

The regular meeting of July 11 2005 of the Washington Township Planning Board was called to order by Chairman Jones at 7:40 p.m.

MEMBERS PRESENT

CLASS IV: Mark Bauerlein, R. Gregory Jones, William Leavens, Kathleen McGroarty, Howard Popper  
 ALTERNATES: Sam Akin, Lou Mont  
 CLASS I: Geoffrey Price  
 CLASS II: Eric Trevena  
 CLASS III: Kim Ball Kaiser  
 OTHERS ABSENT: DiSalvo  
 STAFF PRESENT: Engineer Hall, Clerk Kesper, Planner Banisch, Attorneys Buzak and Cofoni

Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 15, 2005 and posted on the Bulletin Board on the same date. Five notices were mailed, as there were five requests.

**\*\*NO NEW CASES OR WITNESSES SHALL BE HEARD SUBSEQUENT TO 10:30 PM\*\***

Pledge of Allegiance

**MINUTES**

1. Minutes from the June 22, 2005 Regular Meeting

Mr. Price made a motion to approve the minutes, seconded by Ms. Kaiser. Minor changes were made. A voice vote was taken; Mr. Bauerlein and Mr. Popper abstained, all others were in favor and the motion carried.

**DISCUSSION**

1. Highlands Legislation Procedures – E. Buzak Correspondence of June 22, 2005

Mr. Buzak reviewed his letter of July 8, 2005. He stated that the board had requested that the professionals get together to develop a policy on how to handle

applications in the highlands preservation, of which the majority of the township falls under. He noted that in May 2005 the DEP issued new emergency regulations. He stated that the act is silent on how it affects planning boards or the applicants. He briefly reviewed the act.

Mr. Banisch arrived and joined the meeting.

Mr. Buzak stated that there are three parts to the proposed policy.

First, to be covered by the Highlands Act the development has to be in the preservation area and meet the statutory definition of a "highlands major development" as defined by the act. If it does not meet the definition the act does not apply.

Second, if it does meet major development, it may meet one or more of the 17 different exemptions in the act. If it does, the applicant is not required to comply with the act because they are exempt.

Third, if the act does apply then the full obligation as set forth in the highlands act apply to the application. In general there would be a need for a DEP Highlands approval.

Mr. Buzak explained that in order for the board or their staff to determine which of the above three items applies to an applicant they propose the following:

A cover sheet questionnaire will be developed for all application requesting highlands information as noted on page two of his letter.

After the information was provided the staff would look at the application and if the professionals and board can "readily conclude" (language used by the DEP) that the project does not meet the highlands threshold then the board can proceed with hearing the application under their normal procedures. The applicant would then sign a second acknowledgement regarding the determination that the determination solely for the board, not a consistency determination from the DEP.

If the board staff cannot conclude whether the Highlands Act does or does not apply, the board could decide, based upon an applicants testimony during the completeness hearing to hear the application but if the application were approved a condition of approval would be that the applicant must obtain a highlands letter of non-applicability prior to the subdivision or site plan being perfected.

Lastly if the professionals are of the opinion that the highlands act applies and the applicant should get a DEP determination and approval before the board hears the application.

The same procedure would be handled for those applicants stating that they meet one of the 17 waiver conditions of the act.

Mr. Buzak stated that the checklist would have to be revised to include the requirement of the questionnaire and DEP approval. He noted that checklist items may be waived by the Board if they conclude it was warranted.

Mr. Buzak answered Mr. Akin that the township becoming consistent with the DEP regulations is at least a year away based on the legislation.

Mr. Popper asked for clarification of the terms Highlands Council and DEP and their relationship and whether it is Highlands Council charge to develop a Master Plan review township ordinances, and regulating development in the preservation area and did that mean that the Highlands Council are interpreting, developing and enforcing the regulations.

