

**TOWNSHIP OF RIVER VALE
PLANNING BOARD
January 20, 2009
REGULAR MEETING
MINUTES**

ADEQUATE NOTICE STATEMENT:

A Regular Meeting of the River Vale Planning Board was called to order at 8:00 p.m. The following statement was read: "This is a Regular Meeting of the Planning Board of the Township of River Vale. I am informed by the Clerk that adequate public notice has been provided by mailing notice to the Pascack Valley News/Post Review and The Record, by posting notice on the bulletin board in the Municipal Building, and by filing a copy of the notice to all persons who requested the same and prepaid the cost fixed by the Board".

The Planning Board saluted the flag.

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ROLL CALL:

Members Present:

Kenneth H. Koons	Chairman
George Shalhoub	Vice-Chairman
Joseph Blundo	Mayor
By Robert Menville	Class I
Peter Wayne	Class II
Dwight de Stefan	Class III (Councilman)
Mark Ericksen	Secretary
Ron Tucci	
Scott Lippert	Alt. #2

Also Present:

Dennis Deutsch, Esq.	Board Attorney
Christopher Statile, PE	Board Engineer

Absent: Bruce Carillo

Chris Wahmann

Jim Tolomeo Alt. #1

REORGANIZATION MEETING

Mr. Koons turned the meeting over to Dennis Deutsch, Esq. for the swearing in of the Board Members.

Swearing in of Board Members:

The following Members were sworn in by the Board Attorney:

Robert Menville, Class I
Peter Wayne, Class II
Councilman de Stefan, Class III
Mark Ericksen, Full Member
Scott Lippert, Alternate #2

Election of Chairman:

Mr. Deutsch requested a nomination for Chairman. Mr. Menville nominated Kenneth Koons as Chairman, with second by Councilman de Stefan. There were no further nominations. Mr. Menville moved to close nominations with second by Mr. de Stefan and all ayes. On roll call vote, all members voted yes on the nomination.

Election of Vice-Chairman:

Chairman Koons requested a nomination for Vice-Chairman. Mr. Menville nominated George Shalhoub as Vice-Chairman with second by Mr. Wayne. There were no further nominations. Mr. Koons moved to close nominations, with second by Mr. Wayne and all ayes. On roll call vote, all members voted yes on the nomination.

Election of Secretary:

Chairman Koons requested a nomination for Secretary. Mr. Menville nominated Mark Ericksen as Secretary with second by Mr. de Stefan. There were no further nominations. Mr. Koons moved to close nominations, with second by Councilman de Stefan and all ayes. On roll call vote, all members voted yes on the nomination.

Election of Board Attorney:

A motion to nominate Dennis Deutsch, Esq. as Planning Board Attorney was made by Chairman Koons and seconded by Mr. Menville with great pleasure. There were no further nominations. Mr. Koons moved to close nominations, with second by Mr. Menville and all ayes. On roll call vote, all members voted yes. Mr. Deutsch took his oath and was sworn in by Chairman Koons.

Election of Board Engineer:

A motion to nominate Christopher Statile as Planning Board Engineer, was made by Chairman Koons with second by Mr. Menville. There were no further nominations. Mr. Koons moved to close nominations, with second by Mr. Menville and

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all eyes. On roll call vote, all members voted yes. Mr. Statile took his oath and was sworn in by Board Attorney Deutsch.

Approval of By-Laws:

The new By-laws would be distributed and voted on next month, as they were not included in the packets.

Approval of Meeting Dates:

A motion for approval of the 2009 Meeting Dates was made by Chairman Koons, seconded by Mr. Shalhoub and carried unanimously.

The meeting was turned over to Chairman Koons, who stated it was an honor to be Chairman for such a dedicated group.

REGULAR MEETING

MINUTES:

The Minutes of **December 8, 2008 and December 15, 2008** were approved upon motion of Chairman Koons, with second by Mr. Shalhoub and carried. Mr. Menville abstained on the December 15, 2008 Minutes.

RESOLUTION:

1. **Chopra, 209 Rivervale Road, Block 1719, Lot 5.01 Amended & Final Site Plan Approval; and Report from Board Attorney on Request for TCO** - Mr. Deutsch explained the Resolution was before the Board this evening for a vote, and the Board should review it for compartment and also review the final site plan for execution this evening. The Construction/Building Code Official, Mr. Santori, was present and wanted to comment on it as well. Mr. Deutsch advised he also had a comment on the second matter below, which was a report. Mr. Koons asked Mr. Statile if he reviewed the final site plan before it is signed. He further asked, and Mr. Deutsch advised, there was no need for a motion for him to sign. By passing the Resolution, he is authorized and directed.

Mr. Santori appeared and on behalf of Mr. Chopra, stating the site plan does not depict the site currently under construction. There was a requirement for underground electrical service, which has not been done, but there was an agreement to do so in the future. Mr. Deutsch explained the Construction Official came before them for a TCO even

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though the underground electrical is not in place. He has spoken with the Mayor regarding same. Mr. Santori continued. The other item was he performed an inspection on 12/30/08. The barrier-free sub-code does not meet the requirements of the State and the ADA. Applicant was before the Board tonight because the lease runs out for his store on 1/30/09, and he has no where to go, and he does not know if the new site will be ready for that date. Therefore, he was asking the Board for direction.

