

**READINGTON TOWNSHIP PLANNING BOARD
MINUTES
May 27, 2008**

A. Chairman called the meeting to order at 7:32 p.m. announcing that all laws governing the Open Public Meetings Act had been met and that the meeting had been duly advertised.

B. Attendance:

Mrs. Allen	present
Mr. Cook	present
Mrs. Duffy	present
Mrs. Filler	present
Mrs. Flynn	present
Mr. Getz	present
Mr. Klotz	absent
Mr. Monaco	present
Mr. Smith	present
Madam Chair	present

**Michael Sullivan, Clark – Caton & Hintz
Valerie Kimson, Esq., Purcell, Ries, Shannon, Mulcahy & O’Neill
H. Clay McEldowney – Hatch, Mott & McDonald**

C. EXECUTIVE SESSION:

Mrs. Duffy made a motion to enter executive session at 7:36 p.m. Mrs. Filler seconded the motion. *Motion* was carried with a vote of *Ayes all, Nays none recorded.*

**RESOLUTION
(Open Public Meetings Act – Executive Session)**

WHEREAS, N.J.S.A. 2:4-12, Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist:

NOW, THEREFORE, BE IT RESOLVED by the Planning Board in the Township of Readington, County of Hunterdon, State of New Jersey, as follows:

The public shall be excluded from discussion of the hereinafter specified subject matters. The general nature of the subject matter to be discussed is as follows:

- 1. Readington Township Planning Board adv. Liardo**

It is anticipated at this time that the contents of the above discussions will remain confidential.

This Resolution shall take effect immediately.

Certified to be a true copy of a Resolution adopted on May 27, 2008.

Linda Jacukowicz, Coordinator

Mrs. Filler made a motion to enter executive session at 7:55 p.m. Mr. Smith seconded the motion. *Motion was carried with a vote of Ayes all, Nays none recorded.*

D. APPROVAL OF MINUTES:

1. May 12, 2008 – Mrs. Filler made a motion to approve the minutes as amended. Mr. Smith seconded the motion. *Motion was carried with a vote of Ayes all, Nays none recorded.*

E. CORRESPONDENCE:

Mrs. Filler stated that the board received a letter from the State of New Jersey regarding a transfer station permit application. She wanted to know if anyone knew where the site was located. Mrs. Allen made the recommendation that the secretary write a letter to the State to obtain the physical location of the site. Once the information is obtained, Mrs. Allen requested that the board be notified immediately along with the Township Committee.

F. VOUCHER APPROVAL

Mr. Cook made a motion to approve the vouchers. Mr. Monaco seconded the motion. *Motion was carried with a vote of Ayes all, Nays none recorded.*

G. TECHNICAL REVIEW COMMITTEE:

1. TC& D Builders, Inc.
Minor Subdivision
636 Old York Road
Block 97, Lot 4
Action Date: June 9, 2008

Madam Chair announced that the application remains incomplete.

H. RESOLUTIONS:

1. **LFP Holdings, LLC**
Minor Subdivision
Block 77, Lot 28
204 Pleasant Run Road

This matter is carried to the next meeting.

2. **Merck & Co., Inc.**
Block 4, Lots 48, 49, 98, 99, 100 & 104
Block 9, Lot 2
Request for an extension of approval

This matter is carried to the next meeting.

3. **Nicodemus, John & Angela**
Block 64, Lots 36 & 37
Request for an extension of approval

This matter is carried to the next meeting.

4. **Holland Brook Realty/Township of Readington**
Amended Resolution for Capital Improvement
Block 53, Lot 5

Attorney Kimson stated that the board received a letter from the township attorney requesting the resolution be amended. Subsequent to the township's appearance on capital review before the Planning Board, the tax assessor re-numbered the lots because they were transposed. So one correction to the resolution is to correct the lot number and the second correction has to do with a restriction on the use that is contained within the contract that the township has with the property owner. The township attorney has requested that the planning board correct the resolution to reflect the terms that are in the contract between the township and the property owner such as the property will not be used for a solid waste facility.

Mr. Smith made a motion to approve the resolution as amended. Mrs. Duffy seconded the motion.

Roll Call:

Mr. Cook aye
Mrs. Filler aye
Mr. Getz aye
Mr. Monaco aye
Mr. Smith aye
Madam Chair aye

I. PUBLIC HEARINGS:

1. **Heather Liardo**

**Minor Subdivision
Block 51, Lot 25
92 Dreahook Road
Action date: June 5, 2008**

Attorney Kimson stated for the record that the application was filed under cover letter dated April 18, 2008 and the title of the cover letter indicated that it was a revised minor subdivision application, but in fact the applicant submitted a new application. On or about May 19, 2008, the Planning Board administrator notified the applicant that the board's newly revised checklist had not been filed with the application and therefore would not be complete. The board will have to make a determination on completeness at this hearing tonight. The board will also have to address the jurisdictional issues that have been raised by the public and responded to tonight by the applicant.

