

**TOWNSHIP OF RIVER VALE  
PLANNING BOARD  
Monday, December 8, 2008  
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
Mayor Joseph Blundo	Class I
Robert Menville	Designee
Peter Wayne	Class II
Dwight de Stefan	Class III (Councilman)
George Shalhoub	
Ron Tucci	
Scott Lippert	Alt. #2

**Also Present:**

Dennis Deutsch, Esq., Board Attorney  
Christopher Statile, PE Board Engineer  
Lauren Rohrer, Land Use Administrator

**Absent:** Bruce Carillo Vice-Chairman  
Mark Ericksen  
Chris Wahmann Secretary  
Jim Tolomeo Alt. #1

**MINUTES:** The Minutes of 11/12/08 were approved as amended by request of Mr. Shalhoub on motion of Chairman Koons, with second by Mayor Blundo and carried.

**RESOLUTIONS:**

**1. Spence, Spring Street, Block 1501.02, Lot 32.03 Major Soil Moving** - Chairman Koons moved for approval of the Resolution deemed as read, with second by Mr. Menville, who advised he listened to the tape of the 11/12/08 meeting. On roll call vote, Mr. Shalhoub, Mr. Menville, Mr. Wayne, Mr. Tucci, Mr. Lippert, and Chairman Koons voted yes.

**2 Macaluso, 573 Wittich Terrace, Block 806, Lot 4 - Soil Moving** - Chairman Koons moved for approval of the Resolution deemed as read, with second by Mr. Menville, who advised he listened to the tape of the 11/12/08 meeting. On roll call vote, Mr. Shalhoub, Mr. Menville, Mr. Wayne, Mr. Tucci, Mr. Lippert, and Chairman Koons voted yes.

**3. River Vale Housing Element and Fair Share Plan - COAH** - Mayor Blundo advised that this matter was being pulled from agenda, as the public was less than satisfied with plan. The Council will be having a special worksession meeting tomorrow to discuss how to modify the plan. The Council President will have a discussion among the council people. As soon as they receive a consensus, it will be sent to the Planning Board who will hold a Special Meeting on 12/15/08 at 7:00 pm. The Council will meet immediately thereafter. Procedurally, if the Planning Board agrees with the plan, they will pass a resolution recommending it to the Township Council. Any comments would be taken into consideration before an introductory vote, which would then be sent to COAH to state the Township has a plan in progress, to be voted on in January, and the Township can say we met our obligation to the State of NJ. The Mayor said he wanted to come to the Planning Board meeting and make the statement himself. The Council meeting is tomorrow night at 8:00 p.m. It is a Council Worksession, but it is open to the public to observe. The Planning Board may also attend. The recording will be available as soon as possible after the meeting. Mr. Deutsch advised the Planning Board has the right to attend as residents, but not as a Board meeting.

**4. Release of Performance Bond for Jewish Home** - Mr. Deutsch advised we are holding back funds on the

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Letter of Credit. The Board needs to approve the remainder of the performance bond in the amount of \$1,140.00 approximately. Mr. Statile recommended same. There is still a maintenance bond in place.

**PUBLIC HEARINGS/DISCUSSION:**

**1. River Vale Housing Element and Fair Share Plan -**  
Off the agenda - see above discussion.

**2. Changes to the Master Plan with respect to Through Lots and Flag Lots -** A brief discussion ensued. Chairman Koons commented there will be amendments to the ordinance, and his recommendation is to discourage this.

**PUBLIC HEARINGS:**

**1. Pascack Hills Properties, Rivervale Rd/Colonial Rd & Winding Way, Block 502, Lot 1 and Block 502, Lot 12 - Major Subdivision -** Russell R. Huntington, Esq. represented the applicant and explained the limiting schedule was not properly filed. The 120' would not be the appropriate bulk requirement. Accordingly, the only bulk requirement would be 75'. Further, Mr. Huntington submitted a Legal Memorandum stating that the "Limiting Schedule" marked as A8 in evidence has not been lawfully adopted and is of no force and effect. The question is whether they are required to have 75' measured at the curb line or 120'. They have 75' at the curb line and 120' at the building setback line, which is the width of the lot, and they feel they are correct. "Width of Lot" as stated in Section 142-263(b)(2) provides 120.

