

HILLSBOROUGH TOWNSHIP PLANNING BOARD
PUBLIC MEETING MINUTES
September 06, 2012

Chairman Sireci called the Planning Board meeting of September 06, 2012 to order at 7:30 p.m. All stood for the Pledge of Allegiance. The meeting took place in the courtroom of the Municipal Complex.

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

ROLL CALL

Deputy Mayor Gloria McCauley - Present
Greg Burchette – Present
Committeeman Frank DelCore - Present
Steve Cohen, Vice Chairman - Present
Tod Mershon, *Secretary*- Present
Neil Julian - Present

Sam Conard - Present
Steven Sireci, Jr., Chairman - Present
Marian Fenwick - Present
Daniel Marulli (Alt. #1) - Absent
Robert Peason (Alt. #2) - Present

Also present were Robert Ringelheim, P.P., A.I.C.P., Township Planner; Wendy Wiebalk, Esq., Board Attorney (Eric M. Bernstein & Associates); and Lucille Grozinski, C.C.R.

ACCEPTANCE OF MINUTES

July 12, 2012

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

Roll Call: Ms. Fenwick – yes; Mr. Mershon - yes; Mr. Conard – yes; Mr. Peason – yes; Mr. Burchette – yes; Vice Chairman Cohen - yes; Committeeman DelCore – yes; Chairman Sireci - yes. Motion carries.

ACCEPTANCE OF RESOLUTIONS

None

PLANNING BOARD BUSINESS

Gibraltar Quarry / KDC Solar 12-PB-01-SR – Adjournment Request/Extension of Time

Robert Ringelheim P.P., A.I.C.P., Township Planner, stated the attorney for the applicant advised they would like to adjourn and have requested an extension of the MLUL clock through the end of the year. They do not have a specific date when they would like to reschedule therefore they will need to re-notice when they are completely ready. The Board should vote to accept the adjournment officially.

A motion to accept the adjournment was made by Mr. Burchette, seconded by Mr. Conard.

Roll Call: Ms. Fenwick – yes; Mr. Burchette – yes; Mr. Mershon - yes; Mr. Conard – yes; Mr. Julian – yes; Mr. Peason – yes; Vice Chairman Cohen - yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci - yes. Motion carries.

WSH Enterprises, Inc. – FINAL PLAT 08-PB-15-MJF – Extension of Time

Mr. Ringelheim said if you recall, this was an application that went into litigation by the opposition. They had a settlement which was remanded back to the Board. They re-applied and the application went on hold again. We are waiting for them to officially come back. In the meantime, the applicant's attorney is looking to extend the MLUL clock but the extension sheet was not yet provided as of today. The clock runs out at the end of the month. Since the Quarry application has been adjourned there will technically not be a meeting next week but we will hold it open if we do not get the extension to allow the Board to deny them on the record so that they do not get an automatic approval.

Robert Heibell, P.E., L.S. said for the Board's knowledge, I represent this applicant. Mr. White and I have discussed that I will be revising the plans so we will be coming back with an amended subdivision plan. I will give the attorney a call tomorrow.

Mr. Ringelheim confirmed the attorney is aware of it. He just was not in the office today.

Eric Bernstein, Esq., Board Attorney, said the Board will need to have a meeting next week either way, to accept an extension or deny if not provided.

Proposal by Hearthstone at Hillsborough (Ryan Homes) to Satisfy Off-Site Affordable Housing Obligation

Guliet Hirsch, Esq. of Archer & Greiner P.C., representing NVR, Inc. d/b/a Ryan Homes said you have my August 16, 2012 letter which describes the application. The project in question is Hearthstone Homes which is a Senior Citizen project and

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an affordable housing project that includes 14 low and moderate income units. The developer also made payments that the Township used for an RCA with Manville.

Back in 2007, the developer decided they would not be able to market the affordable housing units as rental units, which had been the plan. As a result of the change from rental to 'for sale' units, an increased number of 3 additional low and moderate income units were required. The Board approved that change as well as the offer of Ryan Homes to provide a 4th unit in a Resolution adopted December 13, 2007. That arrangement was approved with a 5 year requirement deadline for those additional units to be produced off-site within Hillsborough Township. We are now coming close to the end of the time to produce those units.

