

**TOWNSHIP OF RIVER VALE  
PLANNING BOARD  
February 20, 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               |
| Chris Wahmann       | Secretary              |
| Mayor Joseph Blundo | Class I                |
| Peter Wayne         | Class II               |
| Dwight de Stefan    | Class III (Councilman) |
| George Shalhoub     |                        |
| Mark Ericksen       |                        |
| Ron Tucci           |                        |
| Jim Tolomeo         | Alt. #1                |
| Scott Lippert       | Alt. #2                |

**Also Present:**

Dennis Deutsch, Esq., Board Attorney  
By Marc Leibman, Esq.  
Christopher Statile, PE Board Engineer

**Absent:** Bruce Carillo Vice-Chairman

Scott Lippert, Esq., Alt. #2, was sworn in by the Board Attorney.

**MINUTES:**

The Minutes of **January 16, 2008** were approved upon motion of Chairman Koons, with second by Mayor Blundo and carried.

**RESOLUTIONS:** None

**PUBLIC HEARINGS:**

1. **Blue Hill Estates** - Chairman Koons recused himself and stepped down from the dais. Mr. Wahmann acted as Chairman. A court reporter was present on behalf of the applicant. James D'Elia represented the applicant and stated negotiations have been going on since October, that is the reason why they were asking for adjournments. It was not until recently that they did not reach an agreement. His main purpose now is to let the Board know why they are finally here and why it took so long. Chris Wahmann was Acting Chair, but he asked him to step down because of an incident wherein he was trespassing on the property with others from the Town and made allegations. A summons was issued but not held; it was thrown out of Court by Judge Harris at great expense to his client. Threats were made based on accounts that were not supportable.

Ira Weiner, Esq. from the law firm of Beattie Padovano, represented Kenneth and Barbara Koons. He wanted to address the Board on the procedural issues. Mr. Leibman asked Mr. Wahmann to sit in the Chairman's seat and addressed the request for recusal. Anytime anyone lives within 200' of the subject property he or she must recuse themselves. If there is anything personally unfair or there is a personal issue with an application, that might prevent a Board Member from being impartial, and they should recuse themselves. The applicant should be given a fair opportunity. So if you think you cannot be fair from an application, there is no reason why you cannot recuse yourself and participate from the public. It is better to err on the side of caution. Mr. Leibman continued. He cannot tell someone to recuse themselves. The Board cannot remove them. It is a personal decision that has to be made. He is not aware of the history, and not necessary to spread it on the record. Mr. Wahmann must make a decision as to what he wants to do. Mr. Wahmann said if Mr. Janovic is willing to hold his testimony, then he will hold his. Mr. Janovic agreed. Mr. Wahmann stepped down. Mr. Shalhoub filled in as Acting Chairman. Mayor Blundo asked if this was proper procedure. Mr. Leibman advised the next most

senior member would be next in line to act as Chairman. Mayor Blundo confirmed it was definitely George Shalhoub.

Mr. Weiner continued. The adjacent neighbor is Mr. Koons. Negotiations took place for the acquisition of pieces of property identified in his letter and Mr. Lamb's letter. They were trying to reach an agreement where Mr. & Mrs. Koons would buy the property from them, and they would add it to the subdivision application to do the proper division. They both had conversations with the County, which took some time. It was not until the last couple of weeks that they found there was no agreement on the table. Mr. Weinram objected to the details of the agreement.

Mr. D'Elia did not agree, and he submitted a letter today in reply to Mr. Lamb's letter. Mr. Leibman asked if everyone had the letters and to let Mr. Weiner present his case. Mr. Tucci questioned the order. Mr. Weiner said that first and foremost is the notice issue. This is a material representation to the public. This is not a six-lot subdivision, as they say, but an eight-lot subdivision. There is a material deficiency in the notice, which creates a jurisdictional issue and requires them to renounce. Mr. de Stefan asked if everyone that was to get notice received notice. Mr. Weiner said they received deficient notice. On the plan, Mr. Weiner said the roadway/driveway is going to be another lot, plus there is another adjacent lot, although deficient. They are all part of the main lot. That is what needs the proper notice. They do not only create six lots, but eight lots. Mr. de Stefan asked him to explain the variances. Mr. Weiner said if you create these lots, they are non-conforming. You don't have the required lot width or frontage, and those variances were not noticed. Mr. Weiner advised the law says when you give notice, it has to be proper notice. This could be a problem if they knew a strip was being created. They may feel that putting this in a homeowners association might be a problem. When you notice and prepare the plans this way and you don't advise the public there are two more lots being created here, it is improper and creates a jurisdictional problem. The application should be redone.