Chairman Koons read from Section 142-262, "Definitions", which contained an additional provision: "Front Yard: The open unoccupied space on the same lot with a main building situated between any street line of the lot and the nearest projection of the main building and extending to the side lines of the lot. Any provision here to the contrary notwithstanding, in all districts, the width of the front yard shall be measured at the street line, and all lots shall have a front yard width and required street frontage of not less than 75 feet. In case of corner lots, the shorter street frontage shall equal 60% or more of the longer frontage. (Amended 3/12/70, No Ordinance given)".

Chairman Koons said his reading of "notwithstanding" means "despite", so despite any other notation in the zoning, which might say you need less than 75', it only would apply to that notwithstanding provision and would have to be a provision, so in essence, if we found another section that said you could have 50', this Section 262, where it says notwithstanding, you would still have to have at least 75'. Mr. Deutsch advised his interpretation is that it must be the minimum 75'. Mr. Lippert commented there should not be less than 75'.

Mr. Tucci commented the reason why they told people in the past they needed variances was because of the Limiting Schedule. When this was adopted, this was how it was adopted. There was never an order for 75'. So when they say notwithstanding, he does not believe a definition has as much power as an ordinance does with a notwithstanding. He does not feel as strongly as Mr. Koons does. There was never an ordinance adopted. Mr. Menville asked him if he feels it should be 150' or 75'. Mr. Huntington said the question is whether they are required to have 75' at the curb line or 120', and they have 75' at the curb line and 120' at the building setback line.

Mr. Huntington showed an exhibit with proposed 120' across, conforming to the ordinance, which showed an unbuildable lot. Then he showed another exhibit. This could be reconciled with the current zoning ordinance. If there are conflicting ordinances, the courts say you must give sense or rationality to the section. There were a number of examples.

Chairman Koons commented there should be a recommendation that 75' is acceptable only on cul-de-sac lots. He agreed with Mr. Huntington's approach. It is the Board that says there are conflicting items in the zoning.

Mr. Koons asked Mr. Huntington to review what is before the Board. The land swap is contingent upon the subdivision. They stand before the Board as a contract purchaser in a land swap. Their proposal is to acquire a rectangular piece of land on Winding way and Dorchester Drive and create two fully conforming lots, with footprints as shown, meeting all ordinances, and ask the applicant to leave a portion of the land next to the northerly lot so that they can continue to use the pathway for the school children. It is 49.6' wide, level and square. It meets

all the requirements and of the engineer. It meets all the requirements in the zone, and this would be for two new homes. All standards the MLUL requires to protect the neighbors are on the map and went to the Engineer. He would speak to the underground detention system. There would be a Developers Agreement as a condition of approval. Proposed lot 12.01, the easterly lot of the two, is slightly skewed. Lots 12 and 12.01 are essentially level lots with no variances, threats or engineering challenges. Mr. Huntington gave his final closing commentary and asked the Board to vote favorably on the application.

Mr. Deutsch inquired about sidewalks. Mr. Huntington they had no problems with the requests and the Developers Agreement. Chairman Koons asked about provisions for the northerly lot for school children. Mr. Huntington referred to the fence shown on plan. Screening has not been shown. As a matter of marketing, there would be additional screening proposed. Mr. Statile commented applicant has a good number of trees. The underground utilities pole has to be set and split between the two houses. Mr. Stabile, a principal of the applicant, commented PSE&G approved the plan. Mr. Statile commented there is a well on the old property. Mr. Stabile noted they capped it, but he would still need a certification.

Mr. Deutsch inquired of Mr. Statile if the Board approves the plan should there be an updated plan, and Mr. Statile indicated yes. Mr. Huntington had no problem with same.