Ryan Homes, in consultation with its new Housing Consultant, Shirley Bishop, has come up with a very good approach. The plan is to subsidize a 4-bedroom group home for developmentally disabled persons. The COAH rules allow 1 credit per bedroom. I describe this as a clarification since at the time of approval in 2007, both the Township and Ryan Homes thought they would be contributing funds to build housing for Raritan Habitat for Humanity homes on a piece of property that ultimately did not get accepted by the Township. We are just seeking clarification that the 4-bedroom group home is acceptable under the 2007 approval. We came to the Board a little late but I would like to express the company's strong commitment to make this happen. No matter what they do however, they are not going to have that home occupied by December 13th. I have laid out some milestones in my letter which show a likely occupancy of perhaps March or April of 2013. I would like to allow Ms. Bishop to speak about the arrangements with the group home provider.

Shirley M. Bishop, P.P., of Shirley M. Bishop, P.P., LLC, was sworn in, reviewed her credentials and gave the following testimony:

The site has not been selected yet. We approached 4 experienced group-home providers. Ryan Homes has selected SERV who will enter into negotiations with the owner of an existing single-family 4-bedroom home that will become a group-home for developmentally disabled adults. As you are aware, the group home receives 1 credit per bedroom. In addition, each bedroom will be occupied by a very low income resident. The municipality has a requirement to provide 13% of your affordable housing as very low income. Depending upon whatever 3rd Round Regulations are ever finalized, there may also be bonus credits for this particular group home. The Court Master has already written a letter agreeing to the extension and to the group-home bedroom concept. A commitment letter will be sent by Ryan Homes by September 10th; thereafter SERV will start negotiations with homes that are on the MLS listing. It is expected that sometime between November and December there will be a contract in place with a closing date and a deed restriction by April, 2013. Occupancy will take place thereafter.

Committeeman DelCore asked why is it that 5 years out we are at the deadline point, trying to revise the approval for what was originally agreed upon.

Ms. Bishop said Ryan Homes relied on moving forward with Habitat for Humanity. I do not know what happened but I understand that fell apart. After that happened, in the spring of this year, Ryan Homes reached out to SCOAH and other providers to see what would be available and eligible for 4 credits. These 4 units were always off-site.

Ms. Hirsch said also included as an exhibit to my August 16th letter was a copy of the Resolution that provides a good description of the 4 units. I believe they were to be individual units because there was an arrangement with Habitat for Humanity at the time. There was a piece of property that D.R. Horton was to dedicate to the Township and then the Township was going to allow 22 homes to be built on that property. The arrangement at the time was that Ryan homes was going to pay for the cost to subsidize 4 homes there.

Committeeman DelCore asked when did that arrangement fall apart.

Ms. Hirsch said I believe it was right around the time the Resolution was adopted in December, 2007. There were efforts made during the interim, as referenced in my letter. I am not going to make this something that it isn't. The company realizes not enough attention was given to this matter in the early years. I believe the conclusion would have been the same though that this is the best arrangement.

Todd M. Pallo, Vice President/Division Manager of Ryan Homes for the New Jersey/Central Division was sworn in and gave the following testimony:

I came into the position of vice president in November, 2011. Some of the efforts are prior to my leadership role however; I can speak to the efforts made when this situation was made aware to me in the spring of 2011. We reached out to several apartment complexes in the area to find out if there were any opportunities in which we could secure a deed restriction. We also examined foreclosures and tax sales for opportunities that might exist but the opportunities were not there for us. I cannot change what has happened or uncover how we got here but my hope is that we can move forward and address this issue. We are actively involved and are looking to resolve the commitment that was made. We feel this group-home opportunity is a "win-win" for the town and the individuals that will occupy these units.

Mr. Cohen said although I agree we should move on, it bothers me that you are coming to us so late in the matter. He

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asked Mr. Bernstein if there was anything that can be done at this time to hold the applicant accountable.

Mr. Bernstein suggested listening to the Board's consultant.

Committeeman DelCore said I am presuming you know the background on this application. We went through an approval to change how the development had been structured because of the economic hardship the developer was facing. I am disappointed that we are at this point five years later after the work we put in to allow you to do that. I do not feel you have lived up to the obligation we set forth and the agreement that we made. I would like to hear from our consultant on this.

Jennifer Beahm, P.P., A.I.C.P. of CME Associates, Hillsborough Township COAH Consultant, was sworn in and gave the following testimony:

As you know, we have been working on our COAH Plan for many years now. These off-site units have always been included in our Fair Share Plan as the Township receiving credit for them. Robert Ringelheim, Andy Bayer, Esq., the Court Master and myself have all been working on this. The Court Master is the one who kept questioning when these units were going to be built. We have been working to try to get this to a resolution. Although it was only relatively recently, I was happy to see Shirley Bishop on board since she has been in the Affordable Housing realm for quite some time.

