proposed) Lot 46 but if it is something the Board wishes to have in place now, the acreage can be added.

Mr. Maski asked if the 150 ft. proposed gives enough space for an access driveway. He asked if a driveway could be far enough away from the bridge, taking into consideration that there is a blind spot coming over the overpass.

Mr. Zederbaum said they had not done any analysis as to access since there are no plans whatsoever to develop the property by this Applicant. He said he does not think adding another 50 or 100 ft. will change the access to that property, either for or against. If there were to be development of that lot, which is unlikely, the access would probably come from the lands remaining.

Chairman Lipani asked the reasoning behind the proposed lot lines.

Mr. Marmora said there may be further subdivisions on this property in the future. This property is in the Mining Zone but now obsolete since the site has been fully mined and reclaimed. The goal was to maximize the developable area.

Mr. Zederbaum concurred with Mr. Marmora's statement. He said they essentially took out the portion of property they believe is not developable.

Members of the Board questioned why the lots are being subdivided at all, and asked for further explanation as to how the lot lines were established.

Mr. Marmora said the lot lines were established by the LSRP as part of the remediation. With the previous application submitted and later pulled, the LSRP was of the understanding that that portion was never part of the "industrial establishment" ISRA site. That portion on the other side of the stream was not considered part of the "industrial establishment." The LSRP was under the impression that the property then had to be subdivided. The NJDEP did not require the subdivision. The predecessor statute of ISRA is ECRA. An ECRA review was triggered for this site in 1988 when Glen Gery bought the property from New Jersey Brick and Shale. The "no further action" and the negative declaration at the conclusion, which was concluded in 1992, was submitted to the Township, at the request of the Environmental Commission. The review indicated that that portion was not included as part of the "industrial establishment." However, the LSRP assumed it was, so that is why it was originally drawn in that area.

Mayor DelCore asked it seems that the lot lines were cut to maximize the clean property and segregate out the property subject to environmental clean-up.

Mr. Marmora disagreed. He said it is not subject to environmental clean-up. The NJDEP did not require it.

Mr. Wagner asked why subdivide at all; why not just keep it one.

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Mr. Marmora said the adjacent PSE&G site was formerly owned by Hillsborough Township back in the 1960's, early 1970's and operated as a landfill. The landfill migrated on to a larger area of the property and later closed altogether. When it was closed, NJDEP wanted groundwater monitoring, which was done in the 1990's. The negative declaration provided that the groundwater wells should be sealed. Those groundwater monitoring results were submitted as part of submitted reports to the NJDEP back then. All of the test results of the groundwater monitoring were provided to the Town last spring, as requested by the Environmental Commission. So that is considered a "closed landfill" and no remediation is required on that portion. The remediation that was required was for the other side. The second ISRA trigger came in 2008 when Glen Gery ceased operations. That remediation has taken all this time to complete. The remediation was thorough and cleaned up to "unrestricted" standards. The final report, which the Township was copied on, was filed with the NJDEP by the LSRP in November, 2014.

Mayor DelCore asked, if the remediation was under "unrestricted status", why the subdivision is being proposed in this way.

Mr. Marmora said "clean to an unrestricted status is the industrial status property, not that portion which was considered a closed landfill.

Mr. Wagner asked for further review using the exhibit.

Mr. Zederbaum pointed out the triangular shaped proposed Lot 46 on the exhibit map.

Mr. Wagner asked if that lot was "unrestricted."

Mr. Marmora said that is only a portion of the site. The primary landfill that was owned by the Township is the adjacent property, currently owned by PSE&G. The total landfill area which was somewhere between 5-9 acres, was not part of the "industrial establishment" so it was not part of the remediation that was signed off on an "unrestricted" basis. The "unrestricted" is for the balance of the site. The small portion of the landfill was not required to be remediated because it was closed years before. There are no legal restrictions, but practical restrictions on this portion, which is why it is sectioned off.

Chairman Lipani said the practical restriction is that you cannot build on it because it cannot hold load bearing, but if a developer had a property of that size, the developer could just leave that area of the property as undeveloped. This leads back to the question of why the property is being segregated and not left as a contiguous lot.

Mr. Marmora said the reason is because a developer does not want to own it. If there was an idea for development (Proposed Lot 46), it would have to go through the proper channels.

Mr. Marmora said the piece that is desirable to a developer is the land that was the former "industrial establishment" that the NJDEP has on record as clean unrestricted standards.

Board Engineer, William H.R. White, III, PE, CME, said NJDEP typically only looks at 30% of applications. He asked if NJDEP actually looked at and signed off on the application. He said there are areas of concern where no remediation was done, such as the oil chip road, and others that were pointed out but no remediation was done.

Mr. Marmora said NJDEP no longer does. As previously stated, originally the LSRP thought the subdivision was required. He went back to NJDEP to discuss and discovered it was not required. NJDEP has had the report since November 2014. NJDEP will not issue a letter as to whether or not they reviewed it and any conclusions. Mr. Marmora said they are confident that the report has been on file for 1 ½ years, without comment.

Mr. White pointed out the report was filed under the current zone use of Mining. He asked if there would be any issues should that property come to the Board for re-zoning under residential.