The matter was opened to public on motion made, seconded and carried, and the following members of the public came forward:

Amy Feldman, 588 Colonial Road was sworn in. She read a statement from a group of property owners. The property is under development. These properties are a forest where thousands of people walk bike, etc. The forest provides tranquility and a magnificent backdrop to their lives. The developer is advertising for sale, "Colonial Estates", by a sign that the Planning Board required to be taken down. The sign is still there. The land swap was negotiated without any permission. She asked if the Planning Board has jurisdiction over this, and said they object. The exhibit was marked Feldman 1. It consisted of seven (7) photographs. Dr. Crow testified there were no wetlands on

the site. They presented a map, Cohen 1, found on the DEP website, showing wetlands. Maybe Woodside School is built on wetlands, she said. and that explains why it is constantly flooding. Tons of water flows on what appears to be the wetlands. Mr. Costa said they would be better off with the four new homes. These woods need to be saved, and 250 people signed a petition. They ask that the Board reject both applications in their entirety. Mr. Deutsch advised the documents cannot become part of the formal record, but the people can come forward. Mr. Tucci said he believed the people signed it and may have some bearing. Mr. Koons wanted to know what they signed. She read it.

Mr. Deutsch read his letter of Advisory Opinion dated 6/17/08 sent to Mr. Huntington, based on a request for the Board to advise whether or not the proposed land swap was in accordance with the Master Plan, and included was a sketch. Mr. Deutsch advised in the letter that: the sketch provided no certainty of what was being proposed. Nevertheless, the Board speculated as to the proposal of a part of the property owned by the Board of Education, which includes a walkway for students, which is currently "open space" being exchanged with an adjacent property owner; the purposes of which is unknown, but not relevant to the Board's consideration. It was concluded, based on this speculation as to what the actual swap will consist of and that such a swap will not be in accordance with the Master Plan. The board also raised concern with respect to whether any swap would change lot lines.

Mr. Stabile referred to the plan, and Mr. Statile showed how the water flows and discussed the drainage system, which he would put as a condition of approval.

Paul Tollin came forward and asked Mr. Statile if water could get the field to the houses. The houses are higher than the field, and water does not go up. Mr. Statile's recommendation was that they provide an inlet.

Next, Pat Pane, was sworn in. She stated she lives right behind Woodside School, and when it rains, there is a stream that forms along Winding Way. Also, she installed a new fence, and a tree fell on it. She spoke with buildings and grounds person at school who said it was wetlands and protected. She asked how is it that the builder can come in with someone that says it is not wetlands.

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Mr. Deutsch reminded the Board that they must make a decision on the testimony that was presented during this application.

Laura McSpirit Grier, of Colonial Road, was sworn in. She provided an exhibit showing flooding. It was marked McSpirit 1. She had water in the basement since the one new house was built, and they never had water before.

Mr. Tucci commented we have an engineering plan for water and noted Mr. Statile's ability to handle something in the office.

Mr. Stabile commented when construction is completed it should start to improve. Once you finish your grading, there will be no runoff. Ms. McSpirit asked when they would finish construction.

Catherine Vilone, Colonial Road, was sworn in. Her concern is, she has lived there for nine years, and since the construction, she has installed a sump pump and French drains. She never had this situation before. A healthy tree was completely uprooted and fell on her property. This new home does not comply with the square footage allowed. Mr. Koons commented the Board cannot dictate the size of the house or the architect. Ms. Vilone said the woods are no longer there. Mr. Tucci asked if the builder responded and did the Township get involved. Ms. McSpirit said she wrote them.

Lisa Kelfis, came forward and provided Exhibit Feldman 2, consisting of three photos marked Lisa Kelfis 1. She did not think the project was in the public's best interests. The rooms in the school get flooded, and they should not have to pay the taxes for this. The research done was insufficient. Mr. Lippert said the Board does not have jurisdiction over wetlands. The Resolution will state it is subject to the applicant getting a LOI from the DEP. If approved, it will be subject to getting that approval from DEP. Also, Mr. Koons stated wetlands are not always wet. Ms. Kelfis commented part of entire living experience here is the woods, and the town is developing open space. Developing the land behind the school is unnecessary.

Scott Tamernhy, 623 Lamanna Drive, was sworn in. He asked the Board to reconsider flipping the driveway, stating it would cause more of a hazard as it is.

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Chris Karnecki, living across from the site, commented it is dangerous coming from the public school.

Pat Pane, again, asked if the Board made a decision as to whether or not what's being proposed is in compliance with the Master Plan.

