

**TOWNSHIP OF RIVER VALE
PLANNING BOARD
July 17, 2006
MINUTES**

The Planning Board saluted the flag.

ADEQUATE NOTICE STATEMENT:

A Regular Meeting of the River Vale Planning Board was called to order at 8:05 p.m. The following statement was read: "This is a Special Meeting of River Vale Planning Board. In compliance with the Open Public Meetings Law, notification of this meeting has been sent to all officially appointed Township newspapers and notice is posted at River Vale Municipal Offices".

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ATTENDANCE:

Members Present:

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| George Shalhoub | |
| Chris Wahmann | Secretary |
| George Paschalis | Mayor |
| Bruce Carillo | Vice-Chairman |
| Mark Ericksen | |
| Norman Goldman | |
| James Hanna | |
| Kenneth H. Koons | Chairman |

Also Present: Paul Kaufman, Esq. Board Attorney
Christopher Statile, PE Board Engineer

Absent: Robert Menville Council Liaison
Maria Sapuppo Alt. #1

MINUTES: June 19, 2006 - Chairman Koons moved for approval of the Minutes of 6/19/06 as amended by Mr. Hanna. The motion was seconded by Mr. Goldman. Mr. Hanna moved to accept the amendments, with second by Mr. Goldman. On roll call vote to approve the Minutes, all members voted yes.

RESOLUTIONS FOR APPROVAL:

1. **Price Construction, Graney Dr., Block 301.01, Lot 3.01 - Subdivision** - A motion for approval deemed as read was made by Mr. Koons and seconded by Mr. Carillo. On roll

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call vote, Mr. Shalhoub, Mr. Wahmann, Mayor Paschalis, Mr. Goldman, Mr. Carillo, Mr. Hanna, Mr. Ericksen, and Mr. Koons voted yes.

2. Kearny Federal, 651/653 Westwood Avenue, Block 2206, Lot 13 - Site Plan/Sign Application - bifurcated - A motion for approval deemed as read was made by Mr. Carillo and seconded by Mr. Wahmann. On roll call vote, Mr. Shalhoub, Mr. Wahmann, Mayor Paschalis, Mr. Goldman, Mr. Carillo, Mr. Hanna, Mr. Ericksen, and Mr. Koons voted yes.

PUBLIC HEARINGS:

1. Locajo, Inc., 207 Rivervale Road, Block 1719, Lot 5 - Change in Use - Carried to 8/21/06 at request of applicant;

2. Durie Properties, Orangeburgh Road, Block 601, Lot 10 - Soil Moving Permit - Carried to 8/21/06 at request of applicant;

3. Absolute Fitness, 220 Rivervale Road, Block 1801, Lot 9 - Change in Use & Sign - no appearance - carried.

4. Toys N' More, 646 Westwood Avenue, Block 1719, Lot 3 - Change in Use & Sign - Rocco Mupo, was sworn in and provided proof of service, stating he had submitted the Affidavits of Service and Publication previously. He was present on behalf of himself, and he was not a corporation. Mr. Mupo's application was for a toy store, and he would get an approval from the Construction Official for the sign, to say Toys N' More. The sign would be the same as the others at the plaza. Mr. Mupo asked if the letters could be colored. Mayor Paschalis explained the specifics of the sign are best left to the Construction Official, since there is a Sign Ordinance. The size of the space is 1,900 sq. ft. existing, with current bathroom and updated heating. He would not be open on Sunday. No food, strictly toys. More means they have more than the normal toy stores. He is presently in Bergenfield on Washington Avenue.

A motion to approve the change in use minus the sign on condition that the sign be applied for with the Construction Official was made by Mr. Koons and seconded by Mr. Carillo. On roll call vote, all members voted yes.

5. River Vale Developers Extension of Approval for I7C - (Mr. Wahmann recused) Stuart Liebman, Esq. represented the applicant. Mr. Liebman stated there was a two-page letter, copied to the Chairman, with enclosures, and essentially these are a series of letters, most of which were from 2004, that had to do with the request for the judicatory hearing dealing with the revocation of the permits by the DEP. Mr. Liebman recalled the extension only ran through 6/19/96, and the hearing was scheduled for May of 2006 with the Office of the Administrative Office of La. The applicant had agreed in February to provide the Board with all documentation from the OAL hearing. He received the filing of the appeal, the Notice to revoke the permits, and in terms of more recent history, what they received were several letters with the OAL judge. The trial was scheduled for 5/9/06, and rather than proceed with the trial, he is advised that Mr. Taub from Walter Sampson has withdrawn the request for the judicatory hearing and took a dismissal on the complaint. In other words, they dismissed the case without prejudice. Mr. Kaufman read the letter, and there is nothing pending any further before the OAL. Mr. Liebman advises him there is a continued hearing before the Watershed Review Board. Thus, they are present for an extension under NJSA 40:55D-49(f). Mr. Liebman explained there was series of papers, including the Order of Investigation, etc. Mr. Kaufman said we do not know what the judge believes, even though the parties believe this is the best outlet.