We reviewed the proposal to see whether or not it would be an acceptable method purely from an affordable housing standpoint to see if the Special Master and the Court would accept a group-home with respect to our Plan. We have been in constant contact with our Special Master, Betsy Mackenzie, who has reviewed the proposal with respect to whether these units would be credit worthy. They absolutely are. As far as the Affordable Housing part of this, we would receive credit per bedroom. Whether or not you decide to accept this methodology; this is something that would be considered an acceptable alternative in our Housing Plan and would not leave us short or create any issues with respect to compliance and the court approval that we are moving forward to.

Committeeman DelCore asked are there any consequences to our Plan if we do not take action.

Ms. Beahm said the only issue I can see is if they are unable to provide the 4 individual units then we would end up having to subtract 4 credits out of our Plan. I think we had more than required; I believe we had a surplus. As you all know, we do not really know what our 3rd Round obligation will be until they reconcile the regulations. Assuming our obligation stays where it was or goes down, I think we will be fine in terms of compliance. If our obligation goes up, we may be in a position where we need the credits going forward.

Deputy Mayor McCauley asked Ms. Beahm if the group home would be eligible for bonus credits and count for 8 credits instead of 4.

Ms. Beahm said it could potentially be eligible. It just depends on how the regulations come to fruition. The DCA is very supportive of group home initiatives because of the need for them. Aside from the credit, there is a benefit to the township in that you are talking about an existing house. There will not be any new construction or school aged children associated with this choice. I am not certain if the approved housing would involve new roofs or not.

Chairman Sireci said I was on the Board at the time of that the approval. The concept for the Habitat for Humanity project was for 4 new modest single family homes to have been built on a piece of land that was to be found and purchased. The group home scenario is another way to fulfill the obligation which the Court Master has already accepted.

Ms. Beahm said the Court Master had some questions as to why the obligation had changed. The answer to that is because as rental units the set aside was 15%. The change to for sale units increased the set aside to 20% which generated the additional 3 units. The Court Master was supportive of extending the deadline but does not want to see it languish another 5 years beyond the December deadline. She suggested monthly progress reports and a firm schedule to be implemented if that is something the Board looked favorably on.

Chairman Sireci said going this way is in a sense "pre-approved" because the judge will agree with the Court Master in these matters being that the judge is not the expert. Enforcing it with the provisions of the Court Master will make sure that it happens.

Ms. Beahm said we do not have the power to force the construction of the units but if at the end of these deadlines there is not a legitimate rationale as to why these things have not been implemented it could jeopardize whether or not the Court Master would continue to support us taking credit for the units.

Committeeman DelCore asked if the applicant can post a bond.

Mr. Bernstein said that would have to be voluntarily done, not imposed by the Board.

Committeeman DelCore asked Ms. Hirsch if the applicant is willing to post a bond.

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Ms. Hirsch said what I would suggest beyond the promises that have been made and monitoring reports is the layout of the time table of the steps that will lead to the home being occupied. The 3rd provision is to have the sales contract executed by SERV between November and January. Ordinarily we would not be required to give the subsidy until the closing but I believe the company would be willing to post the subsidy in an escrow account.

Committeeman DelCore said that would be with the presumption that you reach an agreement with SERV.

Ms. Hirsch said we are providing for a commitment letter to be signed in about a week from today.

Ms. Bishop said once the commitment letter is in place, which it is expected to be by next Monday, then SERV will go forward and negotiate with the homeowner. The agreement is actually between SERV and the homeowner. Ryan Homes will provide the subsidy at closing.

Committeeman DelCore asked what if the deal does not happen.

Ms. Bishop said it is not a question of whether or not the deal will not happen. If a deal is not made with this house, they will find another. Ryan Homes is committed to seeing this through in an expeditious manner.

Committeeman DelCore said there have been plenty of homes available over the last 5 years. Actions speak louder than words and we have not seen the actions to back the words.

Mr. Cohen said in a week Ryan Homes will be off the hook and it will be SERV's responsibility.

Ms. Bishop said SERV will accept the responsibility. They are an experienced provider that I have been working with in other municipalities. They provide a quality product.