Mr. Deutsch advised one of the criteria for voting on the application is a determination of whether or not it is consistent with the Master Plan. His letter was advisory based on a plan that was presented on very unclear terms. The Board will now be voting on this plan, because it was submitted and is what the application is based on. So the answer is no, this Board has not addressed it.

Mr. Cohen, 585 Dorchester Drive, addressed six objections with regard to the Master Plan.

Paul Tollin, again, read a written closing statement, asking the Board to reject the application for many reasons.

Mr. Koons gave comments. On the wetlands issue, they received an LOI on both lots from the DEP. They indicated that copies were sent to the River Vale Construction Official, but they only came from the DEP on 12/5/08, and they went to Mr. Crow. Nevertheless, although normally you might be in contempt to say subject to DEP approval, they have the LOI in hand already. There has been some talk about the preservation of woods. It was noted that the Board of Education is getting considerably less land than it is giving. The exhibit showed all of the land going to the Board of Education, and it is considerably more in area than the applicant is getting.

Mr. de Stefan asked if it is the Board's intention to build on it, so to argue we are in compliance, he would beg to differ. He is not sure of their immediate plans. Mr. Tucci brought up that we should have the letters from the DEP submitted. Mr. Deutsch advised these are simply public records, not subject to cross examination. He has not seen them, but the Board may accept copies, since they are a public record. They have been given to other officials in the Town. They are not part of this record, but documents that were submitted to the Town. During construction and after, it is their contention that there should not be

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problems, and the Construction Official can make the applicant take steps. Mr. Stabile would comply or be made to comply with all construction. The Master Plan is more of aid to zoning and grant of zoning ordinances. When you come to an application that is variance-free, the Master Plan has little to do with it. It is unfair to the Board and misleading to the public to think that the Master Plan could be used in a vacuum and disregard for the Zoning Ordinance.

Mr. Lippert asked Mr. Huntington why not ask the Board for an opinion as to whether it applies. Mr. Huntington advised the Master Plan is no more relevant to this application than any other variance-free application. Those were all the points raised by the neighbors.

Mr. Koons moved to close the hearing to the public with second by Mr. De Stefan.

Mr. Koons commented the Board does not have input or decision making with regard to the swap. It is out of our hands. He asked Board Members if they wanted to vote on this tonight, or would like additional time. Mr. de Stefan stated he would like additional time. In his mind, he has not clarified matters or his opinion, one of which is the lot width. He has mixed feelings and would like to think about it and would make a motion to carry this matter to the next meeting.

Mr. Menville agreed with Mr. de Stefan and seconded the motion. He commented about when he was with the Mayor years ago, the Master Plan was a project they took on. He disagrees with Mr. Huntington suggesting to ignore the Master Plan. It encompasses an entire town. He would also like more time to see if the application complies with the intent and spirit of the Master Plan that was put together over the last six years.

Mr. Tucci commented he would yield to the request to carry to the following month. This is a variance-free application and holds a lot of weight. He would like a decision now as to the 75'. We have only been granting variances .....We have three experts saying there is no variance in this application. He requested a vote. Mr. Deutsch said the votes could be that they agree with the Board that frontage is X. Mr. de Stefan said we could agree, or disagree, or refer it to the Zoning Board for an

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interpretation. That is one of the things he is wrestling with and why he asked for a deferment on the vote.

Mr. Tucci made a motion that this particular application is variance free, postponing the application, and requested a second.

Mr. de Stefan wanted a vote on his motion that was made and seconded. Mr. Deutsch asked for a time extension from Mr. Huntington. He was concerned about a change of ownership, etc. Mr. Huntington conferred with his client. Mr. Tucci wanted to continue the discussion.

Mr. Huntington advised he would grant the time for deliberation and extension on the time, on the agreement that the Planning Board would not amend the ordinance on the application. Mr. de Stefan indicated he would agree. Mr. Deutsch understood the concern, but for the record, any ordinances to be introduced and passed are in the parameters of the Governing Body and not the Planning Board. Mr. Menville stated in order for the Mayor and Council to change the current ordinance, it would take an introduction, be open to the public and then there would be a second hearing. This procedure would exceed the time period requested. Mr. Huntington said there is a 45 day period, and it could be waived if the Board agrees to waive the 45 day limitation, and he is asking the Board to waive that so it does not offer an opportunity for re-zoning.

