

**READINGTON TOWNSHIP PLANNING BOARD
MINUTES
January 28, 2008**

A. Chairman called *the meeting to order at 7:38 p.m.* announcing that all laws governing the Open Public Meetings Act had been met and that the meeting had been duly advertised.

B. Roll:

Mrs. Allen	present
Mr. Cook	present
Mrs. Duffy	present
Mrs. Filler	present
Mrs. Flynn	present
Mr. Getz	present
Mr. Klotz	present – arrived at 7:45 p.m.
Mr. Monaco	present
Mr. Smith	present
Madam Chair	present

Betty Ann Fort	present
Diana Hendry	present

**Michael Sullivan, Clarke – Caton & Hintz
Valerie Kimson, Esq., Purcell, Ries, Shannon, Mulcahy & O'Neill
Joe Modzelewski – Hatch, Mott & McDonald**

C. APPROVAL OF MINUTES

1. January 14, 2008 - Mr. Cook made a motion to approve the minutes. Mrs. Duffy seconded the motion. *Motion* was carried with a vote of *Ayes all, Nays none recorded.*

D. CORRESPONDENCE:

The board had no comments regarding the correspondence.

E. RESOLUTIONS:

**1. Mountain Woods
Preliminary Major Subdivision
Block 4, lot 57**

Mrs. Allen made a motion to approve the resolution. Mr. Cook seconded the motion.

Roll Call:

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

2. Professional Services Resolution

Mrs. Allen made a motion to approve the resolution. Mrs. Duffy seconded the motion.

Roll Call:

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

F. TECHNICAL REVIEW COMMITTEE:

- 1 LFP Holdings, LLC
Minor Subdivision
Block 77, Lot 28
204 Pleasant Run Road
Action Date: February 21, 2008**

Mrs. Filler informed the board that the application remained incomplete.

G. OTHER BUSINESS:

- 1. Voucher Approval – Mr. Cook approved the vouchers as submitted. Mr. Smith seconded the motion. *Motion was carried with a vote of Ayes all, Nays none recorded.***
- 2. List of Master Plan Topics – Carried to the next workshop meeting.**

H. PUBLIC HEARINGS:

**1. Wilmark Building Contractors
Motion for reconsideration Final Subdivision
Block 25, lot 38.01 –**

In order to obtain a quorum, Mrs. Fort and Ms. Hendry, both Board of Adjustment members, attended this meeting. Mrs. Allen, Mrs. Duffy and Mr. Monaco recused themselves from hearing this application.

Richard Clark, Esq., from the firm of Laddey, Clark & Ryan stated that he is the attorney for the applicant. He stated that at the last session, the board re-instated the application. There is still one outstanding item which deals with the 12 ½ acre lot that was required by ordinance as part of the approval. Months ago he submitted the trust document and it was reviewed by the board's attorney. He made revisions according to the board's counsel's recommendation.

Attorney Kimson stated that the fundamental restriction on the property is because it is an open space lot by virtue of the resolution of approval and by the cluster option pursued by the developer. The subdivision approval and the fact that it has an open space lot are superior to any agricultural use or ordinances that the township has.

Attorney Kimson stated that the language for "original structure – single family residence" was removed from the trust agreement. The approvals by the board supercede any uses permitted in his trust documents, but there is wording under agricultural uses in Article 2, Section 2.1 of the Evergreen Trust document that indicates that common farm site activities including packaging, processing, wholesale and retail marketing are allowed. She stated that any of those structures would not be permitted on the property.

Mr. Clark will make the change, that such activities will not include structures.

Mrs. Fort stated that she was not prepared except to deal with Mr. Clark's request for an extension. She wanted to know if all of the questions that the board had, were dealt with. Attorney Kimson stated that at the meeting wherein the applicant requested a motion for reconsideration the applicant was advised that the board raised a lot of questions at the prior meeting, many of which were contained in the minutes of that meeting. There has been no resolution to those issues. Attorney Kimson stated for the record that the applicant's attorney last week had requested an extension of time because in May 2005 the applicant received preliminary subdivision approval. Under the Municipal Land Use Law, from the date of the resolution the applicant is vested for three years under preliminary approval which would expire May 2008. In anticipation of that, the applicant wrote a letter last week to seek an extension of preliminary approval. The applicant has indicated that it is not necessary to proceed with that request at this time. The applicant wanted to proceed with the application of final approval.

Diana Hendry left the meeting at 8:07 p.m.

The board reviewed the July 23, 2007 Planning Board minutes.

