

HILLSBOROUGH TOWNSHIP PLANNING BOARD

PUBLIC MEETING MINUTES

November 02, 2017

Chairman Shawn Lipani called the Planning Board Regular Public Meeting of November 02, 2017 to order at 7:33 pm. 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 Carl Suraci - Present
Robert Wagner, Jr. - Present
Committeeman Frank DelCore - Present
Robert Peason - Present
Stephanie Forrest - Absent
Neil Julian, Vice Chairman - Present

Sally Becorena - Present
Shawn Lipani, Chairman - Present
Kenneth Hesthag, Secretary - Present
Ron Skobo (Seat Alt. #1) - Present
Sam Weinstein (Seat Alt. #2) - Absent

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

DISPOSITION OF MINUTES

None

DISPOSITION OF RESOLUTIONS

- Distinctive Properties, LLC - File 09-PB-06-SRV (2017 Extension)

A motion to approve was made by Mr. Skobo, seconded by Mr. Hesthag.

Roll Call: Mr. Peason - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Mr. Skobo - yes; Vice Chairman Julian - yes; Committeeman DelCore - yes; Mayor Suraci - yes; Chairman Lipani - yes. Motion carries.

- Raymond DRAKE - File 17-PB-03-SV

A motion to approve was made by Mr. Skobo, seconded by Vice Chairman Julian.

Roll Call: Mr. Peason - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Mr. Skobo - yes; Vice Chairman Julian - yes. Motion carries.

PLANNING BOARD BUSINESS

None

SPECIAL COMMITTEE REPORTS

None

BUSINESS FROM THE FLOOR

None

CONSIDERATION OF ORDINANCES

None

PUBLIC HEARING - SUBDIVISION/SITE PLAN APPLICATIONS

- **Hillsborough Estates Homeowners Associates, Inc.** - File 17-PB-09-MS - Block 199, Lots 19.07, 19.09, 19.10, 19.11, 19.12, 19.13, and 19.14 (North View Drive). Applicant seeking amended final major subdivision application to correct and clarify recorded easements filed from original preliminary and final major subdivision applications 05-PB-13-MJP (Resolution dated 02-07-08) and 08-PB-11-MJF (Resolution dated 11-06-08), on property in the CR, Central Residential Zoning District. (EC Review: 10-23-17)

Henry Chou, Esq., of Hill Wallack, LLP, representing the applicant stated all required notice documents have been provided.

Mr. Bernstein confirmed there are no issues with the notice.

Mr. Chou said the applicant is before the Board at the Township's request to correct and error made in the Conservation and Drainage Easement that was prepared and recorded by the Builder in 2010. In order to

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correct the error, the applicant needs to come before the Board with an amended major subdivision application. He said the Builder is no longer around so it is on the small group of seventeen homeowners to get it fixed and pay those expenses.

Mr. Chou said the first issue is that the metes and bounds description that is attached to the easements is what is incorrect in that it does not match the easement limit shown on the final recorded plat. He said the second issue is that the document fails to make a distinction between the conservation and the drainage areas. The boundaries are actually different and need to be delineated so that routine maintenance can occur in the drainage easement area to keep the drainage swale and inlets free and clear.

Mr. Chou said no new work is proposed at this site in connection with this application. He said they are essentially only correcting the legals. The only visible change is that the non-disturbance signs, which are as close as five feet away from some of the homes, will be pushed back to where the actual conservation boundary is. Mr. Chou said the Association's inability to conduct general maintenance within the drainage area has had an adverse impact on the site to properly discharge stormwater.

Mr. Chou said they are prepared to discuss the comments from the Planning, Engineering, and Environmental Commission memos. He said there is one issue that needs to be discussed, which is the need for a landscaping plan in the conservation area. He said he believed the request came from the Health Official for the original application. However, the purpose of the conservation easement is so that the vegetation grows wild and is not landscaped. Mr. Chou said the conservation easement largely overlaps with the Buckeye Pipeline Easement, which cannot be touched by anyone other than the Pipeline, as needed to repair and clear pipes.

Mr. Chou said the president of the Homeowners Association is present to discuss the background, and the Civil Site Engineer, Michael Ford, PE, is present to discuss the technical issues associated with the descriptions.

Ms. Meaders and Mr. Ford were both sworn in.

Exhibit A-1 - Series of photos showing the subject areas

Leigh M. Meaders, Esq., President of the Homeowners Association, stated she had taken all of the photos, with the exception of the image from Google Earth. She said some of the photos were recently taken, others are from about two years ago, but the conditions remain the same.

Ms. Meaders said they had received a notice from the Township about two years ago, by way of the Builders, that the Township had some concerns that the drainage easement was being mowed. She said it was being kept so that it would work properly. Ms. Meaders said the notice instructed that if they did not cease, that construction fences would need to be put up. She said at that time they were not in control of the Homeowners Association but met with the Township to try to figure out the best way to solve this.

Ms. Meaders said in meeting with the Township, they (property owners) highlighted several concerns that the drainage easement and signs associated with the easement were very close to a number of the houses. For some, they simply need to step outside their back door to be two feet away from a sign. She pointed out a sign in one of the photos as being 6.5 ft. away from the rear of a home.