Mr. Buzak explained that the Highlands Master Plan will set forth the parameters in general that municipalities will have to implement through their own ordinances be consistent with the master plan. It will be those land use type regulations that municipalities develop to be consistent that would be the extent of highlands council activities with the municipalities. He stated that the regulations that came out in May were implemented solely by the DEP and the DEP grants the approvals, denials, waivers and exemptions as they deal with development application. The DEP would not discuss an application with the Highlands Council, as this is not part of the legislation. He explained that neither the legislation or DEP regulations refer directly nor indirectly any of the determinations made by the DEP under the act or regulation to the Council for consideration. The DEP essentially acts independently in developing, interpreting and granting the approvals and exemptions. He noted that possibly at some point in time the legislation could be modified or the DEP could modify the regulations, and if that happens in the future then it will have to be dealt with at that time. He noted that under the Highlands Act the DEP has enormous awesome responsible and he was doubtful that the DEP would give up the control.

Mr. Buzak answered Mr. Popper that there is nothing in the legislation or statutes to suggest that the head of the Highlands Council should contact the DEP to stated that they were misinterpreting the legislation on a particular application. There is no formal or informal in the regulatory process for this to happen.

Mr. Popper stated he was concerned about protecting this board against allegations of conflict of interest. He asked if the strategy/procedures the board was discussing this evening, if accepted and adopted, dealt only with the DEP and not with the highlands.

Mr. Buzak answered that what the board is discussing deals only with the DEP and not with the Highlands Council.

Mr. Mont stated that if the staff cannot make the decision that an applicant is exempt or the act does not apply, the board should not make the decision.

Mr. Banisch stated that the information questionnaire puts the applicant on notice that they proceed at their own risk. He stated that the Board could hear

testimony during the completeness review that could lead them to make the decision to hear an application.

Mr. Buzak answered the Board that if the board granted an approval with a DEP condition and consequently the DEP required changes to the plan approved by the Planning Board, the applicant would have to come back to the board for approval of the revised plan. He stated that it is likely that an applicant would decide to have simultaneous applications with the Board and DEP.

Mr. Buzak reviewed the changes to the checklists that would have to be made to implement the procedures discussed.

Mr. Jones made a motion to adopt the highlands policy and procedure as outlined in Mr. Buzak's letter of July 8, 2005 letter. Seconded by Price. A roll call vote was taken:

Ayes: Akin, Bauerlein, Kaiser, Jones, Leavens, McGroarty, Mont, Popper, Price, Trevena  
 Nays: None  
 Abstentions: None  
 Absent: DiSalvo

Mr. Jones made a motion to modify the checklists as discussed. Seconded by Mr. Popper. A roll call vote was taken:

Ayes: Akin, Bauerlein, Kaiser, Jones, Leavens, McGroarty, Mont, Popper, Price, Trevena  
 Nays: None  
 Abstentions: None  
 Absent: DiSalvo

**RESOLUTIONS**

05-18 Granta – Block 43 Lot 48.01 – Kings Highway – R-5 – 19.0661 Acres – Request for two lot minor subdivision with variance for flagstaff

Ms. Cofoni stated that this application this application does not meet the threshold of a highlands major development as discussed previously. She recommended the condition on submitting to the DEP be deleted.

Ms McGroarty made a motion to approve the resolution deleting the condition regarding submission to the DEP. Seconded by Mr. Popper.

Ayes: Akin, Bauerlein, Kaiser, Jones, Leavens, McGroarty, Popper, Price, Trevena  
 Nays: None  
 Abstentions: None  
 Ineligible/Absent: DiSalvo

05-23 Rand Homes (Southern Hill) - Block 33, Lot 87 – West Springtown Road – R-2 Zone, 53 Acres – Approval of Request for amendment to stormwater management plan for ten lot subdivision approved with Resolution 03-18, Remand from Superior Court

Ms. Cofoni reviewed changes from the resolution distributed to the board requested by the applicant and reviewed by the Township Engineer who concurred with the changes.

Mr. Price made a motion to approve the resolution as amended this evening, seconded by Mr. Jones A roll call vote was taken.

