

PLANNING BOARD MINUTES  
PUBLIC MEETING  
MARCH 14, 2013 - 7:00 P.M.  
HELD AT OAKLAND SENIOR CENTER  
20 Lawlor Drive, Oakland, New Jersey

Pursuant to Chapter 231, Public Law 1975 (Open Public Meetings Act) adequate notice of this meeting has been provided by:

- ☐ Adoption of an annual schedule of meetings
- ☐ Posting a copy of same at Borough Hall
- ☐ Forwarding a copy of same to The Record
- ☐ Mailing a copy to any person requesting same

\*\* MEETINGS CONCLUDE AT 10:30 P.M., THEREFORE, NO TESTIMONY WILL BE TAKEN AFTER 10:00 P.M.

PLANNING BOARD MEMBERS:

Jason Shafron, Lee Haymon, Nicholas DiLandro, Eric Kulmala, Christopher Baczewski, Dan Hagberg, Elaine T. Rowin, John Morris, Councilwoman Coira, Mayor Linda H. Schwager and Chairman Thomas Potash.

FLAG SALUTE, MEETING OPENED AT 7:03 P.M., ROLL CALL:

Present: Mrs. Rowin, Messrs. Haymon, Kulmala, Baczewski, Hagberg, Morris, Councilwoman Coira, Mayor Schwager and Chairman Potash.  
Absent: Messrs. Shafron and DiLandro.

Joseph Russo, Esq., Board Attorney, Steve Lydon, Burgis Associates and Kevin Boswell, Boswell Engineering were also in attendance.

Motioned by Mrs. Rowin and seconded by Mr. Morris, to excuse the absence of Mr. DiLandro was voted unanimously by the Board.

PUBLIC HEARING BEGINS:

Chairman Potash noted for the record that no public was present so they would be skipping the open to the public portion.

1. Conceptual hearing for DR Mullen Construction.

Chairman Potash recused himself from the conceptual hearing since he owns property within 200-feet of the applicant. Mr. Morris stepped in to chair the meeting.

Mr. Russo explained to the Board that he had a conversation with Mr. Cascio concerning the circumstances involving this conceptual application because the applicant is asking for relief in the form of a recommendation from the Planning Board to Mayor and Council. Due to the nature of this application, he recommended that the applicant serve notice to the property owners as well as advertise it in The Record.

Mr. Ben Cascio, Esq. from Franklin Lakes, New Jersey was before the Board representing the applicant, DR Mullen Construction Co. He explained that this was not really an application but a request that the Planning Board make a recommendation to Mayor and Council to amend the zoning ordinances.

The amendment being requested is for an application before the Highlands Council to re-designate property to a Redevelopment Area. Mr. Cascio explained that his client was before the Board back in April 2010 with an application which was approved by the Board for development of that property. Mr. Mullen owns a construction company that does street construction for the state and commercial projects. Mr. Mullen's headquarters are located on his current property where he stores his trucks and equipment. He is currently under contract for an adjoining piece of property owned by Mr. Dewey located in the rear of Dewey Electronics which extends all the way to Interstate 287.

Mr. Mullen was before the Board originally for approval to utilize the contract property adjacent to his for storing equipment where no construction of a building or utilities would be needed. The Board granted approval subject to all the usual conditions such as approval from the county and state. However, the applicant hit a roadblock with the Highlands Council since this property is located in the Preservation Area.

Mr. Cascio explained that as a result they have been back and forth with the Highlands Council for almost three years with numerous meetings resulting in requests from Highlands Council for more information. Finally, they requested that the applicant get the support of the Mayor and Council to re-designate this area to a Redevelopment Area and then they would grant the appropriate permits needed.