Ms. Meaders said their concern is in allowing grass to grow in the drainage easement, that there would be concerns about overgrown grass, deer ticks, fleas, and things that would not make it hospitable. She said they are concerned about the safety of our children throughout the neighborhood. Ms. Meaders said the other concern is for the proper operation of the drainage easement. Keeping the grass low allows the water from the swales to flow and keep the piping from getting backed up.

Ms. Meaders said with regards to the conservation easement, there does not appear to be anything that is being preserved, except some miscellaneous items. She said when meeting with the Township, it was determined that the best way to deal with this was to make an application to the Board. She said that is when the HOA hired an attorney and engineer to figure out the issues.

Ms. Meaders explained some of the photos. She pointed out the pine trees in photo #2 and said that is the beginning of the conservation easement. Those trees were put in by the Builder. Additional trees were put in about a year ago to finish off the plan.

Mr. Chou said he believes the Builder split and the Township called in the bond to finish the project.

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Ms. Meaders said photo #3 shows the waters, when they come, flow into a detention basin and works as it should. She said photo #4 shows signs scattered throughout the development, and proximity to the houses. Photo #5 shows the pipeline easement which is mowed and kept up by the Buckeye Pipeline. Ms. Meaders said Chart #6 is the latest aerial of the neighborhood from Google Earth. She pointed out the delineation between the conservation, pipeline, and drainage easements.

Committeeman DelCore asked where the sign is located in relation to the subject of the last photo. Ms. Meaders said there is a sign plan from the Township, but the signs were not installed when the houses were sold. They were put up afterwards. She again showed another slide which showed the location of signs in the area of these easements. Ms. Meaders said house #25 is the house that has the sign that is 6.5 ft. away from the rear of the house. She said some of the signs have been removed, not by the homeowners but by Mother Nature. Some have been moved by others, but not by anyone in the Hillsborough Estates HOA.

Chairman Lipani asked Mr. White if the sign marks the beginning of the easement or just notifies that there is an easement in that area.

Mr. White said the sign marks the line of the easement.

Mr. Chou said the signs say "conservation easement" but they extend out to include the drainage easement area so it is not accurate with the plat filed.

Mr. White said it actually is in accordance with the plat because Township Ordinance 2005-31 created a 75 ft. buffer zone for the Buckeye Pipeline in response to the incident in Edison that happened years ago. There is not to be any construction or grading within 75 ft. of the Buckeye Pipeline's easement, in order to protect the residents of Hillsborough. In this case, the applicant sought a variance to reduce the buffer to do the grading, swale and drainage system behind these homes because there were some issues with drainage in that area. The Board granted the approval at that time. But it was all encompassed within a conservation easement, which may have been the mistake. Mr. White said the limits that establish the easement were done in relation to the pipeline easement.

Mr. Bernstein confirmed it was established as a "conservation easement" which may include the drainage. He said the signs are not a mistake.

Open to the public.

Mike Little - 87 Roycebrook Road

- Mr. Little said he believed there has been some misinformation offered. He said the buffer has nothing to do with the pipeline; the pipeline has its own easement. He said the conservation easement was determined partly to be valid because there was a need for a buffer to the pipeline so that there be no construction to the pipeline as per the explosion that happened in New Jersey near the pipeline.
- Mr. Little asked if any of the Board members were present at the time the application was approved.

Chairman Lipani said there were not.

- Mr. Little said then he and his neighbor would be the only ones in the room who were.

Mr. Bernstein pointed out both he and Board Engineer, Mr. White were present.

- Mr. Little said he agrees with the presentation regarding the inaccuracy of the filing of the amendments/addendums for the landscape buffer on Hamilton Road; for the drainage on Lot 13; and the conservation easement. He said there may be some confusion in that the document talks about a conservation and a drainage easement as hereafter being referred to as "The Easement".
- Mr. Little stated the conservation easement is specified in there as being delineated according to the signs that are up, other than the one spot behind Lot 19.09. He said they have indicated in their application that that lot should only involve drainage, whereas the rest would be conservation. He said everything is delineated in those amendments by the Builder to indicate what the conservation easement was vs. the drainage easement. He said that is the only section that appears to have been recorded into the final plat as to the conservation easement instead of drainage easement. Mr. Little stated the rest of it actually is a conservation easement, as defined

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in that amendment #1, that the Builder provided and indicated that it was a requirement that the buffer be at least 75 ft. from the pipeline easement.

- Mr. Little said contrary to the testimony, the signs have been moved by the homeowners. He stated he personally has seen it.

Mr. Bernstein pointed out that the speaker has now crossed the line between fact and testimony. He suggested Mr. Little be sworn in before continuing, allowing Mr. Chou the opportunity to cross-examine.