Madam Chair asked Mr. Modzelewski if he would be prepared to answer questions relating to stormwater issues this evening. Mr. Modzelewski answered that he could make comments. Mr. Clark referred to the minutes wherein one of the concerns was that if any of the agricultural practices that are being proposed in the trust document adversely affected the detention basin the board's professionals will have to approve what is done ahead of time to make sure that they are properly mitigated. Mr. Modzelewski stated that any agricultural use on the balance of the property would not take place within the stormwater easement. Madam Chair stated that the trust document talks about irrigation on the property and she wanted to know if that would affect the stormwater. Mr. Modzelewski stated that it shouldn't affect it, but they would have to know what type of system they propose to use. Mr. Clark indicated that they would come back to this topic.

Mr. Clark stated that a stormwater management plan would be submitted and would be subject to the engineer's review and approval. Mr. Modzelewski indicated to the board that agricultural use is a just a term and could mean a lot of different things. Until the board knows what type of use is proposed they cannot evaluate what affect it might have on the property?

Mr. Sullivan suggested that by using the "best management practices" for the agricultural use outside of the stormwater management basin, the board could have a level of protection. If there were issues, the recourse could be to go to the Evergreen Trust and require them to fix it.

Attorney Kimson asked if it is true that no agricultural use shall take place within the stormwater easement and there should be a physical delineation of where the easement area is so that the farmer will know to stay out of the area. Mr. Modzelewski answered that he did not recall seeing that on the plan. Attorney Kimson recommended that a fence should be installed around the detention basin.

Regarding the statement in the minutes from July wherein Mr. Klotz did not feel that the trust document benefited the homeowners, Mr. Clark asked Mr. Klotz to please explain. Mr. Klotz stated that the trust is supposed to benefit the homeowners in the development. There is language in the trust indicating that it does benefit them, but he does not see how. He stated that they might get some money if Evergreen Trust makes money, but the homeowners will have no role in the governance of the trust. The rights of the homeowners should be spelled out prior their purchase. Mr. Clark answered that the ordinance states that the benefit is that the property remains open space.

Mrs. Filler wanted to know if the homeowners would be allowed to walk on the property or if they would be restricted from this area.

Attorney Kimson swore in Mark Hartman and the board's professionals.

Mr. Clark answered that this is an agricultural use and not the common open space. The benefit to the homeowner is that they are located next to agricultural use.

Mrs. Filler stated that this is "common open space". Therefore she wanted to know if the residents would be allowed to use this area. Mr. Hartman answered that at this time the open space will be planted with crops. The residents will not be allowed on the property.

Madam Chair informed the applicant that the open space is not Mr. Hartman's property. Mr. Hartman agreed that the trust owns the property. Madam Chair stated that there are community agricultural activities that allow the public access to the property. Mr. Hartman answered that if there is a cause, yes it will be allowed, but he will not put that clause in a document.

Mr. Klotz did not feel that this trust would benefit the homeowners.

Mrs. Filler wanted to know what would happen if one of the trustees didn't want the trust anymore. Mr. Hartman answered that there won't be a default; he would have an attorney to handle it. Mr. Clark stated that in the agreement under Article Four, the township has rights and could take action if needed.

Madam Chair wanted to know if the trust did not make any money, how would the trust pay for the insurance? Mr. Hartman answered that the trust would have a certain amount of funds that they would have to put in it.

Attorney Kimson stated that under N.J.S.A. 40:55D-43, subsection A, this is the standards for the establishment of open space organization and it talks about the fact that the organization shall not be dissolved and shall not dispose of any open space by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of the development. This language is not included in your document. She stated that another item that is not included in the open space is the deed from Wilmark Contractors to the trust, there has to be a deed restriction that the property may only be used for open space. This is not intended to be a charitable trust, it is intended to be a for profit trust. This has to have a mechanism in place so that if for some reason the trust became bankrupt, there is a device for someone else to assume responsibility of the property. Mr. Clark stated that before the trust gets dissolved, the property would have to be offered to the township. Ms. Kimson stated that if the township did not want to take the property, then there has to be another avenue for the trustees to take.

Mr. Clark stated that the document will be recorded, as noted in the July minutes.

Madam Chair asked what does “the under protest” language mean. Mr. Clark answered that it does not mean anything at this point.

Attorney Kimson wanted to clarify that the deed will be filed. Mr. Clark and Mr. Hartman answered that the deed will be filed.

Madam Chair stated that on page 4 of the trust agreement, section E, it talks about hiring employees, etc. If that is the case, where would the employees park their vehicles? Mr. Hartman stated that they could park on the street or on the easement for the detention basin.