This property runs along the highway and when Interstate 287 was being constructed, a considerable amount of shot-rock from this project was dumped on Mr. Mullen's property and Highlands Council consider this impervious area even though the state dumped it there. Part of a settlement between the applicant and the Highlands Council is that the applicant will forest some of this property resulting in a positive outcome for this area. He explained that all the Board would have to do is request that Mayor and Council re-designate this area to a Redevelopment Area. He then offered Tibor Lantincsecs, P.E. to explain the process.

Mr. Lantincsecs reviewed the approved site plans by the Planning Board and explained the existing site. These approvals were subject to Highlands Exemption or a Highlands permit. The applicant applied for a Highlands Exemption and had dialog with NJDEP who denied the Highlands Exemption and suggested a better way would be to apply for a Redevelopment Designation Area. There is a specific provision in the Highlands Act procedures citing Highland Redevelopment Designation Area.

Mr. Lantincsis explained to the Board that the entire West Oakland Industrial Park is located in the Preservation Area which has a tremendous impact to the properties affected. However, if you are re-designated a Redevelopment Area, this allows NJDEP to issue a Highlands permit with waivers. For example in the Highlands Preservation Area, you are allowed 3 percent impervious surface and the Industrial Park is made up of primarily asphalt. If the property is re-designated a Redevelopment Area, NJDEP can consider granting a permit with waivers. The key element under the Redevelopment Area is that the property has to be currently 70 percent impervious surface.

The applicant has made an application to the Highlands Council which is pending but deemed complete for a Redevelopment Designation Area within the Industrial Park. This application consists of six lots which includes the DR Mullen Construction lot and the adjacent lot that they have under contract. Mr. Cascio informed the Board that the surrounding property owners have been noticed and in response, have communicated that they are in support of this request.

Mr. Russo questioned if the Redevelopment Area was a sub category of the Planning Area. Mr. Lantincsis explained that the standards are less stringent for the Planning Area but the Industrial Park is located in the Preservation Area. This surprised the Highlands Council that a fully developed Industrial Park with additional opportunity for development was located in the Preservation Area.

Mr. Lantincsis reviewed the application for the Redevelopment Area that was submitted to the Highlands Council showing the 70 percent impervious surface designated in the Industrial Park which would not involve development. The applicant was required to identify the Redevelopment Area with an overlay footprint of what was being proposed. This application is the third being proposed in the state which is usually done on a municipal or state level and not on a private level. This means it would need to be supported by Mayor and Council by resolution recognizing and supporting the Redevelopment Designation Area. This is why they have come before the Planning Board requesting that a recommendation be sent to Mayor and Council supporting this. He reminded the Board that the Planning Board approved the application being proposed to the Highlands Council but they are still required to go through the process of a Highlands Exemption or Highlands Permit with a waiver which is permitted in the Redevelopment Area.

Mr. Lantincsis informed the Board that the Highlands Council recommended that the entire Industrial Park be re-designated a Redevelopment Area and include that the municipality support this as well. If this were to proceed, it would be subject to a public hearing before the Highlands Council and the plans that were approved by the Planning Board would be submitted. They are petitioning for a Highlands Redevelopment Area Designation and in order to advance that petition, it would require a resolution of support from Mayor and Council.

Mr. Morris questioned if other applicants requesting Redevelopment Area Designation received support from their governing body. Mr. Lantincsis responded that the other applicants did receive support because it was on a state or municipal level. Mr. Morris questioned what would be required from the Planning to send the governing body for this request. Mr. Cascio explained that at the appropriate time they would include them in the application to the Highlands.

Mr. Morris questioned the party that verifies the lines designating the 70-percent impervious surface and whether this is surveyed. Mr. Lantincsis responded that this area has been surveyed but is not required to follow blocks and lots or lot lines and public roadways can be included. They would not be including old Muller Road which continues to Interstate 287. The center portion of that lot where they are proposing the storage area would be excluded from the Redevelopment Area and offered the state the whole upper end by way of subdivision which they declined. It would be deed restricted.