- Mr. Little was sworn in. He said he could testify that he saw the homeowner behind his house move the (easement) sign. He said he is also aware that a homeowner a few doors up has built a fence on the easement line. That homeowner moved the sign from the inside of the fence area to be outside his fence. Mr. Little said the Buckeye Pipeline does not come around and mow anything. He said all of the mowing is being done by the homeowners. Mr. Little further stated that the Builder went in and disturbed the conservation area he was not supposed to enter. Mr. Little said he was under the impression that the Township already knew this and fined the Builder for his misbehavior.
- Mr. Little stated that at the time the Builder was building the swale, there was not a record of a plan with the Township that the swale was to be built in that area. He said there were some trees lost because of the digging of the swale from the original lay of the land. Mr. Little said originally, there was a "seasonal stream" in that area, which was taken into account in the conservation easement.
- Mr. Little said the Builder indicated he would not be disturbing anything in the conservation area, and then turned around and did so. The Builder also indicated he would have the conservation buffer. He said he does not know how the Builder presented himself to homeowners when they purchased the properties, but said it was clear on the plats filed with the Township that some of the boundaries come quite close to where the houses are, as indicated by the testimony of being 6.5 ft. away.
- Mr. Little said he did not believe the issue from the Health Department regarding potential landscaping was appropriate to discuss since it had not been given public notice. He said there was discussion about the perils of a wild area, which is exactly what a conservation easement is. He said he did not understand why they should be worried about ticks and poison ivy, when the conservation easement, if left alone by the homeowners, would probably grow to become woods. He stated the conservation easement is in the state it is because it is being disturbed by the homeowners. Mr. Little said that area is several years behind from what the Builder did because the homeowners continue to disturb it.
- Mr. Little said the conservation easement does not start at the pine trees; it starts at the signs, even though it does not look like it because a fair amount of that area is being mowed. He said the swale is being mowed. If left to grow, it will not disturb anything. Mr. Little said originally DEP did not want the Builder to put in a curb because of the requirements to try to slow down the flow of water and try to have it be "cleaner" by going through the grass. However, that was overridden by the Board, and the Builder was allowed to have curbs and gutters. Mr. Little stated that if trees grew in that area it would make for less drain water going into the streams.
- Mr. Little said the swale is a structure that is fairly well engineered with a hard permeable surface, a layer of stone, and a pipe underneath. He said considering its size, shape and engineering, the claim that it would stop draining water is not a valid argument. Mr. Little said the only error that should be brought up to the Board is the error with the final plat. He said he did not believe the aspect of turning the drainage area, which is part of the conservation easement, into something different than the conservation easement, ought to be considered. He said it should remain a conservation easement and that it should be left alone so it can turn into what it is supposed to be.

Mr. Chou asked if Mr. Little is arguing that there is no distinction between the conservation area and the drainage area.

- Mr. Little said he is not arguing that point.

Mr. Chou asked Mr. Little if it is his experience that having trees growing in a drainage swale is appropriate.

- Mr. Little said they can.

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Mr. Chou asked for examples.

- Mr. Little said he could not provide examples in this area but knows of many in Virginia.

Mr. Chou asked Ms. Meaders to respond to some of the contentions made.

Ms. Meaders responded by saying Mr. Little has not presented an accurate representation. However, he is correct in saying the drainage swale has been mowed. She said they have spoken with engineers on the matter and there is even a letter from RBZ issued that says having things growing in the swale is not helpful. Ms. Meaders said with regards to mowing, there are neighbors that have mowed the area of the Buckeye Pipeline. She said she could not testify as to whether or not the Pipeline is doing so. Ms. Meaders said she could not testify as to whether or not any signs have been moved but is aware of a sign that has been taken down and flipped around. She said to say that the homeowners have done all of the things Mr. Little talked about is incorrect. Ms. Meaders said she does not know Mr. Little's background so she does not know how much weight can be given to his statements, nor can she refute every bit of testimony given. Ms. Meaders said she gave an accurate description and does not appreciate having her testimony impugned by Mr. Little in that way.

Ms. Meaders said there are minutes to the prior meetings, so there is a record that speaks to what has been set forth.

- Mr. Little said the aspect of changing the conservation area to a drainage area seems to be one of the cruxes of the Homeowners Association. He said while it was clearly designated a conservation area, a swale was built in that conservation area. Mr. Little said the question is whether or not people should be maintaining and landscaping a swale that is within a conservation area, or should it be left alone. He commented that not much can even grow since it is pretty much rocks. He said the applicant is attempting to arbitrarily define 20 ft. from the centerline of the swale to the conservation easement. Mr. Little asked what will remain of the conservation easement if this gets approved. He said that is a large deviation from all of the homeowners and landowners here several years ago asking the Builder about the conservation easement; and being assured it would be there, and of the size defined on the plat, and that it was not going to be disturbed. Mr. Little questioned what the appropriate distance from the center line should be, but he said the Township required that the Builder establish a 75 ft. conservation buffer from the pipeline easement before final approval.

Mr. White stated the Developer did additional clearing and was required to put back extra trees in the conservation easement, which are probably the evergreens shown in the aerial. He said the Developer took down a few extra trees than expected. Mr. Belanger (Assistant Township Engineer) addressed it with the Developer and there was compensation for additional trees to be planted in the conservation easement, but not in the Buckeye Pipeline.

Chairman Lipani asked if it is common for the Pipeline to keep an area mowed and free from debris.

Mr. White said he cannot speak for the Pipeline but knows the electric companies are required to.

Ms. Meaders said they have received notification either early this year or late last year from the Pipeline regarding maintenance.