Mr. Tucci asked if the driveway called a lot is shared by anyone else. Mr. Weiner said his client has the right to use this. Mr. Tucci asked if he would lose it. Mr. Weiner stated the easement cannot be extinguished by an act of the Board. Mr. Lippert asked if the notice contained a

"catch-all" phrase. Mr. Weiner said it was not as much of an argument as the eight lots instead of six.

Mr. D'Elia read the definition of lot out of the Code. The important part of the definitions in both of those sections reads, "...for purpose of sale, lease or separate use. They don't plan on those; it will be idle land that has no use whatsoever. That supports what he said in his letter. They don't plan on doing anything with them. They are not lots. They will deed restrict them. They will not be used and will be passive greenery forever. The issue of "six lots instead of eight lots" is a non-issue. The Koons were not the recipient of an easement, it was the other way around. There were predecessors in title. It was Mr. Marasek. Mr. Shalhoub asked what they are going to do with these pieces of property. Mr. D'Elia responded either deed over to the Town or use as a homeowners association. They have no value. Mr. Shalhoub did not see how he was going to get people across the street on Abbe Lane maintaining it if they are not going to use it.

Mr. Leibman recommending dealing with the notice issue now and then the consent issue. Mr. Leibman read from NJSA 40:55D-11, which is the statute that governs notice. Whether the notice is deficient or not is up to the applicant. It is not a Board decision. There is an applicant here and an objector ready to go to litigation. If it goes forward and a year and a half from now, and the judge calls for a remand, that is a great risk and a waste of time and money. Mr. de Stefan commented what counsel said is well taken. This could be restarted with notice at risk, but Mr. Weiner agreed Mr. D'Elia gave notice to everyone.

Mr. Weiner disagreed with Mr. Leibman. The Board has a jurisdictional issue and has to decide. It is not only that the applicant has to waste time, but his client as well has to waste a great deal of time and money. Most Boards, if they believe there is a notice issue, will require the applicant to renotice, so not to waste all of the Board's time and money too. When their lawyer goes to argue this, it is cost to the taxpayers. If you feel there is a jurisdictional problem, they could send a new notice for another \$30.00. It is really the Board's choice, and it makes the most sense. He did not go and look at the green cards, but the issue really is if the notice was sufficient. Forcing this forward when the Board has qualms

is a waste. It can decide to have the applicant renote and come back in 30 days. He is asking that the Board make a ruling this either way.

Mr. D'Elia was given an opportunity to respond and requested he be given five minutes to discuss same with his client. Mr. Shalhoub asked if there were any other objections to the notice. Mr. Weiner said there may also possibly be a slope issue. Mayor Blundo commented if there are other areas you deem deficient, bring them out and let the applicant take them one by one. Mr. Weiner commented if he decides to renote, Mr. Weiner will give him all the objections so he can include them in the notice.

Mr. D'Elia discussed the matter with his client. They will deal with the issues but not necessarily the way Mr. Weiner wants them to. They will bullet them, and it will save a lot of time. Mr. Shalhoub stated there are frontage issues. Mr. D'Elia said he discussed with Mr. Statile that they will go away.

Mr. Leibman asked Mr. Weiner to put his objections on the record. His objections are to any variances attended to those lots; any slope variances. They stand by what is in the letter. Notices to be redone if plans have to be revised, which they will, since the frontage variances will go away. Any other variances created by revisions or otherwise should be noticed. Mr. Leibman asked, to save the Board the trouble of coming back here, if Mr. D'Elia could draft a proposed notice and send drafts to Mr. Leibman and Mr. D'Elia, and if there any objections, to send them back before publishing, so we don't come back here with the same issue. Whoever the Board attorney is at the next time, you can waive the objections so we don't have to do this again, that is why we are giving you the opportunity. The other issue is the consent issue. Mr. Leibman asked Mr. Weiner if he had any contention that his client's consent is necessary. They reviewed the Deed. Mr. D'Elia said it is done backwards. The Koons are the grantors. Mr. Weiner questioned if that strip belongs to the Grantors how could the Grantees say they have the right to keep it open. Mr. D'Elia disagreed. Mr. Weiner said he would conceive that he would speak with Mr. Lamb and see what this is all about. Mr. D'Elia said his client now has a title policy. Mr. Leibman responded to the extent the applicant has an easement over this property, let's see it. Mr. Weiner and Mr. D'Elia said this was it. Mr. Leibman

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advised we will look at it and make a ruling on it. Mr. D'Elia asked about frontage. Both attorneys agreed to copy each other on any correspondence and reports, as well as Mr. Statile.

Lastly, Mr. Leibman asked for a time waiver through 3/17/08. The matter was carried to 3/17/08. A member of the public from Orangetown, NY objected to the date.