Mr. Morris questioned if the definition for impervious surface being used for the Redevelopment Area was consistent with the definition used in their Planning Board applications. Mr. Lantincsis responded that in the Highlands Preservation Area crushed stone, quarry processed, pavement, rooftops are all considered impervious surfaces.

Mr. Morris confirmed that the applicant's recommendation was that the Planning Board would recommend to Mayor and Council that the entire Industrial Park be included in the Redevelopment Area. Mr. Cascio clarified that they are not requesting that the entire Industrial Park be included in the Redevelopment Area but it was suggested by the Highlands Council that other property owners could recommend that they are included in the Industrial Park.

Mr. Morris questioned if the 70 percent impervious ratio would be met if the entire Industrial Park were to be included. He expressed that it appears it could increase the percentage.

Mr. Hagberg verified that the applicant was agreeing to forest the upper portion as an offering to get Highlands Exemption, but if the entire Industrial Park were included by recommendation of the governing body, would the Borough be responsible to forest a larger area. Mr. Lantincsis responded this request is specific with their application and the Redevelopment Area is simply a line recognizing the limits of an area appropriate for redevelopment within an industrial park.

Mr. Morris expressed that the lines showing the impervious surface does not look like it was thought through. Mr. Lantincsis assured Mr. Morris that that the proposed area is clustering around existing developed areas.

Mr. Lantincsis expressed that it would be in the benefit of the municipality to include the entire Industrial Park with this application but reminded the Board that they are there specifically for Mr. Mullen. Mr. Kulmala questioned if the Board was to consider recommending the entire Industrial Park be designated Redevelopment Area would this slow down their process. Mr. Morris explained that the Board would need to have the other property owner's concurrence and he expressed that he did not know what the benefit would be for the existing businesses that are already developed. Mr. Lantincsis explained to the Board that it is a hardship for businesses in the Preservation Area to apply to lending institutions because they are considered bad risks. However, re-designating to a Redevelopment Area would add value to the property.

Mr. Lantincsis gave his opinion that it was inappropriate for the Industrial Park to be placed in the Preservation Area and being able to re-designate to a Redevelopment Area would be one way to mitigate this. Mr. Morris responded that there are other industrial zones placed in the Preservation Area.

Mr. Morris requested that Mr. Lydon give his opinion of the benefits broadening the recommendation to include the entire Industrial Park in the Redevelopment Area. Mr. Lydon responded that he has researched the Redevelopment Area Designation and explained that any interested party may petition the Highlands Council. However, he could not find anything within the Highlands Act requiring that a municipality needs to become involved. A discussion ensued between Mr. Lydon and Mr. Lantincisics concerning if the municipal roadway was involved. Mr. Lantincisics responded that the roadway is no longer part of the application. Mr. Lydon explained that originally the roadway was a part of the application and this could explain why the municipality needed to be involved.

Mr. Lydon explained that in the Preservation Area the ability to expand the footprint of impervious surface is very limited and approximately 125 percent is allowable to the existing impervious. He expressed that there may be advantages to including the whole Industrial Park in the Redevelopment Area and if the municipality needs to be involved, then property owners could be contacted and get their input. When Mr. Mullen goes through the process and his application this could make it favorable with the Highlands Council.

Mr. Russo explained that this hearing is between a conceptual application and a recommendation from the Planning Board. He suggested to the Board that a formal vote be taken followed by the adoption of a resolution recommending that the DR Mullen Construction property be re-designated to a Redevelopment Area. Mr. Morris entertained a motion to open the meeting to the public.

Motioned by Mrs. Rowin and seconded by Mr. Baczewski, to open the meeting to the public regarding matters concerning the DR Mullen Construction application was voted unanimously by the Board.

No comments.

Motioned by Mrs. Rowin and seconded by Mr. Kulmala, to close the meeting to the public regarding matters concerning the DR Mullen Construction application was voted unanimously by the Board.