Committeeman DelCore asked how much the subsidy is and how much would it have cost to build 4 units.

Ms. Bishop said the subsidy is \$100,000. I do not know what the cost would have been for construction.

Todd Pallo said the cost can vary depending on the size and type of building but we can construct homes in the \$50,000 to \$60,000 range, per unit.

Committeeman DelCore said the proposal decreases the financial obligation from Ryan Homes.

Chairman Sireci said the legal expectation is that they provide 4 units. The original agreement said they would build them through Habitat for Humanity, or someone else. How they provide it is up to the court to decide whether it is acceptable or not.

Ryan Homes waited until the very end, as every developer does, and do not want to spend as much to do it. From Hillsborough's point-of-view, we need to fulfill the obligation. This property was once known as "Bielanski", as part of the Round 2 lawsuits settled over 10 years ago. You need the mechanism to fulfill the 4 units.

Mr. Bernstein asked Ms. Bishop what the going rate is for an affordable housing unit today in this market, in this area.

Ms. Bishop said a lower moderate unit, in lieu of fee, is probably around \$120,000.

Mr. Bernstein said I believe a concern of some of the Board members is what happens if we get stuck holding the bag. I believe what the Board is looking for is something from Ryan Homes in the event that this whole thing falls apart and we are left to scramble to find the credits that we have something to do so. We are at this position now because Ryan Homes told the Board 5 years ago that the market was not there for affordable rental units; they could only do 'for sale' units. Now that the market is back to rental again, Ryan Homes is getting off the hook. The Board is looking for some guarantee in form of money or bonds that can be cashed by the Township as the mechanism to fulfill the obligation, should it come down to it.

Chairman Sireci said I do not think it matters how much money is spent as long as it is successful and gets the 4 units established. If Ryan Homes can do that for \$100,000 plus whatever the other company puts in, it does not matter. What matters is if we are left holding the bag for \$500,000. The issue is what trust do you have after 5 years that it is going to get done and how much will it cost us if we are left holding the bag.

Ms. Beahm said you stated the subsidy is \$100,000. How is the balance of the project being financed? I believe the concern is that there are no homes for sale in Hillsborough for \$100,000.

Ms. Bishop said SERV said they will take out a mortgage for the difference. Ryan Homes wants to move forward as expeditiously as possible. We will give you monthly reports. I would like to suggest that you give us until mid-November to see if we have a potential contract in place at which time we would come back to you with what SERV has done so far. We

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would have the representative from SERV, Keith Hamilton who was not available tonight, here as well.

Chairman Sireci called for a 5 minutes recess to allow the applicant to have time for consultation.

Ms. Hirsch said during the break we received authority from Ryan Homes to post a \$100,000 escrow in cash, rather than a bond. We can talk about what the Township could determine if there was a default and claim the money in the escrow account. If there were to be a default I believe the Township would be able to do the very same thing Ryan Homes is doing, which is contract with SERV to produce the 4-unit group home for the same credits Ryan Homes is attempting to produce.

Vice Chairman Cohen asked the Board Attorney if the escrow was legal to do.

Mr. Bernstein said it will ultimately have to be cleared by the Court Master. Ms. Beahm will discuss it with Ms. Mackenzie. Assuming all parties are interested, and as long as she believes we are going to make the desired result, the Township has to understand however, what comes with a default?

Committeeman DelCore said I was hoping for more than just the subsidy amount. That is why I thought a bond would be preferable.

Ms. Hirsch said the problem with a bond is; I do not know if you have had the experience of collecting on a performance bond from a developer who did not fulfill an obligation but you can spend years in litigation with a bonding company because that is how they do business. We are offering cash in an account. You can define the terms very clearly and if the default occurs, you have the right to withdraw that cash and step into the shoes of Ryan Homes with SERV.

Mr. Ringelheim said with regards to a performance bond, this very development defaulted on their obligations on a separate matter. Because of the circumstances, it was not actually Ryan Homes; it was the Atlantic Company that was responsible. Our Assistant Engineer, Tom Belanger and Township Attorney, Albert Cruz, Esq. have been very diligent in negotiating a settlement agreement with the bonding company but it has taken awhile. What happens is that they do not value the improvements down the road the same as they were originally anticipated. That negotiation has been ongoing for 4 or 5 years now.

Mr. Bernstein said the hesitation of the Board is that \$100,000 is nice but will not be enough to fulfill the obligation.