Mrs. Fort wanted to know where the annual report of the finances would go. Mr. Clark answered it would go to the homeowners.

The board requested that a split rail fence should be installed on the easterly side of the property. There will be “no motorized vehicle” signs installed on the access easement.

PUBLIC COMMENTS

There were no comments from the public.

Attorney Kimson recited the conditions of approval: the applicant shall comply with the May 8, 2006 report from H. Clay McEldowney; the plans shall be detailed to include that all utilities within roadway shall be backfilled with select material in accordance with RSIS standards; the applicant shall comply with the March 26, 2006 letter from Michael Sullivan; and concerning the April 22, 2005 letter from Dr. Souza, the applicant still needs to perform a soil test outlined in item #3 and determine the type of filter to be used in the water discharge system; the inspection fees shall be updated; no agricultural use shall take place within the stormwater easement; the applicant shall advise the township engineer as to the type of irrigation system proposed and for review and approval regarding the stormwater management plan and for compliance with soil erosion; best management practices shall be followed for agricultural use; the deed shall contain a restriction that the property shall be maintained as an open space lot in perpetuity; the engineer will review the stormwater management plan based upon the proposed agricultural use; the applicant shall install a split-rail fence to delineate the open space lot and including signage along the easterly side of the property; the trust document shall be amended to include the language contained at N.J.S.A. 40:55D-43 (a); agricultural use on the property must follow best management practices which are current at the time; no storage trailers shall be stored on the lot, nor over-night; at section 1.2 b of the trust document it shall be amended such that no repair or maintenance of vehicles or equipment occur on this lot; the property may not be mortgaged; the applicant shall comply with the language in N.J.S.A. 40:55D-43; the property must be deed restricted to open space; no building permit shall be issued until such time

as the open space has been unconditionally filed with the clerk's office; and no trespassing on the open space lot unless specified by the trust.

Mr. Smith made a motion to approve the application with the above mentioned conditions. Mrs. Fort seconded the motion.

Roll Call:

Mr. Cook	aye
Mrs. Filler	aye
Mrs. Fort	aye
Mr. Getz	aye
Mr. Klotz	nay
Mr. Smith	aye
Madam Chair	aye

Mrs. Duffy left the meeting.

I. NEW BUSINESS:

- 1. Ordinance #02-2008
Amending §148-50 –
Mandatory language to be included in Conservation Easement**

Mrs. Filler made a motion that the ordinance is consistent with the Master Plan. Mrs. Allen seconded the motion.

Roll Call:

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

J. INFORMAL REVIEW:

- 1. Holland Brook Realty/Township of Readington
Capital Improvement
Block 53, Lot 5**

Julia Allen recused herself from hearing this application.

Sharon Dragan, Esq., on behalf of the Township Committee stated that she is before the Planning Board for a courtesy review under the zoning ordinance 148-120.1 for municipal capital improvement projects which involve open space and farmland preservation. She stated that the property is known as Block 53, lot 5 located on Holland Brook Road. It is the prior RVD site. The property is owned by Holland Brook Realty. The site was closed down in 2005. The township has a contract to purchase a portion of Block 53, lot 5. There is a 2 acre non-severable exception area and the net easement to the township will be 23.3 acres. If any development is proposed on the 2 acre exception, the owner would have to obtain all permits. The two acre exception is proposed to be located at the location of Distillery Road. The owner originally made the application directly to the County. At the end of the round, there was a list of all of the farms that receive the funding and this farm did not make it into that round so the township is purchase it. Additionally, there will be a 10 acre lot where the old RVD site was located. That property surrounds the existing house and out buildings. The reason for this is because the county would not fund this area. The 6 acres adjacent to this will be merged with the Block 53; lot 2.01 and it will become 10 acres. It will have a four acre conservation easement on the property and it will be restricted from further development that will be donated by the owner. The garage and the eastern most part of the property would consist of 2 acres that would not be in the conservation easement and four acres of it would be in a donated conservation easement.

The board suggested that the documentation should clearly state that the prior use has been abandoned, and there are no grandfathered uses, no rights to any other use than what is permitted by the current ordinance.

Mr. Smith made a motion to recommend to the governing body that the Planning Board is in agreement with the application subject to the additional language to indicate that the use has been abandoned and no rights to any other use other than what is permitted by the current ordinance is allowed. Mr. Cook seconded the motion.

Roll Call:

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

K. ADJOURNMENT

Mr. Cook made a motion to adjourn. Mr. Smith seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.

Respectfully submitted,

Linda A. Jacukowicz