Chairman Lipani spoke of his own experience with the same Pipeline, saying his Nursery on Hamilton Road had unknowingly encroached on the Pipeline's (easement) area, and they were notified to remove those trees. He said the Pipeline is not necessarily looking for a mowed area, but they are looking for a cleared area.

Michael K. Ford, PE, of Van Cleef Engineering, brought up three exhibits for marking.

Exhibits

A-2 - Plan Sheet 1, with color highlights

A-3 - Plan Sheet 2, with color highlights

A-4 - Soil Erosion & Sediment Control Plan for Hillsborough Estates

Mr. Ford stated both Sheets 1 and 2 were submitted with the application. Exhibit A-4 was obtained from the Hillsborough Township Engineering Department as is part of the record for the development.

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Mr. Ford said the easement area being referred to is both a conservation and drainage easement. He said part of the issue is that there is not one area separately delineated as a conservation area, and an area delineated as a separate drainage area; it is a Conservation and Drainage Easement. Mr. Ford said part of the impractical aspects that has brought the applicant here today is the enforcement part of that from the Township's perspective by the Staff members, as to what the homeowners are allowed to do and not do in those areas within the easement.

Mr. Ford confirmed the swale already has drainage in it; there are catch basins behind these homes. Exhibit A-2 shows the pipes and inlets. There is a drainage easement between two of the homes - Lot 19.11 and 19.12. That pipe continues down to another inlet and down to the detention basin. Mr. Ford said the features that are in that easement are not just swale areas that transmit overland flow, but there are underground features which cannot allow trees to grow over top of pipes and inlets that are intended to provide for drainage. The Homeowners Association is responsible to own and maintain these features.

Mr. Ford said one of the fundamental engineering aspects of this application is intended to clean up what was intended (originally). Exhibit A-4, which was part of the original subdivision plans, also has some red hand-written landscaping notes written on it. He said as he understands from the Assistant Township Engineer, Tom Belanger, that this was the exhibit produced when the Builder, as part of his construction, went into areas he was not supposed to. He said he understood that Maser Consulting was consulted by the Township Engineering Staff to come up with a landscape plan to put in some supplemental plantings to restore that area that was intended to be within woods. He said this exhibit clearly shows not only the drainage features described, but also clearly shows the regrading area, and identifies what was intended to be the limits of the wood-line. He said there was never an intention to have a wood-line 6 ft. from someone's house, which would be the result of putting up a sign 6 ft. from someone's foundation saying it is a conservation easement that they can never touch, mow or maintain. Eventually, it would become woods in that case.

Mr. Ford said what we are talking about is carrying out the intended aspects of the subdivision and maintaining a wooded buffer. He said usually when speaking to the Board about buffers, it is between two different uses. Here the buffer is between residential houses. Mr. Ford said the plantings that were planted as part of the landscape plan are still there. As a condition of any Board approval this Body may grant, the Township Staff can inspect to ensure the plants are there.

Mr. Ford said delineating that area between what was intended to be conserved, the wood-line, the landscaping, and the drainage feature, which is the underground pipes and the swale is shown on Exhibit A-2. Exhibit A-3 shows the total area of the easement. He said they are not looking to change the area limits, only to delineate which areas are for drainage, where some things can be done, such as mowing and keeping trees from growing over top of storm drainage pipes; and what areas will be preserved so that the trees will not be touched. Conservation Easement signs would also be moved from 6 ft. off of someone's foundation, to 10 ft. on the other side of a pipe. Mr. Ford said typically, drainage easements are 20 ft. wide; 10 ft. on either side of the pipeline, as shown on Exhibit A-3. The blue area shown would be the drainage area portion of the easement. He said that would be a filed and recorded drainage easement, which would still have the same limit from the existing overall drainage and conservation easement, which includes the setback of 75 ft. from the Buckeye Pipeline easement. The blue drainage easement would not allow something to be built in that area. The green area would be that remaining portion of the drainage and conservation easement that exists today, that would be specifically intended for conservation. It would include the intended wood-line; the existing woods; the planted woods; and the Buckeye Pipeline buffer.

Mr. Ford reviewed the reports from the professionals. He said Mr. White has asked that it be specified what will occur in the easements. He stated the conservation and drainage easement and splitting it into two areas so that it is easy for the Township Staff to enforce what can occur beyond the conservation sign and woods cannot be touched, and what can occur within that drainage area portion so that the Homeowners Association can maintain the drainage features, including the swale, pipes and inlets behind these properties, in perpetuity.

Mr. Ford said the changes requested are for legal documents; there are no physical changes proposed. He said currently, Homeowners who mow the area over the drainage easement are in violation of the easement. But it is a practical area where you cannot enforce what has put in writing because not only can you not let trees grow over top of the storm drainage pipelines, but you also cannot allow a tree to grow within 6 ft. of a house to a point where it could essentially disturb the foundation of the house and jeopardize the safety of the people in the house.