Mr. Kaufman read from the statute governing extensions. The Planning Board shall grant an extension.....but not exceeding one year, if to the reasonable satisfaction of the Board the developer was delayed from obtaining legal approvals from other entities...Now we hear the extension expired in June, and Mr. Liebman timely made the request. The next issue is, has he shown you, the Board, to your reasonable satisfaction that he was barred or prevented directly or indirectly from obtaining legal approvals from other governmental entities, that he diligently pursued gaining these approvals. Mr. Kaufman asked, but Mr. Taub was not present to testify as to what he did to gain these approvals. He asked Mr. Liebman if he had anyone else to testify as to what has transpired with the DEP over the last several years. Mr. Liebman responded no. Mr. Kaufman asked if there were any submissions to the DEP prior to May of 2004 that he was aware of. Mr. Liebman responded during the course of settlement negotiations,

there was a series of submissions, by the water company and River Vale Developers. There were also several meetings and phone conferences with the OAL. Mr. Wahmann asked if the submissions were other than those submitted to the Board under 7C. Mr. Wahmann questioned whether to recuse himself. Mr. Kaufman advised if he were asked at the beginning of the proceedings, his answer may be different, but since he has recused himself in River Vale Developers over the past seven years, he would not recommend changing it now.

Discussion - Mr. Wahmann recused himself and stepped down from the dais.

Mr. Kaufman asked if we received anything since May 24, 2004 or August 2004, as he has received nothing in his packet. Mr. Liebman said he provided everything that was provided to him, consisting of correspondence, etc., and the matter is still pending. Mr. Kaufman stated there is an appeal process within the DEP. Mr. Liebman stated this process was provided as the avenue of relief. There were no papers submitted since the withdrawal of the complaint. Mr. Liebman stated there was no requirement for same. One of the conditions of the approval has still not been obtained - the stream encroachment, which was revoked, and the process is still pending and not exhausted. Therefore, they are entitled to the extension. One of the requirements under the MLUL is to show to the reasonable satisfaction of the Board to demonstrate his due diligence to obtain these approvals.

Mayor Paschalis asked if they withdrew their appeal. Mr. Liebman stated in response to the Order of Investigation, which is still pending, so they could work with the parties and resolve it before going to a judicatory hearing. They have been trying to resolve this. You have to file an appeal in order to preserve their rights under the appeal. It is all very normal. Mr. Kaufman stated it is normal to file an appeal, but the questions is did they show to your reasonable satisfaction that they diligently tried to pursue the approvals. The Mayor stated he has not received anything recently. Mr. Kaufman stated Mr. Liebman sent a letter dated 6/16/06, setting forth a chronology. That was his recitation. The only documents attached were the Stormwater Outfall Structure with conditions and the Letter of Revocation. Mayor Paschalis stated the letter came in after the extension ended. Mr. Kaufman advised the Board scheduled

this for a hearing on 6/19/06 and asked for all the material, and applicant agreed to provide it.

Mr. Liebman reiterated this is all normal. They cannot control the time, and they have been doing everything they could do to pursue these approvals. They have been pursuing the development of these properties, including the conditions and I6B, which the Board denied and was reversed. They are entitled to an extension, granted today or not today, and they would get it from another authority. Mr. Kaufman asked if Mr. Liebman was threatening this Board, and he said no. He was asked if he would consider selling this property, and if they would sell to the Township.

The matter was opened to the public for comments, but there were none. Mr. Koons asked if there was anything else from the Board. There being no further questions or comments, Mr. Koons moved to close the hearing to the public with second by Mr. Goldman and carried.

Mr. Carillo moved to deny the I7C extension request, as applicant has not diligently pursued the DEP approvals. Mr. Kaufman added 'to the Board's reasonable satisfaction' and clarified the motion, stating applicant has failed to demonstrate to this Board, to the Board's reasonable satisfaction, that he diligently pursued the DEP approvals. The motion was seconded by Mayor Paschalis. On roll call vote, Mr. Shalhoub, Mayor Paschalis, Mr. Carillo, Mr. Hanna, Mr. Erickson, and Mr. Koons voted yes. Mr. Goldman voted no.