Mrs. Filler made a motion that the application remains incomplete. Mr. Smith seconded the motion. *Motion* was carried with a vote of *Ayes all, Nays none recorded*.

Attorney Kimson stated that under cover letter dated May 22, 2008 Mr. Murray who is the attorney for some of the adjacent property owners wrote to the board with respect to whether or not the board has jurisdiction on this application. To paraphrase the letter, Ms. Kimson stated that the applicant was before the board and the board denied the application. That application is in court because the property owner has taken an appeal of the board's denial. The applicant filed a new application. Mr. Murray is asking the board to make a determination on whether or not the principle of *res judicata* applies to this application. Also, counsel for the applicant, Mr. Matyola, provided the board's counsel with a legal memorandum in support of the application asserting that *res judicata* does not apply and that the board properly does have jurisdiction of this application.

Daniel Matyola, Esq., stated that he would try to explain the issue of the application's completeness. He mentioned that the only reason that this is a new application is because the applicant paid the application fee again. This was done because he did not want the application rejected if the board or the administrator, or the professionals deemed it to be different enough to be a new application. In order for *res judicata* to be applicable, among other things it must be shown that the second application is substantially similar to the first. The parties are the same and there must be no substantial change in the application itself, or conditions surrounding the property. There must have been adjudication on the merits and both applications must involve the same cause of action. In this application, it is substantially different from the first application. The 2007 application divided the 9 acre lot into a 3 acre lot and a 6.12 acre lot. This was one of the items that the board was previously concerned about. In the new application, they have divided the property as follows: one lot is less than 4 acres and the other lot consists of over 5 acres. The 2007 application was designed to preserve the possibility of farm land assessment on one of the two remaining lots. In the new application farm land assessment is no longer possible. On the 2007 application, the remainder lot would not comply with the ordinance for requiring a minimum lot circle of 250 feet. In this application the lots are regular in shape. Under the 2007 application the entire portion of each lot would have been available for development. In the new

application, 4 acres of the land are proposed to be placed into a conservation easement where there can be no development.

Joseph Murray, Esq., stated that he represents the objectors. He stated that Mr. Matyola is disregarding the essential element of what the board decided when it denied the application last year. The width of the lot is controlled by the lot circle. In order to maintain the appropriate width, a 250 foot lot circle must exist within 150 feet from the right-of-way. The C-1 variance relief requires the applicant to establish that there are exceptional circumstances with respect to the lot, for example its topography, and configuration. The finding by this board found that there was no exceptional circumstance with respect to the configuration of the lot. The change to the new plan does not change the exceptional circumstances.

Mr. Monaco stated that before the board is an application with a number of differences, most notably the change in the number of variances. It is clear to him that it does not fall under *res judicata*.

Madam Chair stated that this is a different application because there is the addition of the conservation easement which may or may not mitigate some of the deficiencies of this application. The lot line has been re-aligned. There is a reduction to the variances. It is not just based on the lot circle distance.

Attorney Kimson wanted the public to know that the board was not going to decide the merits of the case at this meeting. They are only going to decide if they jurisdiction.

Mr. Monaco made a motion that the board does have jurisdiction over the application. Mrs. Filler seconded the motion.

Roll Call:

Mrs. Allen	nay
Mr. Cook	nay
Mrs. Duffy	aye
Mrs. Filler	aye
Mr. Getz	aye
Mr. Monaco	aye
Mr. Smith	aye
Madam Chair	aye

Attorney Kimson stated that the board has found that they do have jurisdiction over the application. The board has determined that the application is not complete. The applicant will have to submit the additional checklist items or waiver requests and then the matter will be scheduled for a completeness determination.

J. OTHER BUSINESS:

1. Ordinance §148-111 COAH development fees

Mr. Sullivan stated that COAH recently adopted regulations which increased the developer fees that a municipality can charge. In 2004, in advance of

the township preparing the updated housing plan and fair share plan, the developer fees were increased. The municipality will increase the developer's fees again. The ordinance proposes that now when developers complete projects, they will have to pay a developer fee which will go into the housing trust fund.

Attorney Kimson recommended another change to the ordinance. She recommended taking the language out that identifies a specific bank and insert the language "the township's designated bank."

Mrs. Filler made a motion to forward this ordinance to the township committee for consideration. Mrs. Duffy seconded the motion. *Motion* was carried with a vote of *Ayes all, Nays none recorded*.

2. Ordinance §148-21 Business Zone-

Mr. Sullivan stated that car dealerships are not permitted in the Business Zone. There was some confusing language in the ordinance about used car dealerships being permitted if they were connected to new car dealerships. The implication was that new car dealerships are permitted, when in fact they are not. The language has been revised to state that new or used car dealerships are not permitted in the Business Zone, unless they are using agricultural equipment.

Mr. Smith made a motion to forward this ordinance to the township committee for consideration. Mr. Monaco seconded the motion. *Motion* was carried with a vote of *Ayes all, Nays none recorded*.