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Mr. Ford said Exhibits A-2 and A-3 show where the conservation and drainage easement has been delineated into a drainage easement and a conservation easement. The exhibit shows where the Hillsborough Township conservation area signs would be moved to from 6 ft. away from a residence to about 10 ft. away on the other side of the pipes in the ground. He said with regards to the 75 ft. setback from the pipeline; the legal documents can include acknowledgement of the Township ordinance that limits what property owners can and cannot do within 75 ft. of the pipeline easement. Mr. Ford acknowledged metes and bounds descriptions will be prepared to go along with the easement documentation, as a condition of approval.

Mr. Ford said the Applicant and professionals met with the Environmental Commission to review the application. The Commission commented on why there is a need to extend the conservation easement over top of the pipeline easement because the Buckeye Pipeline easement carries with it allowances for them to maintain their easement area to their satisfaction. Mr. Ford said it is up to the Board as to whether to include that area or just have the easement document that is recorded acknowledge the rights of the existing Buckeye Pipeline easement.

Mr. Ford said the Homeowners would like to be able to maintain the area of the swale, which is the area beyond the houses from the property foundations to the area of the swale, as it is being mowed today. Mr. Ford said with regards Mr. Maski's comment in his memorandum regarding the need for a landscape plan; that has already been addressed as part of the original subdivision approval, and as part of the amended landscaping plan approved by Maser needed to fill in open areas after the Builder went into areas he should not have and removed trees. That plan with handwritten notes was made part of the Developer's Agreement. He suggested Township Staff can inspect the site to see that those trees still exist. Conservation Area signs could also be moved to their proper location. The conservation signs included not only signs for this development, but signs for the adjoining neighbors.

Mr. Maski said the reason for that comment for a restoration / maintenance plan is to address the concerns heard today and in previous discussion with the Homeowners. The conservation area is somewhat degraded at this time. It seems appropriate to have a restoration and maintenance plan for removing all dead, dying, diseased trees, and invasives, and come up with a restoration plan for indigenous species that can be allowed to grow on their own, and continued maintenance going forward. The Homeowners Association would be responsible to put that in place.

Mr. Maski said the conservation and drainage easement document has language to leave that area forever wild. He said "forever wild" does not mean you just let the area go. Sometimes you need to step in to help restore the area, such as removal of poison ivy. Maintenance of the buffer area, however the Board describes it, would be appropriate.

Mr. Maski said he went to the Buckeye Pipeline's website. There you can find all of the things you can and cannot do. Under the "Above Ground and Underground Structures", Section 3.2(a) Gardening and Landscaping, says "trees, shrubs and bushes are not permitted within the right-of-way. Trees planted outside of the right-of-way should be placed so branches and limbs do not overhang the Pipeline right-of-way as the trees mature. Buckeye may trim or remove overhanging branches or limbs that encroach into the right-of-way." 3.2(e) "Flower beds, vegetable gardens, and lawns are permitted within the right-of-way. Buckeye is not responsible for replacing any planting located within the right-of-way."

Mr. Ford said the Applicant has no issues with the Buckeye Pipeline and them continuing to maintain it. He said the existing trees and the trees that were planted are between the homes Hillsborough Estates and the Buckeye Pipeline. The Pipeline is at the immediate rear of some of these houses. Mr. Ford said the Applicant has no issue complying; they are not looking to change that existing easement at all.

Mr. Maski asked again about a restoration and maintenance plan.

Mr. Ford said they could review the plan already prepared and defer to Mr. White's office. He said they can make sure the Developer carried out what was required.

Mr. Singer asked Mr. Ford what type of additional landscaping or vegetation could be placed in the area of the conservation easement that overlaps the Buckeye Pipeline, if trees, shrubs and bushes are not allowed.

Mr. Ford said there is nothing that can be planted within the Buckeye Pipeline easement for certain. He said there were some trees intended for that area in the supplemental landscape plan to fill in areas that were

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open or potentially disturbed by the Builder. He said his understanding is that those trees have been installed.

Mr. Ford showed that area on the display. He said it runs across North View Drive and along the rear of the properties on Royce Brook Road, crosses the track, and runs along the rear of the homes on the east side of Hillsborough Estates. He said the Pipeline would continue to maintain its area. There is an existing wooded area that was to be left undisturbed, and beyond that, there was an area intended for drainage at the rear of the homes. He stated they are not looking to change any of those physical features in what was part of the original approval.

Mr. Ford explained that currently there are areas on the East portion of the tract that has wetlands and in the DRCC buffer area. That area was placed in just a conservation easement. There is another area with a detention basin with underground pipes is just in a drainage easement. The language of the easements clearly state what can and cannot be done within those areas.

Mr. Ford said the unintended consequences of what was created here is that the easement was created with the title of "Drainage and Conservation Easement." There are conflicting requirements between those two issues. The proposed is intended to clear up those issues. Using the displays, he explained the (area in blue) drainage easement (subject site) will immediately run into the existing drainage easement around the detention easement. The delineated conservation easement (area in green) will then run into the existing conservation easement that is around the wetlands. The subject easements are not around any critical areas, steep slopes or wetlands that need to be protected; rather just a buffer between residences and the area along the pipeline.

Vice Chairman Julian summarized by saying the intention is to create an enhanced area that would be delineated between Van Cleef and Maser; then the signs would be moved for what would now be the new "conservation area" which would include an enhanced restoration area; and then the rest of the area would be mowed.