Mr. Tucci inquired about the plat before the Board that evening. The detailed plans approved by an architect, showed the proper access. Mr. Santori was working off the wrong plan--the preliminary approval. The ADA was on the original plan, but that has changed with the final site plan. The plan before us tonight becomes the approved plan tomorrow. Mr. Statile explained the parking lot is too low and the entrance is too high, and they are working on this. The applicant would have to submit a revised plan. Mr. Tucci suggested approving it subject to. Also, they want to fully encapsulate the dumpster enclosure.

Mr. Deutsch advised the only thing before the Board is a Resolution saying yes this is what we did or an instruction to revise it. There is nothing the Board can do about waiving anything or saying anything about ADA compliant. Mr. Koons commented the applicant has to fix the plan. Mr. Santori suggested holding off on the Resolution and operating under a TCO. Mr. Deutsch said we cannot advise Mr. Santori what to do; it is up to him to issue a TCO. Further, Mr. Deutsch advised, the final site plan is what the Board approved. This document is reflective of what the Board did last month. The only decision is whether it was drafted properly.

Mr. Tucci commented said he would make a motion to delay this matter for one month to review the site plan. The motion was seconded by Mr. Lippert. Mr. Menville questioned what happens if his lease is up. Mr. Santori said he could issue a TCO for a time period specified by him, but the applicant cannot open until the ADA requirements are in place. It should be able to be corrected by the next meeting. There were no further discussions. On roll call vote, Councilman de Stefan, Mr. Shalhoub, Mr. Menville, Mr. Wayne, Mr. Tucci, Mr. Lippert, and Mr. Koons, voted yes. Mr. Ericksen was not eligible to vote. The Resolution was carried to the next meeting.

PUBLIC HEARINGS:

1. **Blue Hill Estates, 719 & 707A Orangeburgh Road, Block 202.01, Lots 9, 15.01, 16.05 - Preliminary Subdivision and Final Subdivision** - Chairman Koons recused himself and stepped down from the dais. George Shalhoub presided. Ira Weiner, Esq. appeared on behalf of Ken and Barbara Koons. Mr. D'Elia represented the applicant and stated he appeared before the end of the year to request an adjournment to make an agreement with the neighbors. They are close and received a document from Mr. Weiner to settle the matter and enter into an agreement. He is reviewing the agreement, which is with the Koons. They are conveying property to Koons, and he is present to ask for an additional adjournment; they are very close. Mr. Wiener is here tonight and can fill in the Board as to the Koons' position and the details of the negotiations that have gone on for some time.

Mr. Weiner concurred that Mr. Delia and he spent many hours negotiating this matter. They have a draft document which has some language issues that need to be cleaned up by the laws. In terms of the delay, there was some discussion in the last month about the exact location of the Abbe Court, and until that was settled, they could not finish and have the engineer draw the plans. They have now completed that. They support the application and feel it will be much better long term than an objective case going back and forth. They would consent to carry the matter and feel by next meeting they will finish. There will be a strip from Lot 9 added to the Koons' lot, which makes for a nicer and cleaner subdivision, with no lots or strips owned by a homeowners' association.

Mr. D'Elia commented the only thing in terms of field work is the improvements on the Koons property, and that can be done quickly.

Mr. Shalhoub asked what if the Board does not like where the road is placed. Mr. Deutsch advised the approval goes both ways, and if agreeable, they would amend the application. Mr. Weiner stated the agreement is contingent upon the Board approving everything--the minor and the major. The agreement can be terminated or amended based on the Board.

Mr. Tucci inquired if it should be heard as one or separate applications. Mr. Deutsch advised it is up to the

applicant; the Board cannot mandate it. Mr. Deutsch asked Mr. Weiner, assuming the adjournment is granted, would he be present during the entire explication. Mr. Wiener responded yes, but he did not think it would be that long. It could be done either way, but he felt a phased approach was good--the minor first, then major would be better, but either way. Mr. Tucci commented they have to extend the time. He also asked a question on the plan. Mr. Deutsch advised you cannot discuss the specifics on the application; they are only here asking for an adjournment.

Mr. Menville moved to grant a 30 day extension of the application to 2/11/09. It was amended to 3/16/09, and second by Mr. de Stefan. Mr. Shalhoub asked when they would do the drainage work for the people on Chalmers Court. Mr. D'Elia deferred to Mr. Eichenlaub who advised they would be ready with both of them by 3/16/09. They need approval for the Board to make any drainage modifications. Mr. Shalhoub asked Mr. Deutsch if they could grant an adjournment subject to the drainage, and Mr. Deutsch advised they could and indicate it as part of any Resolution. This would be in there. There were no further questions, comments or discussions. On roll call vote, Mr. de Stefan, Mr. Menville, Mr. Ericksen, Mr. Wayne, Mr. Tucci, and Mr. Lippert voted yes. Mr. Shalhoub voted no. The matter was carried to 3/16/09.

Mr. Koons returned to the dais and assumed the Chairmanship.