Mr. Morris entertained a motion recommending that the Mayor and Council support the applicant's process for the Redevelopment Area Designation by adoption of a resolution.

Motioned by Councilwoman Coira and seconded by Mr. Baczewski, to recommend that Mayor and Council support the applicant's process for the Redevelopment Area Designation by adoption of a resolution.

Roll Call Vote:           Ayes: Mrs. Rowin, Messrs. Haymon, Kulmala, Baczewski, Hagberg, Councilwoman Coira, Morris, Mayor Scwager and Chairman Potash.  
                                  Nays: None  
                                  Abstain: None  
                                  Absent: Messrs Shafron and DiLandro.

## 2. Review and recommendation of the Complete Streets Program.

Chairman Potash recalled that the Board discussed this matter at the January meeting and it was then carried to the February meeting where it was tabled and carried to the March meeting.

A discussion ensued concerning that no comments have been received from the Police Department and maybe this agenda item should be tabled until there is some feedback from the Traffic Bureau.

Mayor Schwager motioned to table the matter. Mrs. Rowin questioned if the Board could discuss other aspects in the resolution to save time. Mayor Schwager responded that she made the motion because the Board requested comments from the Traffic Bureau and the Board has not received these comments. She suggested that Ms. Gurney send a letter with the questions of the Board to the appropriate person at the Traffic Bureau. Mrs. Rowin expressed that some of the other issues could be addressed while waiting for the comments from the Traffic Bureau. Mayor Schwager withdrew her motion to table the topic of the Complete Streets program.

Chairman Potash expressed that the Board could proceed and he was not aware of any specific questions for Traffic Bureau but it is routine when receiving an application, to give the various agencies such as the Traffic Bureau the opportunity to review and comment.

Mr. Morris explained that he had questioned the number of streets in town that the volume of traffic is more than 1,000 cars a day and how many streets are 28-feet in width. Chairman Potash responded that he did not know if the Traffic Bureau would have those answers. It may be a question for the engineer. Mayor Schwager added that traffic counts may be conducted by the county and the DPW may have an answer to the amount of streets in town that are 28-feet in width.

Mr. Morris explained that he remembered two major issues being the scope of Oakland streets being covered by this ordinance and would the town be comfortable with 20-percent of the cost being contributed by the taxpayers towards road improvements.

Chairman Potash suggested that the Board discuss the topic of cost to the Borough. He informed the Board that one of the sample ordinances had a contribution of 5-percent which would be more reasonable and questioned if the Board was in favor of that percentage. The consensus was the Board favored that percentage and would be recommended.

Chairman Potash explained that Ms. Mejia's letter pointed out some spelling errors as well as pointing out that allowances should be made for new construction or reconstruction of roadways to account for the fact that there may not be enough right-of-way width to accommodate paved shoulders on Borough roads. Mrs. Rowin suggested that the wording "where feasible" be added so that it gives the Borough latitude not to be lock into anything.

Mr. Boswell commented that the section referring to bicycle pedestrian lanes 'should be established in all new construction and reconstruction projects' should define what is meant by reconstruction. Milling and paving streets should not be placed under

reconstruction. Chairman Potash suggested it be defined that reconstruction projects does not include milling and paving.

Mrs. Rowin commented on the same section that it should be spelled out who is determining the detrimental environmental or social impacts that outweigh the need for these accommodations. Mr. Russo suggested that the clause be taken out. Mr. Morris disagreed expressing that the clause is in there to give flexibility on decisions. Chairman Potash agreed that leaving the clause in gives the Borough more flexibility. He suggested that it be added that determination would come from the Borough. Mrs. Rowin suggested that it be some Borough official.

Mr. Kulmala questioned Mr. Boswell what is the value of a program such as this one. Mr. Boswell responded the D.O.T. encourages towns to develop a circulation plan in their master for bike lanes throughout the boroughs. The town meets with the planner, engineer and a committee of that town and it is determined how to create these lanes to schools and the downtown area on a practical level. Some towns receive grant money to help them establish these bike lanes.