6. River Vale Developers I6A & I6B - (Mr. Wahmann recused) - Mr. Liebman stated the Affidavit of Proof of Publication was sent by federal express, and they sent Notice to the property owners. The Board did not receive it, and Mr. Liebman provided a copy. Fred Epstein, a member of the public, of 625 Poplar, said he did not receive notice. Mr. Kaufman advised, according to the Tax Assessor's list, Mr. Epstein did not live within 200'. It was noted Mr. Epstein's name is on the plan, but it was from 2004. Mr. Kaufman said the applicant is entitled to rely on the Property Owners List from the Tax Assessor. Mr. Kaufman checked the plans. He was on the Site Plan for I6A. This shows he is within 200' on the plan, but he is not on the Tax Collector's List. Mr. Wahmann stated he was on the list also, but was not notified. Mr. Kaufman

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advised the statute specifically states that the applicant can rely on the Tax Assessor's list. The fact that you are present means you have notice. Mr. Collegian, of 616 John Street came forward. Mr. Kaufman stated John Street is not on the list either. The public asked if they could put the hearing off so they could properly prepare for it.

Mr. Kaufman advised that the Board is under a mandate to make a decision by 7/31/06. Mayor Paschalis stated the point is well taken and perhaps a special meeting should be called prior to 7/31/06. Mr. Kaufman stated his suspicion is that the Tax Assessor made a mistake and only calculated from one parcel. The applicant cannot be penalized. Another member of the public said last time there was 150 names, and now there are only 35. Mr. Koons stated we believe the Tax Assessor gave an improper list, and the applicant is entitled to rely on it. Mr. Epstein asked what the residents are entitled to. Mr. Kaufman stated they are entitled to participate since they are here. The Mayor recommended once again carrying to a special meeting. Mr. Kaufman said that Mr. Liebman and Mayor Paschalis should obtain an amended list. If it is not generated tomorrow, he should be entitled to rely on the list on the plan. The Mayor asked Mr. Statile to assist the Tax Assessor.

Mr. Liebman said they gave good notice under the law, and they do not consent to carry and are ready to proceed and will. Mr. Kaufman indicated the Board graciously consented to extend the resolution, and no one is stating there will be a decision later than 7/31/06. Mr. Liebman stated their experts were paid to be present, and they would extend if the Township would pay. Mr. Hanna commented for years they knew there were 150 people, and this has not changed, and to send out only 35. It is a common courtesy to carry.

Mayor Paschalis suggested holding a vote to carry the hearing to a special meeting on 7/31/06. Mr. Kaufman it is unfair to continue at this point, and a hearing on the 31st would ensure Mr. Liebman would have the opportunity to give notice. Mr. Kaufman said he was not available 7/31/06, and applicant does not want a date that is not 10 days from now. Mr. Liebman commented as long as the Board can render a decision on 7/31/06. Mr. Kaufman stated he consented absolutely as long as the Board made a decision by 7/31/06. When the order provided for the memorialization by 7/31/06, Mr. Kaufman called and asked Mr. Liebman if he would

consent to changing that portion, as long as the Board made a decision by 7/31/06. It was submitted it to the judge, and he saw there was consent. If Mr. Liebman wants to go back to Court, they will bring an order to show cause to extend it.

The Board discussed a special meeting date on 7/31/06. Mr. Koons announced the motion is to carry this matter to 7/31/06, at 8:00 p.m., a special meeting, to be devoted only to I6A& I6B, as long as applicant gets the Property Owners List. The motion was seconded by Mr. Carillo and carried unanimously on roll call vote. Mr. Wahmann was recused.

Mr. Wahmann returned to the dais. The Board took a recess from 10:00 - 10:10 p.m.. Upon reconvening, a new roll call was taken and remained the same.

DISCUSSION:

1. Bergen County Utilities, Brook Avenue Access Road, Block 1601, Lot 3 - Informational Discussion - Nancy Skidmore, Waters McPherson, represented the applicant and continued from last meeting. Ms. Skidmore reviewed that at the last meeting, the Board requested a map with access to the site, electrical and lighting plan. Mr. Kaufman advised the Site Plan is dated June 2006.

Keith Weisman, Licensed Professional Engineer in NJ, was sworn in. He was involved with preparation of the plans and described the site, which was the Brook Avenue access road, approx. 12,000 sq. ft. Mr. Wahmann noted there is a permanent easement. Mr. Weisman stated it is for access. Mr. Wahmann asked for further information, but he had none. Ms. Skidmore stated there is a sewer easement that runs under the tennis courts. Mr. Wahmann stated it is a 40' easement and goes to the southeast corner of the tennis courts permanently. Mr. Weisman agreed. Mr. Kaufman stated there is confusion and reviewed the easements on the plan, noting there are two easements—an access easement and a sewer easement. Mr. Wahmann's question is why they need an access road when they have an easement. Mr. Weisman said they would have to go back to the condo development. Mr. Kaufman the question is which came first the tennis courts or the easement. Ms. Skidmore checked the title search. The easements were from 1969.