Ms. Hirsch asked what do you need additional money for. Would it be for legal fees and planning costs?

Mr. Bernstein said the additional money is for if we have to ultimately fill in the gap to satisfy the Court Master. If ultimately this deal falls through and an acceptable home is not able to be found, the Township will have to come up with the money to take care of it. Township money comes from the residents. I will say that there is already a tortured history with this property. We would love to see Ryan Homes take care of this obligation but ultimately if they do not, Hillsborough is on the hook because it is our credits and our obligation for which you are proving for.

Ms. Hirsch asked how much money are you looking to secure.

Mr. Bernstein said I would think at least \$250,000.

Ms. Hirsch said I do not see that as a possibility nor do I understand the basis for it. You have the ability to negotiate an agreement with SERV or a similar provider.

Mr. Bernstein said we do not. It is not our obligation to meet; it is yours.

Mr. Pallo said we are here with a plan to satisfy the credits. We have hired the experts to help get us to the finish line. We are hopeful we can look forward to this plan with timelines to put them in place. We can give you milestones and meet regularly to discuss those. We have already consulted with the experts and feel confident that this plan will work.

Ms. Beahm said I believe the frustration you are hearing, at least from my perspective, is that the Board has been accommodating in the past. Bringing Shirley on board has definitely helped to bring this forward but we have reached out and been trying to move this process along for a long time and had gotten no response at all. So it is difficult for you now, 3 month before this deadline, to stand here and say you are "committed" when you were "committed" 5 years ago. I know I sent letters, Bob sent letters and Betsy sent letters and they were ignored. The track record is not there so at this point we do not trust you to come through because you have not done that up until now. I absolutely agree with everything Shirley has said about it being credit worthy but I do not think that is the issue here. The credibility of the representations made on behalf of Ryan Homes is questionable considering you have made these commitments to us before and have not followed through. My own position is whether it will work from an affordable housing standpoint; yes. Does it make up for the 5 years of you ignoring this obligation? My guess is no. I believe that is what you are getting back from the Board at this point in time.

Ms. Hirsh said I would like to add a few points about the history of this project. The Chairman already mentioned the

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Bielanski Group being the group that litigated with the Township and got the affordable housing zoning on this property. I have looked at that settlement agreement very carefully and the zoning that resulted from it. This is a project that whether it was for rental or for sale, was a 15% set aside from the project. Bielanski made a commitment to the Town to produce rental affordable housing units. That worked well but then there was a change in the approach.

Do not forget that this is a company that produced 13 low and moderate income units on-site and provided \$325,000 to the Township for its RCA. It is not as if the only obligation of Ryan Homes was these 4 units. It was originally 3; they added a 4th to help out the town. I think they have been accommodating and should be given some amount of credit regardless of the fact that everyone agrees they did not act quickly enough on this.

Committeeman DelCore said this was all brought up at the time to convert the units. You are absolutely right; they have been accommodating in that regard. The issue is that the Affordable Housing Obligation is something we have worked very diligently on as a township. Jennifer has been on board from the beginning and this is very near and dear to the Township Committee. At this point I am very disappointed that we are at this point and having to deal with this now.

Mr. Burchette said our attorney asked for a \$250,000 escrow. If everything is going to go the way you say it is, you are only going to be without that additional \$150,000 for 3 months. That gives us the guarantee.

Ms. Hirsch asked what are we guaranteeing though.

Mr. Bernstein said you are guaranteeing that if for some reason you cannot meet your obligations in accordance with the agreement you are asking us to do and the Special Master has had enough and says if you want the credits you have to do it yourself; it is seed money for the Township to do it.

Committeeman DelCore said as long as you get this done in April it will be fine. If not, you will have to come back to the Board.

Vice Chairman Cohen asked Ms. Beahm if there is a track record with the County for getting a proposal like this to happen.

Ms. Beahm said group homes are very prevalent. We actually have a number of these types of facilities existing within the Township. The Plan has taken credit for 14 group homes throughout the community, maybe more have come on line since 2010. Throughout the State these facilities are a mechanism advocated by the HMFA who helps subsidize with matching funds through a program. I have dealt with SERV as well and find them to be a reputable provider.

There is no home site currently so they will have to find a home, purchase the home, secure a mortgage and so on. As with any real estate transaction there is always opportunity for things to arise. If one home does not work they will find another that will. The concern is that real estate is more expensive here than in other locations. How it is handled financially is outside of my area.