2. Pascack Hills Properties, Rivervale Road/Colonial Road & Winding Way, Block 502, Lot 1 and Block 502, Lot 12-Major Subdivision - Mr. Lippert recused himself and stepped down from the dais. William Bailey, Esq. of the offices of Russell R. Huntington, Esq. represented the applicant.

Mr. Menville set forth his understanding of the issue, and Mr. Bailey advised his understand was the same. The public hearing was closed, and his was simply a deliberation and decision.

Mr. Menville commented all we need is a motion. Mr. Wayne requested clarification on the Master Plan.

Mr. Deutsch advised the question deals with the open space language in the Master Plan. The Master Plan is adopted by the Governing Body with the input of the

Planning Board. It is a guideline of where the Governing Body wants to go and what is desirous. It is not controlling law as to zoning. This Board has to abide by ordinances as adopted by the Governing Body, and it can refer to the Master Plan. This is a residential zone, which means the dominant consideration is that this is a residential zone, not open space. To remain open space perpetually, the Township has the option of purchasing land to keep it open space, and so can schools or individuals. It does not have to be kept as open space as stated in the Master Plan if the property is in a residential zone, and the Governing Body is desirous of developing it. You cannot simply make a determination that a particular piece of property in a residential zone must be kept open space based on the Master Plan if in fact it was zoned residential, because it is an indication of the Governing Body that this be kept residential. You have to consider the evidence presented not your personal desires with respect to a piece of property. You have to review the testimony. If there's credible evidence that the application creates a health and safety factor, that you can consider. In the absence of that, with respect to a proposal which complies with the ordinance of the Governing Body, Mr. Deutsch cited case law wherein the Court determined that the Board must grant the preliminary subdivision. Now what consideration can you give in a variance-free application - there is a fair amount of case law on that, and essentially you are limited to standards of health and safety on the plan before you. In the event there is any interest in denying an application based on this, Mr. Deutsch advised, there must be absolute and substantial testimony about the issues and problems preventing this, and he read a list of requirements for doing so. The Board must consider the evidence as it is presented, not personal desires. The prime consideration has to be the ordinance and whether the applicant satisfied the bulk requirements. If there has been credible evidence strong enough to support that the application creates a public hazard in any way, that is a consideration, but that is a very high bar to reach in the way the Courts have handled it. There was no further discussion

The Chairman called to entertain a motion. Mr. Tucci moved to approve the application based on information received from the Board Attorney, with second by Mr. Shalhoub. There were no further discussions.

On roll call vote, Mr. de Stefan requested to make comments with his vote. He thanked the public for coming out and giving testimony. He was impressed with testimony by Mr. Costa and Dr. Crowe. As the Board Attorney said, the Master Plan is not written in stone; it is a guideline, but it should not be dismissed lightly. There is a tie-in to the MLUL. It does affect variance applications, and it sets forth the public policy of the Governing Body and this particular Board. His opinion, and from all the evidence and testimony given, this application is in direct conflict with the Master Plan. He finds it adversely affects the policy of the Township to protect open space. In his mind, and from the evidence, Mr. de Stefan said it negatively impacts an area used for ingress and egress by Woodside students, adding congestion and traffic, and it certainly creates safety concerns for the students. Mr. de Stefan voted no.

Mr. Menville said he agreed with Mr. de Stefan, and without repeating everything he said, he believes it violates the spirit and intent of the Master Plan, it creates safety issues, and he also voted no.

Mr. Ericksen voted no. Mr. Wayne voted no.

Mr. Tucci asked if he missed any expert testimony on the safety issue, because the Board Attorney said we have to judge the matter on expert testimony and not on our own opinion, and because of case law. Mr. Menville commented to Mr. Tucci that only he himself would know if he missed any testimony, and then he would have to recuse himself. Mr. Tucci said he did not miss anything, but did not remember anyone having any credentials on safety, and based on the Attorney, he voted yes in favor of the application.

Mr. Shalhoub voted yes.

Chairman Koons commented he believed the spirit of the Master Plan is in direct conflict with this application. He also believed the residents have a right, when they move into a town and have a municipal facility, to depend on the fact that the municipal facility will stay the way it is, not whether or not it is safe for the children to walk in. Chairman Koons said he still thinks there is a safety issue, and we do not need an expert to say it is safe for the children to walk in. There is still a problem with some wet soil, and not only is it an open space issue, but an

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issue on the fact that you have what is believed to be a municipal facility that the residents have a right to believe will stay that way. Mr. Koons voted no.

Mr. Deutsch confirmed there were five (5) no votes and two (2) yes votes, and the motion fails. Mr. Koons stated the Resolution fails, and therefore, it is a Resolution of Denial by definition.

DISCUSSIONS: None

OPEN TO PUBLIC - None

PAYMENT OF INVOICES: A motion for approval to pay invoices was made by Chairman Koons, seconded by Mr. Menville and carried.

NEXT MEETING: February 11, 2009

ADJOURNMENT: On motion made, seconded and carried, the meeting was adjourned at 11:00 p.m.

Respectfully submitted,

**Mary R. Verducci, Paralegal
Recording Secretary**