Ayes: Jones, McGroarty, Kaiser, Trevena, Price                      Nays: None  
 Abstentions: None                      Absent: DiSalvo  
 Ineligible: Bauerlein, Leavens, Mont, Akin, Popper

05-21Perez – Block 51, Lot 2 – Zellers Road – R-5 Zone – 153 Acres – Approval of Request for Waiver of Site Plan for farm labor housing

Mr. Mont and Mr. Jones stepped down due to a conflict of interest.

Ms. Cofoni reviewed changes to the resolution.

The board discussed the condition regarding the boarding of horses. It was concluded the condition should stay.

Mr. Leavens made a motion to approve the resolution as amended. Seconded by Mr. Bauerlein. A roll call vote was taken:

Ayes: Akin, Bauerlein, Kaiser, Leavens, McGroarty, Price, Trevena  
 Nays: None                      Absent: DiSalvo                      Ineligible: Mont, Jones, Popper

05-20Lance – Block 33, Lot 59 – James Trail – R-5 Zone – 95 acres –Three lot minor subdivision – Approval of extension of time and amendment to Resolution 04-20

Mr. Jones, Ms. Kaiser and Mr. Leavens stepped down due to a conflict of interest.

Mr. Trevena made a motion to approve resolution 05-20, seconded by Mr. Bauerlein. A roll call vote was taken:

Ayes: Bauerlein, McGroarty, Akin, Mont, Trevena, Price  
 Nays: None                      Abstentions: None                      Absent: DiSalvo  
 Ineligible: Jones, Kaiser, Leavens, Popper

05-24Regency at Long Valley I (Formerly Jade Land – Welsh Farms Estates) – Block 28, Lots 46 & 47 – Village age restricted housing overlay zone – 27.83 acres – Approval of Request for amendment to preliminary subdivision and site plan approval (Resolution 04-16) and Final

subdivision approval (04-27) – Reduction from 50 to 45 building lots and elimination of private community center and three COAH apartments

Ray Rice, Applicant

Ms. Kaiser, Mr. Leavens, Mr. Jones and Mr. Akin stepped down due to a conflict of interest.

Mr. Rice stated that he would like to have the Mt. Laurel payments paid per unit with the full amount to be paid within two years from the first C.O.

Mr. Buzak objected to this method of payment and explained how it is difference from a developer paying his development fee.

The board discussed the issue and agreed to amend the resolution to have the payments coincide with the Townships COAH obligation. The payments will be made with the 8<sup>th</sup>, 16<sup>th</sup> and 24<sup>th</sup> Certificate of Occupancy.

Ms. Cofoni noted that the condition regarding revised final subdivision plans have been amended to add the requirement that revised final construction plans also are required.

The adoption of the resolution was adjourned to July 19<sup>th</sup> due to lack of quorum to vote.

Eligible: Bauerlein, DiSalvo, McGroarty, Trevena, Price  
Ineligible: Popper, Akin, Kaiser, Leavens, Mont, Jones

The meeting was opened to the public for questions and comments on items not on the agenda. There were no questions or comments and the meeting was closed to the public.

DECISIONS ON COMPLETENESS

None

**APPLICATIONS**

1. Carfaro – Block 63, Lot 28.03 – Hackelbarney Road – -5 Zone – 16.138 acres Request for two lot minor subdivision – Deemed Complete March 14, 2005 – Previously Heard March 14, 2005 – Expires August 10, 2005

Mr. Jones announced that the application had been adjourned at the applicant's request to August 8, 2005.

2. 2085 Realty Partners, LLC – Highlands Plaza (A&P Shopping Center) – Block 3.09, Lot 5 –6.81 Acres - Route 4 East –Request for preliminary and final site plan for medical center, surgical center, retail services and restaurant with variances for pre-existing conditions - Deemed complete June 22, 2005 – Expires October 26, 2005.