Ms. Freeman said you are going to see more developmental centers closing over the next 2 years. This is the direction of how things are going. You are going to have more of these types of facilities in communities.

Ms. Beahm said I am aware that there are individuals currently on a waitlist for facilities of this nature. They seem to operate more successfully in the smaller environment than in the larger.

Mr. Bernstein said the August 29th letter from Ms. Mackenzie requests monthly updates. I would recommend to the Board that any agreement include the requests of the Court Master.

Vice Chairman Cohen suggested the update be required twice a month, not once.

Ms. Hirsch said we have the authority to provide \$250,000 in the form of a letter of credit or a cash guarantee in an escrow account. To review, we will make the arrangements with SERV and provide you with bi-monthly status reports and anything else you want in the meantime. If it reaches a point in the process where Ms. Mackenzie determines there is no way Ryan Homes is going to perform, that is the trigger for the money being turned over to Hillsborough Township.

Mr. Bernstein agreed.

Ms. Beahm said I will verify that with Betsy but I do not foresee that as being an issue.

Mr. Bernstein said so we understand for the purpose of the Resolution that will be drafted, the applicant is willing to accept the requirements as set forth on the record and shall include any further requirements set forth by Ms. Mackenzie in any of her letters and in the letters of Archer Greiner relative to their obligation to the deadlines.

A motion was made by Mr. Burchette, seconded by Mr. Cohen.

Ms. Hirsch added that this is an obvious point but you agree that once the deal with SERV goes forward, the units are

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produced and the obligation is met. At some point, the money will be returned.

Ms. Beahm said the obligation will be formally met once the deed restriction is placed at the closing, provided to the Court Master and she has checked off on it.

Ms. Bishop said the Court Master would also like to review the deed restriction prior to it being executed, which is fine.

Roll Call: Ms. Fenwick – yes; Mr. Burchette – yes; Mr. Mershon – yes; Mr. Conard – yes; Mr. Julian – yes; Mr. Peason – yes; Vice Chairman Cohen – yes; Committeeman DelCore; Deputy Mayor McCauley – yes; Chairman Sireci – yes. Motion carries.

Ms. Beahm said I will relay this information to Betsy Mackenzie. I do not perceive there to be any issues but if there are I will let everyone know right away.

PUBLIC HEARING – SUBDIVISION/SITE PLAN APPLICATIONS

Curtis WESTOVER – File #12-PB-03-MRV – Block 174, Lot 93.06 – Zion Road. Applicant seeking Minor Subdivision with 'c' Bulk Variances for relief from: (Lot 93.061 Minimum Lot Area; Minimum Lot Width; Maximum Impervious Coverage; and (Lot 93.062) Minimum Lot Area; Minimum Front Yard Setback; Maximum Impervious Coverage; Waiver and such other variances, waivers, and approvals as are necessary to permit the applicant to retain existing non-conforming conditions to subdivide 8.0001 acres into 2 undersized lots on property in the MZ District.

Robert B. Heibell, P.E., L.S. representing the applicant stated Curtis Westover is present and as an individual has chosen not to be represented by counsel. Both were sworn in and the following testimony was given:

Mr. Heibell reintroduced the application stating there is a deed restriction on the property for agricultural use. Mr. Westover appeared on his own before the Planning Board approximately 10 years ago. At that point in time, pursuant to the application before you, agreed to that stipulation on the property and a deed was filed. The application before you is to subdivide the 8 acres, subdividing off 2 acres which would encompass the existing Westover house and leave a 6 acre flag lot to the north.

The MZ Zone requires 15 acres. We are only starting with 8 so the property is deficient in area as it exists today so both subdivided lots would be deficient in area as well. One of the aspects of the application is that the 6 acre flag lot would be deed restricted from any single family dwelling. It would exist in its current state which is a landscaping business, an allowed agricultural use. Mr. Westover is seeking the minor subdivision so that he and his wife can reside in the existing house on the 2 acre lot and have the ability to sell the landscaping business on the 6 acre lot without providing for any further construction and/or dwellings on the lot. The subdivision would create a series of bulk variances, the majority of which exist currently, one of which is impervious surface. The application does not propose any additional impervious surface or additional use that does not currently exist. Often times there are options on how to subdivide a lot but in this instance, there is no way to reconfigure or overcome these variances.