1. Water Quality -

Dr. Stephen Souza of Princeton Hydro addressed the board. Dr. Souza stated that his presentation will deal primarily with regulations. There are a number of different regulations that are in place at this time that will affect the board's review and decision making process that apply to lands that have streams, lakes, ponds, wetlands, stream buffer areas and riparian areas.

He stated that the New Jersey Stormwater rules (NJAC 7:8) includes language to protect the Category 1(c-1) streams. Water quality standards are found in NJAC 7:9B. C-1 stream criteria information is found in this rule. It also includes anti-degradation regulations that apply to both C-1 and C-2 streams and all other water bodies. The NJAC7:13 is the new flood hazard protection rules that provide guidance for what can or can't be done and how it should be done within water bodies, their floodplains and riparian zone. The Freshwater Wetland rules (NJACC 7:7A) have been in place for a long time, but will be revised shortly.

Dr. Souza addressed the terminology of riparian areas, transition areas and special waters resource protection areas. He stated that in these areas they are supposed to be protected and nothing is to be disturbed. This area is providing protection for surface water or wetlands, however, some encroachments are allowed but they are covered under general permits. The riparian area is the land located in the vegetation that is adjacent to regulated waters and this is defined in NJAC 7:13-4.1 and illustrated at figure NJAC 7:13-2.3. If you have a C-1 waterway, the flood

hazard area rule requirements state that you are required to have a 300 foot buffer on either side of the stream. If you have a trout production stream, a trout maintenance stream or a stream that harboring threatened and endangered species, a 150 foot buffer applies to that stream. Dr. Souza stated that this buffer is different than the township's stream buffer ordinance. All of the other waters have a 50 foot buffer on either side of the stream.

The Freshwater Wetlands Act has its own set of buffers and its own set of definitions. It will depend on the type of wetland resource.

He stated that there are three NJDEP rules that must be assess with respect to any project affecting a surface water resource. The Planning Board will have to study each application carefully. To obtain the definition of category 1 waters it would be found at NJAC 7:9-B. He stated that his firm will guide the board accordingly.

Madam Chair wanted to know what was meant by "flood fringe". Dr. Souza answered that there are two types of areas. There is the flood hazard area and that includes the floodway and then the flood fringe. There is also the riparian corridor and it applies to habitat.

Mrs. Filler wanted to know how the township's ordinance compares to the State's regulations. Dr. Souza answered that the township's stormwater and stream corridor ordinance meshes very well with the State. In most cases the township's ordinance provides more protections for the township.

The way the State has been applying the designation of Category One waters is it does not apply just to trout production streams, or waters that are in Federal or State holdings, it could apply to any type of waterway. It could be a waterway that has poor water quality. He stated that if you refer to NJAC 7:9B, it provides specific definitions as to what should be a Category One water, but as we know that there are a lot of other water bodies that fall out of that definition. Pursuant to NJAC 7:8, it establishes the SWRPA buffers, but there is no definition in this rule that identifies Category One water.

Dr. Souza stated that in the future it will become difficult when encroachments are included in an application. Also, there was an administrative order issued in January 2008, because it was recognized that there was a conflict arising between flood hazard area rules and the stormwater rules. In NJAC 7:8, there is no provision made to disturb the 150 foot buffer area, but the administrative order provided some guidance in terms of what can be done if you had to encroach into the 150 foot buffer area.

Dr. Souza summarized his presentation. He stated that the township will have to be familiar with these rules and try to maintain an understanding of how each of the 3 main rules, namely the wetland rules, the flood hazard area rules and the stormwater rules apply to applications. Understand that there are different buffer areas associated with each rule. The board should know what they are designed to protect and some of the allowances contained in each one of those rules. They are designed for the protection of water resources. There are allowances for some encroachments, but they are difficult to obtain from NJDEP. However, when those applications come before the board, i.e. stream crossing for driveways, or hardships

cases, expand a roadway or existing access point, those are the situations where the board will have to be astute as to figuring out what is really being asked by the applicant and how the applicant is functioning within our ordinance. If the board maintains very strong ordinances as far as governing what can be done within riparian areas that will be key to protecting the resources within the township. Also there is the regional stormwater management plan, and when that is adopted it will provide an entire set of ground rules with respect to buffer areas and other protections that are being established.

Madam Chair stated that the board has to be aware and review immediately the Letter of Interpretation notices, flood hazard notices and general permit applications even before there is an active application before the board. The board would at this critical time have an opportunity to let the State know if they have concerns.

Dr. Souza informed the board that he will return to the board with information regarding where the ordinance is deficient in terms of water quality. He stated that he will meet with Michael Sullivan and Clay McEldowney and return to the board at a later date with updated information.

K. ADJOURNMENT

Mr. Cook made a motion to adjourn at 9:57 p.m. Mrs. Filler seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.

Respectfully submitted,

Linda A. Jacukowicz