Mr. Ford said that is correct. He said that area is being mowed today, as seen in the photos.

Vice Chairman Julian said the landscape plan would need to be revised to whatever is agreed upon in terms of enhancement of the restoration area itself.

Mr. Ford said the Homeowners Association has inherited this situation from the Builder. They understand there is a landscaping plan that was addressed to prepare those issues, such as filling in the buffer area. He suggested the Township's Attorney and Engineer can include what Mr. Maski recommended, which is the ability to do something in that area to maintain it properly.

Vice Chairman Julian said that is a legal issue that would need to be worked out.

Mr. Ford offered that the conservation easement that eventually gets filed could include such language to allow removal of dead trees and/or invasive species.

Mr. Bernstein clarified that what the Applicant is looking to do is memorialize the actions taken by the Homeowners, not so much the Association, regarding what happened in their backyards, whether they knew it or liked it, within a conservation easement that was in relatively close proximity to their homes. The biggest issue that occurred when this application was approved over a decade ago, it that there was no specific delineation as to exactly where the footprint of the homes were going to be. The Builder put the homes within the areas they were allowed but some were exceedingly close to where the easement was established. He said what prompted these proceedings is that a homeowner was one day surprised to find a conservation easement sign roughly 6 ft. from their home and could not understand why. The matter has been discussed many times over the years with the Planning Department. The proposal is for the Board to accept what has happened over the years relative to the easements, as now acceptable to be and that it be memorialized so we can move forward.

Mr. Bernstein said what really is at issue is the conservation easement; the signs are not for the drainage easement. The Board wanted that area of the properties to remain in a vegetated state. For whatever the reasons, the builder and Homeowners decided ostensibly that they would do what they wanted to do. He said the Applicant is here at his recommendation after sitting through numerous meetings over the years with the Homeowners Association, trying to find a way to resolve this. The reason being that only the Board can change what they have approved. The Board is essentially being asked to memorialize the current conditions. The

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conservation signs are exactly where they belong; there is no need to move them. The issue is that the property may not look like a conservation easement area in its current conditions. He stated the signs in the easement are exactly where they are supposed to be; the drainage easement is exactly where it is supposed to be; the Buckeye Pipeline is not even an issue here but it is also where it is supposed to be. What the owners do not want to do is replant the backyards of some of these homes in a vegetated state that they find unattractive, unnecessary, obtrusive, and potentially health related. Mr. Bernstein informed the Board that Dr. Belnay was involved in these conversations.

Mr. Bernstein said what the Board's professionals have suggested is that they try to ameliorate a situation that is just there. He said the area can be portioned up any way the Board finds appropriate but ostensibly, everything is where it is supposed to be. The decision for the Board is whether or not you are willing to allow the homeowners to continue to do in their backyards, what they and/or the Developer was not supposed to do in the first place.

Committeeman DelCore said he did not remember easements being combined in this way.

Mr. Bernstein said they exist this way for this development but are not the norm. He said it simply turned out that way because of where the drainage was and where we wanted the conservation in parts; they melded into each other, and further melded by the 75. ft. buffer ordinance from 2005 related to the Pipeline.

Chairman Lipani asked if the Pipeline easement and the conservation easement are at the same point.

Mr. Bernstein said the conservation easement signs are where the conservation easement was established in accordance with the plans when the development was approved. Within the areas is a separate Pipeline easement, and within parts of the conservation easement is a drainage easement, which is why there are two filed documents: one that says "Conservation Easement" and one that says "Conservation and Drainage Easement."

Mr. Bernstein noted that the HOA is not responsible for the easements not being adhered to but are here representing all of the parties because they are the only ones withstanding. He said there are homeowners that do not want to follow the rules but the problem was exacerbated by the Developer building homes on top of the conservation easement. The issues started when homeowners complained to the Township about the signs being in close proximity to their homes.

Mr. Maski agreed that the conservation signs are appropriately placed given the outer boundaries of what is a conservation easement. Any conservation easement has to be based on the resource that it is protecting, be it a wetland, steep slope, buffer, drainage facility, etc. He said what we have here is an all-in-one conservation area with a dual purpose; part of it is for drainage and drainage facilities, and part of it is to provide a vegetated buffer. Mr. Maski said he understands the request as wanting to establish the rules of engagement for those two portions of the conservation easement.

Mr. Maski said in the portion of the easement where we are trying to maintain a drainage facility, what are the appropriate rules of engagement and what are the limits of that area; can it be mowed, can it not. In the part of the area that is meant to be a vegetated buffer to the adjoining properties, what is the appropriate way to plant that area in order to achieve a buffer, and what can you do in that area.

Mr. Maski said in order to maintain the drainage portion of the easement in a workable fashion, there is language in the filed easement that allows the Association to maintain the area so that the drainage facility operates properly, such as removal of rocks. He again recommended there be a restoration and maintenance plan for that area earmarked for a landscape visual buffer. Rules are written as to what can and cannot be done in those portions of the conservation easement.

Mr. Maski said his understanding is that the Applicant is not looking to alter in any way the outside boundary of the conservation easement. It is a matter of what are the purposes of the conservation easement; outline those areas that achieve those purposes; and define what you can do in those two portions of the easement.