Mr. Wahmann returned to the dais. A member of the public from Orangetown, NY was adamant about being heard. The Board Attorney wanted to be accommodating to the public, but he cannot be heard, because the application never started. He asked if the application was approved. Mr. Leibman explained that the application has not yet commenced. It is different in NJ than in NY. Mr. Koons stated the property is not part of the application. He cannot turn a letter in. He did not understand why. Mr. Leibman advised any letter submitted must come along with testimony by the person who offered it. The Board cannot take a letter without someone to testify. The gentleman asked if the Mayor could take a letter. The Mayor said if he receives a letter, he will read it, but will take the advice of counsel not to have it influence him. Mr. D'Elia did not object to the Mayor receiving the letter, but requested a copy. The member of the public said as a neighbor, he may even speak directly to the applicant's attorney. Mr. Leibman explained how the hearing would proceed. At the end of the hearing, the members of the public may make a statement. Mr. Weiner said it would not be finished in one meeting.

Mr. Koons returned and announced the record should show that Mr. Koons and Mr. Wahmann returned to the dais. The time was 9:20 p.m.

**DISCUSSIONS:**

**1. Ordinance #192-208 - TH-1 Town Home Zone (Second Reading before the Council scheduled for 3/10/08) -** Mayor Blundo advised there were not really many changes from the last and what was in front of the Board was the Ordinance contemplated for March 10th. The only change was the setback from 30' to 40'. Everything else in the ordinance was as written. If it happens, the land swap that the Township would receive would be reduced. Other considerations for recreation improvements would be made for the Township from 1.7 acres to .8 acres, and the

additional land that the applicant would use to increase the setbacks would be for additional overflow parking lots for the use of whatever the Town decides on for the .8 acres. Action will be taken in March, at which time it will either be passed, passed with changes, tabled, or shot down. Mr. Tucci said he would like to keep it as it is. Mr. de Stefan's perspective was he values what his colleagues and the Board says, but in his view, saving that golf course for 50 years is paramount and everything else pales. It must be done, in his opinion, or it will be a target.

Mayor Blundo said he is creating a COAH Committee and asked Mr. Koons to be part of it. He received a second consultant. By 9/30/08 all Bergen County towns must have an application in. If the rules get adopted, 6/2/08 will be a challenge to all communities. We need to come up with a plan that everyone accepts, and municipal planners are saying COAH wants real concrete plans and will not accept the statement, "it's in our Master Plan to build COAH units". This rule will be challenged, and the Pascack Valley towns will put comments on the record. They Mayor may not get adopted. But by 9/30/08 we need to adopt a real plan. That is where the golf course comes in. If we have a sufficient plan by that date that we feel strongly COAH would accept, he believes the golf course would have less vulnerability. His concern is if we don't find a real solid plan. Then the golf course is at stake. Mr. de Stefan commented COAH always changes, and if we could save it with a deed restriction for 50 years it could be saved.

Mayor Blundo explained there are four scenarios. Plan A is the ordinance you see in front of you. Plan B has 40' set backs and less land. Plan C has senior housing. In Plan D they have the ability to build an assisted living facility that could generate 125 units variance-free. Plan A & B would be with a deed restriction. Plan D would yield no COAH.

Mr. Statile agreed that plans must be in by 9/30/08, but the municipality can have its planner fight the numbers before time. It is a comprehensive plan on how you are going to meet your goal. A brief discussion ensued.

The Mayor asked Mr. Koons what the preferred method of communication was to the Council. Perhaps they could get a recorded C/D portion of this meeting to play for the

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Council. It was indicated that would be done by Mr. Gil tomorrow. The discussion was concluded.

Mayor Blundo announced Peter Wayne will be appointed Deputy of Office of Emergency Management.

Mr. Koons thanked Damian Gil for all his organization and planning for the MLUL Class on Saturday, which was a success.

Mr. Leibman asked if the Board was recommending the Ordinance to the Township Council, as usually it is sent to the Planning Board before the Council starts the adoption process. Mayor Blundo responded it was only an introduction. If it is being adopted it must be in a form of a Resolution. The notification can be done by way of letter.

Mr. de Stefan made a motion to approve the ordinance subject to the recommendations and changes the Board discussed. A second was made by Mr. Shalhoub. On roll call Mr. de Stefan, Mr. Shalhoub, Mr. Wahmann, M. Ericksen, Mr. Wayne, Mr. Tucci, Mr. Tolomeo, and Mr. Koons voted yes. Mayor Blundo abstained.

Mr. Statile asked for clarification of lot frontage, and a brief discussion ensued.

**OPEN TO PUBLIC** - None

**PAYMENT OF INVOICES:** None

**NEXT MEETING:** March 17, 2008

**ADJOURNMENT:** On motion made, seconded and carried, the meeting was adjourned at 9:45 p.m.

**Respectfully submitted,**

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