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Mr. Weisman stated they would be replacing the outdated generator and there would be soundproofing. There would be very little disturbance. Mr. Kaufman advised that the condo unit owners took title subject to the easement. Mr. Koons said let the unit owners address it. Mr. Wahmann said he was fine with it. Mr. Weisman stated this would all take about two months. Mayor Paschalis asked when the work would be done. Mr. Weisman stated they are very flexible - they agreed to 9:00 a.m. to 5:00 p.m. Ms. Skidmore advised she would relay that to the BCUA. Mr. Carillo asked that they leave it in nice condition, and the response was yes.

The matter was opened to the public, but there were no comments or questions. A motion to approve the upgrading of the pumping station as per the plans presented, subject to the conditions as stated, was made by Mr. Carillo, with second by Mayor Paschalis. On roll call vote, all members voted yes.

2. North Firehouse - Project Review and Consistency with Master Plan - Edward Arcari, Township Architect made the presentation. They are proposing an addition, 1,980 sq. ft. , 27-1/2' wide by 2' long. This is to accommodate the new fire vehicle slated for delivery this Fall. There will be two offices in the back for EM and one for Fire Prevention. The building would be slab on grade, one truck bay, with 19 parking spaces, to accommodate 20 vehicles, including 1 handicapped.

Mr. Koons asked how wide the driveway was on the South side. The response was 18'. Mr. Koons asked if the Fire Dept. had meetings with them, and he responded yes, up to this level. They have to sit down for the final programming and details. Mr. Hanna inquired about the parking lot with the 20 spaces immediately behind the firehouse, and Mayor Paschalis stated it would be reserved strictly for fire fighters. This drawing vastly improves the parking situation that is currently there. Mr. Hanna commented it was possible to gain a few spaces. It may be more advisable to get rid of the trees and curbing. It will be a problem with snow removal. Mayor Paschalis felt it was not much of a problem. Mr. Koons commented about the green addition in the front and did not see how they could park the vehicle.

Mr. Statile explained there is a Verizon easement on the firehouse property and extra space. He asked what they would do with it and is there a provision for a walkway

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along the South side of the addition. Mr. Statile currently there is not. Mr. Koons asked if he thought it was a good idea. Mr. Statile wherever the fire house would think. Mr. Koons commented the handicapped space would hinder the access to the firehouse. It is blocking the rear entrance. He feels there should be full, complete access. Mr. Hanna stated most of the time they will park in the front. Mr. Koons asked why there was so much parking in the rear. Mr. Hanna stated for drills and parties. Mr. Koons said he would like to hear from the Fire Chief, who was in the audience.

John Tobin, Chief of the River Vale Fire Department came forward and stated it should be a relatively easy thing to, and Mr. Koons said to remove it. The Chief agreed to. Mr. Koons asked how they would enter under this proposal. Mr. Tobin stated they would park in the front or park in the back and come around the front. The front of the building could easily accommodate four cars, and if stacked one behind the other, you could fit eight. His experience is about eight respond in the evening. They would make more use of the rear parking when they have meetings and drills.

Mayor Paschalis stated the Board needs to discuss if the project meets the needs and the Master Plan. Chief Tobin stated they have had a number of meetings and this is the best way to accommodate this apparatus and this program. They have being using that truck for 20 years.

It was noted the door is 20' high and matches the South Firehouse. Mr. Carillo asked about the rear door being double in the back, and Mr. Arcari stated it was not necessary. Mr. Goldman suggested moving the handicapped parking to free up the space in front of the door for the firemen. Mr. Statile it is required by law and has to be closest to the door, but he could shift it. He could switch it with the 8' refuge. Mr. Koons thinks it is totally wrong to block that entrance to the firehouse. Also, he felt a walkway was needed along the side of the building. There were no further questions or comments. They thanked the Fire Chief and he departed.

Mr. Kaufman stated the Board should act since this was sent to it by the Council, and the Board has to tell the Governing Body whether you recommend it or not. Mr. Carillo, asking if the Board can make recommendation with

conditions, moved for approval with the following conditions: The handicapped space at the rear of the addition shall be moved one space over for better access for the firefighters; all 20 spaces behind the firehouse be limited to Fire Dept. use only; the walkway from the rear of the building is not needed and no striping is needed per the Fire Chief. The motion was seconded by Mr. Goldman. There were no further questions, comments or discussions. On roll call vote, all members voted yes.