One of the aspects Mr. Ringelheim and I spoke of is the existing driveway that exists to the west of the property. The area along Zion Road is very steep there. The driveway is in an easement. If the Board were to approve this application, one of the conditions the Board would have to impose is a revised driveway easement with the adjoining property owner. The reason being is that potentially another user could potentially use the 6 acre lot. Mr. Westover is aware of this. The easement currently goes beyond the restrictions of the current lot. The current lot allows 2 lots driveway access. Should the Board approve this minor subdivision there will be 3 lots to utilize the easement which causes a new access easement to be a requirement.

I have had an opportunity to go over Mr. White's report. There are no conditions in that report the applicant will not agree to. This application involves a paper subdivision without any physical improvements. Part of the request of Mr. White was to put on the record facts that the applicant is not intending to build anything on the property; not intending to build any houses on the back of the property; not intending to increase the impervious surface on the property. Should the application be approved, it would be done by the filing of a deed for the two new lots and access easement.

We have received an exemption and/or approval letters from the SUC, SCPB, and DRCC. The Fire Marshal has no comments on the application. We were not asked to attend the Environmental Commission meeting but the Commission did review this application. The comments in the EC letter have already been addressed tonight.

Mr. Julian, a member of both the Planning Board and Environmental Commission said this application is a little more complicated for the EC. I believe an application for this property came before the EC originally under the Board of Adjustment. There were some concerns at that time because it was a landscaping business and the EC made a request to walk the site. The BOA application did not go forward so we were never able to submit a report to the Board. We did not realize this was the same site as the Board of Adjustment application so the concerns we noted previously are not in this letter to the Planning Board.

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I have some concerns written in my notes from the BOA site-walk that I would like to review. Mr. Westover allowed myself, Debbie LaMond and Tom Almendinger to walk the site. There was a little garage on the property where the applicant had done car repairs. Chemical stains were evident on the concrete. There was also an oil tank in the middle of the property with staining underneath on the soil itself but we did not know the extent of the contamination.

Mr. Heibell said originally and through recently, small engine repair was done on the property. There had been a fire on the property in 2005 and that building burned down. I have spoken with Mr. Ringelheim on this and he has spoken with your Board Attorney. The ordinance says if you want to replace a non-conforming use, you have to do that within 1 year. Mr. Westover did not. I will submit on the record that once it got to the Planning Board, we changed the application. Mr. Ringelheim and Mr. Bernstein concurred that if we wanted the application to include the engine repair business, we would have had to go back to the Board of Adjustment. There is no intended use for a small machine repair use to remain on the property. If Mr. Westover wants to retain the usage of the existing smaller building that is now on a concrete pad of the original building, he can do so for agricultural use but not for the purpose of small engine repair. That does not address any environmental concerns but addresses the use on this particular property.

Mr. Julian said there was some confusion as to whether you would be subdividing to sell to a landscaper. As a commercial transaction you would need to identify and possibly mitigate any contamination issues for that process to happen. That was our concern that whoever is going to buy this property has to go through the correct environmental regulations and laws for whatever contamination there is or isn't.

Chairman Sireci asked Mr. Bernstein, since this application no longer involves the continuation of the use that created this contamination, do we have any environmental jurisdiction over it for this particular subdivision.

Mr. Bernstein said yes. Once an applicant comes before you seeking to subdivide the property in order to turn it into something more than an agricultural use, but a commercial portion of the agricultural use, there are certain environmental considerations that have to be given because the Board is being asked to approve an application that would allow Mr. Westover or his heirs to sell that property with just the business verses under the current situation in which they would have to sell the entire property; house, business and all for a similar reason. One option is for the Board to remand this back to the Environmental Commission for a report. The other concern I have is that there are two issues in Mr. White's most recent letter that I have not heard testimony about.

Chairman Sireci asked Mr. Julian what the Environmental Commission could do from having members walk on the property that would provide us with more information about that than we already have.

Mr. Julian said I think the Environmental Commission is set up to recommend assessing contamination to the Board. Beyond that it is the Board's decision as to whether to take that recommendation or not.

Mr. Heibell said I would expect that even without going back to the Environmental Commission, I think that is exactly what they will recommend. I would expect that Mr. Westover would accept that as a condition of approval.

William White, Board Engineer, said to Mr. Heibell, the survey provided is over 10 years old. Do you or the applicant testify this represents what is currently on the field today?

Mr. Heibell said yes. In 2011 when the first application was filed, we went out and updated a prior survey so this does represent the conditions as of 2011.