Mr. Kulmala questioned if an ordinance like this would be practical for the Borough of Oakland. Mr. Boswell responded that it is practical in some areas of the town but it does not work in every area. With this program in place, it gives the Borough the opportunity to start looking at the potential in some of the areas that would allow this. It has been done successfully in some towns and in some towns partially. In addition, it does open up an opportunity to receive grant money to help implement the program.

Mayor Schwager questioned if the program were in place before the construction begins on the Fanale property would be responsible to make room for bicycle lanes. Mr. Boswell responded that the Fanale application was approved before this ordinance was adopted so they would not be obligated. He explained that this program would assist a town if a site plan were seeking approval and if a bridge or covert needed repair. With the program in place the town has leverage on requesting a bike lane for any of these improvements. In the event of sewers, it could cause the Borough financial obligation. Mr. Morris commented that the financial risk would be capped at 5-percent.

Mr. Kulmala questioned what types of grants were available if the Borough adopts this program. Mr. Boswell responded that the grants come and go but they are available such as Safe Routes To School grants which are out there for towns that currently lack sidewalks. He explained that there is a scoring process when applying for a grant.

Mr. Morris verified that the two agreements were that milling and paving would not be considered a reconstruction project and that the 5-percent would be the financial cap for the Borough. Chairman Potash added that Mrs. Rowin had a recommendation on using the wording 'where feasible' and who makes the determination on environmental and social impacts of the program.

Chairman Potash mentioned that the sample resolution from River Edge covered some of the questions the Board thought Traffic Safety Bureau might have answers to. The sample ordinance was subjective by eliminating the volume of vehicles and the width of the street by using wording such as 'scarcity of populations, travel and attractors, both existing and future, indicate the absence of need for such accommodations rather than

being more specific.' He questioned if the Board would be more comfortable leaving the 28-feet in width and 100 cars.

Mr. Russo verified that when reconstructing or building a street, the cost of the combinations cannot be greater than 5-percent of the total cost so the cost would be to widen the street by 6-feet, put curbing in and whether or not removing some sidewalk. Mr. Boswell responded that this is correct and if you are replacing a bridge or a covert and you see that a street is narrow, it would then be designed to allow a bicycle lane in the future which is a cumulative process. Mr. Russo expressed it would happen more with new construction.

Chairman Potash entertained a motion to authorize Mr. Russo to draft a letter recommending the Complete Streets Program be adopted by Mayor and Council as amended.

Motioned by Mr. Morris and seconded by Councilwoman Coira, to authorize Mr. Russo to draft a letter recommending the Complete Streets Program be adopted by Mayor and Council as amended

Roll Call Vote:           Ayes: Mrs. Rowin, Messrs. Haymon, Kulmala, Baczewski, Hagberg, Morris, Councilwoman Coira, Mayor Schwager and Chairman Potash.  
                              Nays: None  
                              Abstain: None  
                              Absent: Messrs. Shafron and DiLandro.

#### MEMORIALIZATION:

None

#### PAYMENT OF BILLS:

Motioned Mrs. Rowin and seconded by Mr. Morris, for the payment of bills subject to the availability of funds.

Roll Call Vote:           Ayes: Mrs. Rowin, Messrs. Kulmala, Baczewski, Hagberg, Morris, Councilwoman Coira, Mayor Schwager and Chairman Potash.  
                              Nays: None  
                              Abstain: None  
                              Absent: Messrs. Shafron and DiLandro

#### APPROVAL OF MINUTES:

Motioned by Councilwoman Coira and seconded by Mr. Baczewski, to approve the February 14, 2013 minutes as amended.