Anthony Pantano, Applicant's Attorney  
Paul Couvrette, Applicant's Engineer  
John Murphy, Applicant  
Michael Deehan, Applicant  
Walter Kneis, Applicant's Architect

Walter Kneis, was sworn in by Attorney Buzak and presented his qualifications to the board and was accepted as an expert witness.

Mr. Kneis referred to the previously distributed architectural plans, which were marked A-1. The applicant is not proposing to expand the structures but that there will be interior changes and an updating of the façade of the building. The elevations were marked A-3. The engineering site plan drawing was marked A-4. He stated that the applicant plans to modify the existing storefronts to allow for more glass and a textured finish and the addition of columns and tower structures. He referred to the elevations and pointed out the metal screening to change the look and hide the mansard roof behind it. The caps on the towers are ornamental metal. They plan to keep the existing sign banner. The applicant will submit a detailed sign plan. He stated that some of the tenant leases might not allow for the signs to be changed. The sides and rear will be repainted. He pointed out the proposed freestanding sign, which would be externally illuminated. The sign will be located at the setback line at the entrance of the center. He answered Ms. McGroarty that the existing roof is 23' and the towers would be 38' to the top.

Ms. McGroarty stated that at the site walk they talked about the facade being more traditional, such as brick.

Mr. Pantano agreed to use brick for the sign.

Dr. Dheets stated that they would consider using materials such as those used for the new Chester Library.

Mr. Bauerlein wanted the fire department to look at the metal grills in front of the mansard roof.

Mr. Kneis stated that he would come back with revised plans.

Ms. McGroarty stated that she wanted to see an elevation of the side of the medical center entry.

Mr. Kneis answered Mr. Banisch that the applicant would be re-roofing the building and if there were moisture problems on the exterior walls, it would be addressed. He stated that on revised plans he would show on the design used for visual and audio buffers of the roof top air conditioners.

Mr. Pantano answered Mr. Banisch that the leases for the A&P Liquor Store and Blockbuster may not be negotiable regarding the signs. The other tenants will probably be changeable. He will supply the lease renewal times to Mr. Banisch so it may be addressed and be put into any resolution of approval.

Mr. Kneis stated that revised plans would have the height of the existing roof and proposed height. He answered Mr. Hall that the applicant is proposing only one freestanding sign.

Hal Simoff was sworn in by Attorney Buzak.

Mr. Simoff stated that he did a limited traffic analysis to point out the differences from a grocery store complex to a medical center. He reviewed his report of June 30, 2005. He stated that the AM peak hour goes up by 84 trips. PM peak hour would go down. The overall 24-hour traffic for weekdays and Saturdays would be reduced. He stated that this report was necessary to get a Certificate of No Interest from the NJDOT. He referred to his parking analysis/comparison of three reference sources and the Township Ordinances. It was his opinion that the Urban Land Use numbers would be the most similar use and this standard uses 373 parking spaces vs. 424 spaces required by the Township Ordinance. He stated that the applicant's plan proposes 378 spaces where the Township ordinance requires 424 spaces. He answered Mr. Hall that it was his opinion that 370-375 spaces is a conservative, realistic number for this type of use.

Mr. Hall answered Ms. Kaiser that there are currently 298 spaces on the site.

Ms. Kaiser stated that this parking lot has a history that of never being completely utilized. She state that regarding concerns that it may become a "park and ride" there is an official NJDOT park in ride just east of this site on Route 46.

Mr. Simoff suggested "banking" some of the spaces, to be built at a later date if the need arose.

Mr. Popper wanted to have Mr. Maltz involved and he wanted data based on our site and not a model.

Mr. Simoff stated that the parking/traffic studies he used are the industry standards, which are periodically updated by the traffic engineers based upon data collected. The trip generation formulas have been developed over 15 years and are the accepted source to predict the amount of traffic.

Mr. Trevena suggested using the 302 parking spaces and banking the additional up to 378 with the need for additional parking to required/authorized by the Police Department and or Township Engineer.