Committeeman DelCore asked if the area is large enough and if this action will be able to fix the problem or just clean it up a little.

Mr. Maski said Mr. White would be able to determine what the appropriate width would be to properly protect the drainage

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facility, be it 5 ft., 10 ft., etc. The visual buffer is in a sense what is left over after that and/or an area wide enough to create the visual buffer that was originally required. It would depend on how much is needed for clearing and maintaining or mowing the area on top of the catch basin.

Mr. White said you typically require 20-25 ft. wide area for drainage purposes so that you can go in with a backhoe, go in and put the out-riggers down to stabilize, excavate and get down to the pipe or structure to work on it, and put it back. Mr.

Ford testified it was 10 ft. to the limit of disturbance, which would be a boundary between the proposed drainage easement and proposed conservation easement line. It would be 10 ft. into the drainage easement to the Pipeline. You would be looking to provide at least 20 ft. around the drainage line, not the Pipeline.

Chairman Lipani asked which house on the exhibit has the sign 6ft. from the house.

Mr. Ford showed it as Lot 19.12 and 19.11.

Mr. Bernstein said although he did not recall all of the particulars of the original application, he does recall that an extensive amount of time was discussed about the conservation easement, which was a concern to Mr. Ringelheim. To some extent, it was envisioned that the homes would be placed closer to the street than they are now so the homeowners would have backyards, rather than have their backyards literally being in the conservation easement.

Mr. Ford handed out copies of Exhibit A-4 showing a copy of the original plans.

Mr. Bernstein said he is not suggesting placement of the houses but rather that the Builder was aware that there would be situations where the homes were closer to the easements than others.

Mr. Skobo asked how much of a problem it would be to leave it as is and move the signs back to the wooded area.

Mr. Bernstein said that is ostensibly what this application is. He said one of the major concerns that has come up over the years from the Township's Staff has been that if there is some kind of memorialized change; that would be it. Everyone would then understand what can and cannot be done, and there would not be further encroachment to the point where we now see nothing more than finely mowed lawns that look like a golf course rather than a conservation easement. That is why Mr. Maski suggested, and Mr. White concurred, for the need for a landscape restoration and maintenance plan, so that it does not get any worse from the Township's point of view than may already exist.

Vice Chairman Julian said there is nothing the Board can do tonight then until we see the restoration plan.

Mr. Bernstein said it could be a condition of approval and therefore in order for this to ultimately be approved, it would have to be put into effect, preferably before the Board voted on the memorializing resolution. That is up to the Applicant and Counsel.

Mr. Ford said Exhibit A-4 identifies what they found through their discovery of contacting the Engineering Department. He asked that the Board members take a look at the comparison of Exhibit A-4 to Exhibits A-2 and A-3, which show the existing homes the way they were built, in comparison to Exhibit A-4 which was the subdivision plans and the plans for the intended locations of the homes. Mr. Ford said Van Cleef did not prepare the subdivision plans for this project. He said they secured plans of survey from all of the owners of the property in question, as well as the as-built plans that were part of the certificate of occupancy for those homes. The existing homes are shown accurately on the existing conditions plan and proposed conditions plan, which were submitted as part of the application. He said what they learned upon contacting the Engineering Department was that the soil erosion and landscape plan (A-4) has hand-written red-line landscaping that was implemented during construction at the direction of Mr. White's office to accomplish that buffer. Mr. Ford said again that they are not looking to disturb or change that. Any maintenance, restoration and continued review of that (area) can be included in the language as part of the conservation easement.

Mr. Ford said the conservation and drainage areas are opposing. He said the drainage area has underground features in it that obviously cannot have vegetation growing over it.

Mr. Chou said the Association will agree to satisfying the condition of having a restoration and maintenance plan for landscaping in the conservation area delineated; not the areas for drainage.

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Mr. Maski summarized that the Applicant is asking to have the line redrawn as shown on Exhibit A-3, Sheet 2 of the plans, which shows a varied width easement drainage facility, and a varying width on the portion of the conservation easement for the landscape buffer. He said if the Board was to vote, it would be for what is show on Sheet 2. The signs can be moved but we need to be able to determine the line first in order to do that.

Committeeman DelCore asked if the line is moved, does it then create other waiver requirements.

Mr. White said the Board already approved the grading for the drainage pipe to be put within the 75 foot buffer.

Mr. Maski said there are rules that apply to the drainage area and rules that apply to the conservation area / buffer easement. He said whatever the appropriate width of the drainage easement; it can be mowed and needs to be kept clear. The catch-basins need to be left unencumbered and there has to be the ability to maintain the pipes.

Mr. Maski said the area that is delineated for conservation / buffer requirements: upon restoration of the area, no structures or any other plantings can take place in that area. Future maintenance can take place thought, such as removal of dead, dying, diseased or invasive species.

Chairman Lipani noted there was testimony about one resident putting up a fence. He questioned if that would be allowed.

Mr. Maski said no structures would be permitted.

Mr. Bernstein added, sheds, fences, pools, swing-sets, etc. are not allowed on any utility or related easement.

Chairman Lipani said it is meant for open space.