Mr. White asked Mr. Westover if anything has changed on the site since Mr. Heibell's 2011 update.

Mr. Westover said no.

Mr. White asked is the landscape business a retail or wholesale business.

Mr. Westover said we had a landscaping business there plus a nursery. My son did have a retail business there which took place during daylight hours, nothing at night. He sold Christmas trees.

Mr. Heibell asked beyond the Christmas trees, is there any other retail use.

Mr. Westover said no.

Mr. Bernstein said in his letter of August 30, 2012, Mr. White raises in Conditions #7 and #8, that we are putting together an approval for someone to buy. We need to put together what the terms and conditions are so we know what exists.

Mr. White said I mentioned it so that the Board would know what it is they were granting a use for.

Mr. Heibell asked Mr. Westover several questions related to the landscaping business being run on the property over the last 12 months.

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Mr. Westover responded: We grew trees; 95% of which were sold for landscaping for my son's landscaping business. Very few were sold to individuals who visited the property. Those individuals could either plant them themselves or retain the services of my son. My son also had honey bees. He sold honey at Christmas time when he sold Christmas trees.

Mr. Bernstein asked Mr. Westover, during what periods of the year did your son sell evergreen trees? What were the hours of operation for the retail business? How much truck traffic was there? Do you sell to other landscapers and if so, how do they obtain the trees off of your site?

Mr. Westover said trees are sold maybe 6 months out of the whole year. The hours were generally from daylight till dark, depending on the season; longer in the summer, shorter in the fall. We have maybe 5 or 6 tractor trailer loads in the spring that bring trees for stock. Other landscapers pick up with their own vehicles.

Mr. Bernstein asked, do you intend as part of this application to improve the existing landscaping or nursery use? As Mr. White pointed out, do you plan on leaving more storage bins, more equipment storage, etc. or do you plan on leaving the property in the current condition it is in?

Mr. Westover said we do plan on expanding the nursery as far as planting. We have to plant so many trees a year to keep our nursery assessment so we will be planting all of the time as we use the landscape.

Chairman Sireci said we are not concerned with trees; we are concerned with buildings.

Mr. Heibell said I have already informed Mr. Westover that that is a variance condition. The existing property is over on the existing impervious surface. Any approval of the Board would not allow any additional impervious surface, whether it be buildings, driveways or whatever.

Mr. Bernstein consulted privately with Mr. Ringelheim and Mr. White then stated, I think the best protection for the municipality, relative to the resolution that will be drafted, is to send the Township Zoning Officer, if Mr. Westover will allow him, to survey the site with pictures, etc. to see what is on the site and what is going on there so that we have a snapshot in time of what the business is doing so we can put it together as part of the variance approval for the resolution.

Mr. Heibell said that would be acceptable. There is an existing right of entry to go on the property. We would expand that to include the Zoning Officer.

Mr. Heibell said there is an existing concrete pad on the property for the building that burned down. Mr. Westover let me know during the break that he did not want to give up the right to put up a barn for agricultural use, not for small engine repair. There would be no extra impervious surface involved.

Mr. Conard asked how big is the concrete pad.

Mr. Westover said 50' x 72'.

Mr. Bernstein asked Mr. Westover to clarify if there is any lighting; existing or proposed.

Mr. Heibell said there is no proposed lighting. Mr. Westover said there is only lighting inside the building, not outside.

Mr. Julian asked if phase I of the property would be part of the approval.

Mr. Heibell said I asked Mr. Westover during the break. He does accept that as a condition of approval.

Open to the Public

No questions/comments

Close Public

A motion to accept application #12-PB-03-MRV with all stipulations, conditions and acceptance of all professional reports and recommendations was made by Deputy Mayor McCauley, seconded by Mr. Julian.

Roll Call: Ms. Fenwick – no; Mr. Burchette – yes; Mr. Mershon – no; Mr. Conard – abstain; Mr. Julian – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci – yes. Motion carries.

Chairman Sireci announced the public hearing for the **RPC Equities, LLC** application, File #12-PB-07-MSRV – Block 151.09, Lot 221 – 300 Valley Road has been carried to the public meeting of October 11, 2012 with re-notice.

Mr. Bernstein said the reason it was not on tonight is because the notice was defective.

Mr. Ringelheim reminded the Board there will be a quick meeting next week for some Board business.

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ADJOURNMENT

The meeting adjourned at 9:15 p.m.

Submitted by:
Debra Padgett
Planning Board Clerk

Approved