Dr. Deehan stated that it was his opinion that the required number of spaces is substantially more then they will require.

The board discussed the parking and the reduction of the numbers and banking of the spaces. The board was of the opinion that perhaps reducing what is there now to 250 and allowing the applicant to add spaces up to 302 without approval of the police would be appropriate.

Mr. Simoff suggested that the handicapped parking be allowed along the building.

Mr. Banisch suggested the applicant prepare a parking sketch of 302 spaces with 50 of the spaces being banked. The plan should also show where the total 373 parking spaces would be located if the uses changed in the future.

Mr. Trevena suggested that the first 50 spaces could be built with the approval of the Police Department and/or Township Engineer but that before the remainder of the spaces were built the applicant would have to come back to the board.

A TCC will be held on the parking.

Mr. Hall suggested that the applicant install a sidewalk in front of the property and explained the previous applications that are providing sidewalks.

Mr. Banisch stated that sidewalks should also be installed to the residential developments.

The meeting was adjourned to August 8, 2005.

Eligible: Akin, DiSalvo, Kaiser, Jones, Leavens, McGroarty, Mont, Price, Trevena

Absent 6/22: Bauerlein, DiSalvo, Popper  
7/11: DiSalvo

2. Gorry – Block 51, Lots 9 & 10 – Middle Valley Road – R –5 Zone – 7.799 Acres – Request for determination of exempt subdivision (previously subdivided June 12, 1978)

Robert Mielich, Applicant's Attorney

Mr. Buzak stated that the application is for an exemption from a minor subdivision for the board to make a determination that there was not a merger of

lots when the Township changed the zoning from R-3 to R-5. He stated that the lots had been created through a minor subdivision before the Planning Board in 1978. It was his opinion that the Board did not have jurisdiction to hear the application

Ms. Cofoni explained that the application was submitted based on procedures used by the board in the past. It was their opinion that this is a Township Attorney decision, not a planning board decision. She explained that if the Township Attorney determines that the lots were not merged the sale of the two separate lots could go through. If the Township Attorney determines that the lots were merged the applicant would have to apply for a new subdivision requesting lot size variances.

The application was not heard and the applicant was directed to speak to the Township Attorney regarding this issue.

***DISCUSSION/ CORRESPONDENCE***

1. Vouchers

Mr. Leavens made a motion to approve the vouchers found in order by the chairman and send same on for payment, seconded by Mr. Bauerlein. A voice vote was taken; all were in favor and the motion carried.

2. Sign Ordinance

Mr. Banisch distributed a memo regarding the sign ordinance amendment. The board decided that they would discuss the memo and ordinance revisions at the work session on Tuesday July 19, 2005.

2. June 29, 2005 Correspondence from NJ COAH - RE: Extended Substantive Certification

Mr. Banisch stated that he spoke to the Township Attorney on this matter and he will have a memo for discussion at the work session. He stated that the township has substantially complied with their second round plan. He noted that the numbers the township did not meet were mostly the rehabilitation units. He explained that COAH is not taking into consideration the third round numbers and that the township actually has a credit going into the third round certification because the Township has built more than the actually required units based on the 2000 census.

Mr. Buzak answered Ms. Kaiser that COAH has not yet modified their numbers for Townships covered by the Highlands legislation.

4. Scuedes vs. Washington Township

Ms. Cofoni stated that the court dismissed the suit with prejudice since the township repealed the cluster ordinance.

Ms. Cofoni also informed the board that The TM Group has filed a motion to have the appellate division dismissed with prejudice the Scudese motion challenging the Superior Court decision upholding the Planning Board's preliminary and final approval because the legal council for the Scudese's have not filed their required brief. She stated that the have joined in this motion on behalf of the Planning Board.

Mr. Price made a motion to adjourn, seconded by Ms. Kaiser. A voice vote was taken; all were in favor and the meeting was adjourned at 10:20 p.m.

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Virginia R. Kesper