Mike Little - 87 Roycebrook Road

Mr. Bernstein stated Mr. Little is still under Oath.

- Mr. Little said the filed amendment which was available for public review, does delineate the difference between conservation and drainage easements in the discussed area. He said it indicates the 75 foot buffer is to be conservation; and by implication, the 25 feet left would be for drainage.
- Mr. Little said he understood the need to maintain underground structures. He said the plan provided by the Applicant proposes that part of the conservation easement area that is not adjacent to the drainage area, to become a drainage area, specifically the section that abuts North View Drive. Mr. Little pointed to the area on the map. He asked if Mr. Ford could clarify if there are any underground structures in that area.

Mr. Ford said the highlighted area is adjacent to Lot 19.07. He said there are no structures there; it looks to be a swale between that property and the adjoining property. The plantings shown on Exhibit A-4 would be preserved by virtue of creating it that way. He said that area is about 20 ft. from the first house. Allowing trees to grow in that area would be too close to the house for conservation but that area would be maintained for drainage. All of the limitations of a drainage easement would remain so that trees are not allowed to grow there. He said that area was not woods before.

- Mr. Little said the available document he examined showed a 40 ft. buffer, not a 20 ft. buffer.

Mr. Ford said there are areas of the drainage easement that would be wider than 20 ft. but that is because of the physical location of the underground pipes. He said they are not looking to make the easement wider towards the neighbors in order to preserve and maintain the drainage structures. He said they are including the typical 10 ft. offset of the pipe that would be part of a standard 20 ft. wide drainage easement.

- Mr. Little continued to note the distances he found to be appropriate.

Mr. Bernstein asked Mr. Little to show the location of his property on the exhibit.

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Break 9:18pm - 9:28pm

Mr. Maski said after consultation with Mr. White, the suggestion is that the drainage boundary be drawn 10 ft. to the south of the storm drain pipe, for the length of the pipe. Everything south of that, towards Royce Brook Road, would be in the conservation easement. The exception would be the tail end discussed earlier, which does not have a pipe in it, would also be part of the drainage area.

Mr. Chou said the Applicant is fine with all conditions proposed thus far. He said they will have metes and bounds descriptions accompanying the easement.

Gary Bouwmans – 83 Roycebrook Road

- Mr. Bouwmans asked how the line would be delineated so that everyone knows where it is. He said the discussion on remediation needs to be resolved as part of this condition.

Mr. Maski said once the property is surveyed, the signs will be placed at the boundary on both sides of the easement.

- Mr. Bouwmans said this is a debacle which everyone is suffering through, including the homeowners. He said he does not understand how a Developer can have the property surveyed to put in corner markers and then removes those markers so he can sell the property. The homeowner then has to repay a surveyor to remark the property. He commented that if this was all marked out from day one; the homeowners would have known where everything was and there would be no need to go through this.

Ms. Becorena asked if the Board would see a plan with the proposed changes before any approval.

Close public

Mr. Bernstein said the Board has two options regarding approval action taken:

Option A: The Board take an action this evening, one of the conditions is that there be a landscaping and maintenance plan, a survey map which clearly delineates where the lines are, and that the memorializing resolution relative to this application is not approved by this Board until the Township's professionals and the Applicant are satisfied as to where the material is.

Option B: There is a time of decision rule of 12-29-17. If the Applicant will not allow Option A, this application would be continued to the last meeting in December at which time a survey map and a maintenance plan, reviewed and agreed to by Mr. Ford, Mr. White and Mr. Maski. The options are up to the Applicant.

Mr. Chou said Option "A" would put less pressure on everyone to finish up. An easement will also need to be prepared for Mr. Bernstein's review.

Mr. Bernstein asked for an extension on the time of decision until the end of February, 2018.

Mr. Chou agreed to the extension.

Mr. Bernstein said a motion for approval would include all of the requirements made by the professionals and all other conditions agreed to by Applicant as part of this application.

A motion to approve was made by Mr. Skobo.

Committeeman DelCore said it will be up to the professionals to work it out.

Mr. Bernstein said by the time it comes back to the Board as a memorializing resolution, all matters will need to be worked out and agreed to by all of the professionals. The plan should be provided beforehand so that the members of the public can also review the plan.

Mr. Bernstein recommended everything be taken care of by the end of January in order to be able to schedule the resolution to a February meeting.

Mr. Ford asked if the Environmental Commission's comment that the Buckeye Pipeline Easement be excluded from the conservation easement.

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Chairman Lipani comments it would be.

Mr. Skobo repeated his motion, seconded by Mr. Wagner.

Roll Call: Mr. Peason - yes; Mr. Wagner - yes; Mr. Hesthag - yes; Ms. Becorena - yes; Mr. Skobo - yes; Vice Chairman Julian - yes; Committeeman DelCore - yes; Mayor Suraci - yes; Chairman Lipani - yes. Motion carries.

CORRESPONDENCE

None

Chairman Lipani said the next meeting will be held on November 9.

Mr. Maski noted the applications scheduled are for the Veterinary Hospital, new and existing.

There was discussion about attendance.

ADJOURNMENT

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

The meeting adjourned at 9:39pm.

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

APPROVED