3. Ordinance 159-2006 - Zoning Change to Four Corners - Zoning Change - Overview given by Mr. Hakim for the three lots at the northeast corner of Four Corners. It has been introduced at the Mayor & Council level as an ordinance. They sent it back to the Board for recommendation, but the Board has already recommended it by virtue of the fact that it is in the Master Plan. Mr. Kaufman advised why it comes back to the Board is for a letter that it is consistent with the Master Plan. If it is in the Master Plan, it can vote right now. Mr. Hakim stated all three are zoned commercial right now. Mr. Koons asked why make it non-conforming. Mr. Hakim stated of the three lots one is currently an office building.

Mr. Koons asked why zone an existing commercial building, non-conforming. Mayor Paschalis said we are zoning it office. What the Master Plan calls for is, what we want to do is hold the lines on the commercial district to stop it from extending into residential neighborhoods, and the proposal of the Master Plan is exactly to do that.

Mr. Kaufman advised the review is whether this Ordinance is consistent with the Master Plan, not whether the Master Plan is appropriate. It sounds that the Council is merely implementing the Master Plan. If you think that the Greenhalgh office should not change, then you have to go to the Council. Mr. Hakim said it is consistent. Mr. Hanna asked why are we just doing spot zoning. Why zone a commercial building residential and reduce the property value, and further the property owners were not notified of this change.

Mr. Kaufman advised that whenever a proposal is made to make a zoning change, the property owners must be notified. Mayor Paschalis added the neighboring towns will also be notified. Mr. Hakim on three sides of these three lots it is all residential. Mr. Koons stated they had to

approve the Master Plan because it was on a fast track, so if we have to amend something, okay. He asked why Lot 3 is not spot zoning. Mr. Hakim explained the Master Plan said to amend the dimensional zones, and provided a lengthy explanation.

Mr. Koons asked about the easterly side of River Vale Road to Collignon. The response was it was commercial retail at the intersection, and professional office for the Spectrum site. Mr. Koons said that is wrong, because there are apartments upstairs. Mayor Paschalis questioned why this was important now when for years developers have decided what could go in, and then we find another strip mall and say how did this happen.

The Board discussed spot zoning. Mr. Kaufman read the definition from the MLUL. A long discussion ensued. Mr. Koons asked if commercial professional office is good planning. Mayor Paschalis stated we have made every mistake in the downtown---a house next to a strip mall next to an office and allowed the developers to decide what they wanted. You are correct Mr. Chairman, it is a hodge-podge. It is extending the commercial into the residential. Mr. Koons stated we will address it later on, and all the Board can do is say we recommend it.

A motion to recommend Ordinance 159-2006 was made by Mayor Paschalis, and seconded by Mr. Goldman. There were no further questions, comments or discussions. On roll call vote, Mr. Shalhoub, Mr. Wahmann, Mayor Paschalis, Mr. Goldman, Mr. Carillo, Mr. Erickson, and Mr. Koons voted yes. Mr. Hanna voted no.

4. Ordinance 160-2006 - Telecommunications Antennae

Mr. Kaufman asked Mr. Hakim if it were consistent with the Master Plan. Mr. Hakim stated yes and gave a brief explanation. The Municipality revisited the ordinance and towers on residential properties and did not eliminate it. Mr. Kaufman advised the issue is if there is substantial consistency. A lengthy discussion ensued.

A motion to recommend Ordinance 160-2006, since it was consistent with the Master Plan, was made by Mr. Carillo, and seconded by Mr. Goldman. There were no further questions, comments or discussions. On roll call vote, Mr. Shalhoub, Mr. Wahmann, Mayor Paschalis, Mr. Goldman, Mr. Carillo, Mr. Hanna, Mr. Erickson, and Mr. Koons voted yes.

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Closed Session Discussion: 11:05 p.m. - A motion to close the Public Meeting and go into Closed Session to discuss litigation was made by Mr. Koons, seconded by Mr. Hanna and carried.

Return to Open Session: A motion to return to Open Session at 11:10 p.m. was made by Mr. Koons, seconded by Mr. Hanna and carried.

A motion to authorize Mr. Kaufman to appeal the decision on River Vale Developers effective immediately was made by Mr. Koons and seconded by Mr. Hanna. On roll call vote, all members voted yes. Mr. Wahmann was recused.

PAYMENT OF INVOICES: None

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

Respectfully submitted,

Mary R. Verducci, Paralegal
Recording Secretary