Mr. Marmora said the property has been cleaned to "unrestricted standards." He said he did not bring the LSRP because these issues were not raised in the reports. This information is found in the Remedial Action Outcome Report dated November, 2014, copies of which were provided to the Town. The LSRP is standing behind the claim that it is clean to unrestricted standards.

Board Attorney, Eric M. Bernstein, Esq. said the Applicant is in for a subdivision, which the Board can approve or deny. The issue of the environmental status of the property, in and of itself, is not an issue before the Board at this time because there is no development on the site, other than the remnants of a closed mining operation. If and when the Township Committee was to consider rezoning the property, and

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if and when it was granted, depending of the application, the Planning Board or Zoning Board would address the issue of the environmental status at that time. At that point, discussions on the LSRP decision and NJDEP award would be discussed. The Board can certainly ask to hear from the LSRP but the issues of environmental issues with respects to where the lines are drawn are not the focus. The decision to granting or denying the request for subdivision is whether or not it is conforming to the CODE and MLUL. The report from Mr. Maski indicates that although he would like to see another 46 ft. added to Proposed Lot 46; the property in and of itself conforms.

The Board discussed the options.

Open to the Public
No questions or comments.

Close Public

Mr. Maski noted the time of decision runs through April 30, 2016.

Chairman Lipani said the entrance to the proposed subdivided property is not conducive for traffic safety, for either ingress or egress. Anyone coming out is basically blind due to the overpass, which would almost make this property unusable for safe access on Hamilton Road. Whether an easement or access can be granted off of the other property is yet to be determined. Chairman Lipani said he thought the access recently put in was for utilities. If the intension is for public access, it needs to be moved further down.

Mr. Wagner spoke in favor of increasing the width of the frontage, as suggested by Mr. Maski. There is also the issue of the replacement of the existing bridge. It is likely that a new bridge would be less steep and longer.

Vice Chairman Dr. Marulli said he was not comfortable with the application, as proposed.

Mr. Peason said the proposed lot lines do not present the best use for the property, albeit legally acceptable.

After further discussion Mr. Marmora requested an adjournment to continue the application to discuss the access. He said he will hire a traffic engineer to do a study and speak with the County on the plans for the bridge. Mr. Marmora said he agreed that environmental issues are not at question for this application.

Mr. Bernstein asked if there are any other proofs the Board is looking for from this Applicant.

Mayor DelCore said he would like to hear from the LSRP to understand what was done.

Mr. Marmora agreed to an extension of time through June 30, 2016 and a continuation of the application on the June 09, 2016 agenda, without notice.

A motion to accept the extension for the time of decision through June 30, 2016 was made by Vice Chairman Dr. Marulli, seconded by Mr. Peason.

Roll Call: Mr. Peason - yes; Mr. Conard - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes; Chairman Lipani - yes. Motion carries.

A motion to continue this application to the June 09, 2016 without further notice, was made by Vice Chairman Dr. Marulli, seconded by Mayor DelCore.

Roll Call: Mr. Peason - yes; Mr. Conard - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes; Chairman Lipani - yes. Motion carries.

EXECUTIVE SESSION

- The Board will convene to discuss litigation and Attorney-client privilege matters - RE: Pierson Properties, LLC

Mr. Bernstein said the Board will convene to discuss litigation and Attorney-client privilege matters on the Pierson Properties, LLC application.

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A motion for the Board to go into Executive Session was made by Mr. Conard, seconded by Mr. Wagner. All were in favor, none opposed. Motion carries.

Executive Session: 8:23 pm to 8:39 pm

Mr. Bernstein stated there was a discussion about the Pierson Properties, LLC application. The other matter discussed was related to the Noise Expert, Norm Dotti on the application. The original contract was not-to-exceed \$4,000. However, the bill exceeded \$6,000. The Applicant's Attorney, Alexander Fisher, Esq. agreed in writing that the Applicant would agree to pay the additional charges. The Board agreed that a not-to-exceed \$6,000 will be paid, provided that all monies relative to this contract are paid by the Developer. The Township and the Board have no obligation to pay any/and or all of the amount of the original or amended bill in question.

Mr. Bernstein said if the money is not ultimately deposited, Mr. Dotti will be paid \$4,000.

A motion to approve the invoice from Norm Dotti, not to exceed \$6,000 out of the escrow account, and that the Board nor the Township are in any way responsible for those monies, was made by Vice Chairman Dr. Marulli, seconded by Mayor DelCore.

Roll Call: Mr. Peason - yes; Mr. Conard - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Vice Chairman Dr. Marulli - yes; Deputy Mayor Suraci - yes; Mayor DelCore - yes; Chairman Lipani - yes. Motion carries.

Mr. Bernstein said there are no items on the agenda of the April 14th or April 28th agendas.

A motion to cancel the meetings of April 14th and April 28th was made by Mr. Conard, seconded by Deputy Mayor Suraci. All were in favor, none opposed. Motion carries.

Chairman Lipani said the next meeting will be held on May 5th.

ADJOURNMENT

A motion to adjourn was made and seconded. All were in favor, none opposed. Motion carries.

The meeting adjourned at 8:43 p.m.

*Submitted by:
Debora Padgett
Administrative Assistant / Planning Board Clerk*