A vote on the motion of Mr. de Stefan and second by Mr. Menville to adjourn the matter to the next meeting was called for. Mr. Deutsch outlined the parameters: The Chairman has already closed all testimony on this application and closed any further application for the public, which means no more discussion. At the next regular meeting of the Planning Board, the one on 1/20/09, this application will come before the Board for deliberation. The Board Members will discuss the application openly among themselves and the public, and vote either to grant it or deny it. The Board also by consensus has agreed not to waive any 45 day period for review of any ordinance changes with the exception that within that 45 days if a determination has already been made on this application, they be free to make any recommendation they like. On discussion, Mr. Lippert disagreed with carrying it until next month. He heard all the evidence and did not know anything that would change

his mind. Since applicant has consented to carry it, he will not oppose the motion. On roll call vote, Mr. de Stefan, Mr. Shalhoub, Mr. Menville, Mr. Wayne, Mr. Tucci, Mr. Lippert, and Mr. Koons voted yes to carry the matter to 1/20/09 with no further notice. Mr. Tucci rescinded his motion for the record

**2. Rockland Built Homes, 722 Westwood Avenue, Block 1801.01, Lot 30 - Major Subdivision** - Robert Mancinelli, Esq. - Carried to 1/20/09

**3. Chopra, 209 Rivervale Road, Block 1719, Lot 5.01** Amended & Final Site Plan Approval - Mr. Statile stated this is a whole new application, an amended site plan application, because applicant is adding signs, among other things, and it triggered an amended site plan application. The applicant would have been able to come in for final approval, but now there are signs being sought. Mr. Deutsch asked Lauren Roehrer to confirm that Mr. Chopra has complied with notice, and it was confirmed that applicant provided notice to all persons within 200' and placed a notice in the newspaper.

Mr. Statile read from the ordinance that triggered this application being made. There were also four (4) new variances for wall signs. Three wall signs are proposed vs. one allowed. Mr. Tucci asked why he could not comply with the ordinance, and why is it necessary to go larger. Mr. Chopra said the size of the awning is 8' x 8'. Mr. Statile commented there are three wall signs plus another. Mr. Koons asked what was before the Board, and Mr. Statile responded final site plan approval and signage. It is in conformance with what was approved. Mr. Shalhoub commented the electric service must be underground. Mr. Statile said it is indicated as such on the plan. Mr. Chopra explained his contractor was given the plan, and he would make sure this was done.

Mr. Menville commented the signs on the awnings are allowed only facing Rivervale Road. Mr. Shalhoub said the sign over the front door on the awning is not allowed, although it looks better. Mr. Menville asked if he would keep his signage on the awning only facing Rivervale Road, adhering to current ordinances and inquired if there were any other issues. Chairman Koons asked, and it was stated there is are second story signs above the second floor windows. The only signs would be on the awnings facing

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Rivervale Road. He would be willing to comply with the ordinance. Applicant was willing to stay within the parameters. Next they discussed window signage for advertising lottery tickets, sales, etc., as window signs are not permitted. Mr. Chopra said he applied to the Zoning Officer for same. Mr. Menville recapped the Board is going to allow signs on two ordinances, of the same size, 32 sq. ft., and window signs per the Zoning Officer. There were no further questions or comments.

A motion to allow the signs to be placed on the two awnings facing Rivervale Road as shown on the plan, in addition the street address, not to exceed 20 sq. ft., and a door sign on the glass panel above the door for two upstairs tenants, with any window signs being controlled by the Zoning Officer was made by Mr. Menville. Mr. Tucci seconded the motion. On roll call vote, all members voted yes.

**OPEN TO PUBLIC** - None

**PAYMENT OF INVOICES:** None

**NEXT MEETING:** January 20, 2009

**ADJOURNMENT:** On motion made, seconded and carried, the meeting was adjourned at approximately 11:15 p.m.

**Respectfully submitted,**

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