Roll Call Vote:           Ayes: Mrs. Rowin, Messrs. Kulmala, Baczewski, Hagberg, Morris, Councilwoman Coira, Mayor Schwager and Chairman Potash.  
                              Nays: None  
                              Abstain: None  
                              Absent: Messrs. Shafron and DiLandro



## NEW BUSINESS:

Chairman Potash reminded the Board that a memo was received from the Board of Adjustment concerning the accessory structure ordinance where an issue was raised about the definition accessory structure. He explained that a very large shed was proposed to the Board of Adjustment and needed to meet the setbacks for an accessory structure which was three-feet from the property line.

The Board of Adjustment would like to define accessory structures and perhaps limit the size of certain structures when located close to the property line. Mrs. Rowin referred to a detached garage on Ramapo Valley Road that was very large. Chairman Potash explained that according to the ordinance, there is no limit on the size. Mr. Russo explained that there are two sections in the ordinance book where it addresses accessory structure or building but in neither section is it defined. The other problem is in Schedule B in the back of the ordinance book they talk about 5-percent allowable lot coverage of the lot size which can be substantial.

Mr. Russo suggested the Board revise the ordinance and define what an accessory structure is and try to limit it. You can try to define the major types of accessory structure allowing certain dimensions and size for each type of accessory structure. Mr. Lydon suggested the ordinance could be revised by having a staggered setback for certain heights and sizes. It will be difficult to try to define each type of accessory structure.

Chairman Potash informed the Board that he talked to Rick Lepre, Chairman of the Zoning Board, and he explained that the Board knows what an accessory structure or building is as defined but there are no definitions to restrict the size. Mr. Morris expressed that the Board does not want to see anything that big next to the property line and agreed with Mr. Lydon suggestion staggering setbacks by decreasing the size of a structure as you get closer to the setback.

Mr. Hagberg commented that he believes the big problem with the ordinance in Oakland is that they are allowing a height of 22-feet for an accessory structure. Most towns keep the height restriction of an accessory structure to 15 to 16-feet because that will eliminate second floor and second floors on an accessory structure lead to apartments.

Chairman Potash questioned Mr. Lydon concerning the 5-percent allowable of the lot size. Mr. Lydon suggested that you can restrict it to a certain percentage of the rear or side yard instead of the whole lot. Mr. Morris expressed that Mr. Hagberg suggestion reducing the height takes care of the percentages. Chairman Potash suggested they combine the two suggestions by limiting the height and stagger the setbacks based on the size. .

Mr. Hagberg informed the Board that he had a discussion with the Zoning Board Attorney that day and explained that his Zoning Officer has taken the position that air conditioners and generators have to meet the setback requirements of the primary structure not an accessory structure. The Board had an applicant come in for an air conditioner only and the Board expressed that there should be some consideration given for applicants wanting to put the air conditioners in the setback. He disagreed with the Board because air conditioners have to meet the setbacks of the primary structure and

this includes generators to control the noise. They are not accessory structures and he will not allow applicants to put them 3-feet from the property line because they should be considered part of the principal structure. Members of the Board were saying that the units were not attached to the main structure but they are. Chairman Potash suggested that it be revised in the ordinance that air conditioning units and generators are not accessory structures because they differ due to the noise. Mr. Hagberg explained that he would continue to treat air conditioning units and generators as a principal structure and he suggests the ordinance clarify this.

Chairman Potash summarized that the agreement was height of an accessory structure would be reduced from 22-feet to 16-feet, leave the percentage at 5-percent allowable of the lot size, add to the definition of either accessory structure or building that an air conditioning unit or generator would not to be considered an accessory unit, modify paragraph 1A of 59-47 and based on the size of the building, staggered setbacks. Mayor Schwager commented that when she sees building and structure in the ordinance, it seems like two different things. Chairman Potash responded that those words should be revised in the ordinance.

Mr. Hagberg added that the maximum stories on an accessory structure are 1-½ stories. He requests that you make the maximum height 15-feet rather than 16-feet because that would eliminate the two-story.

Chairman Potash expressed that Mr. Lydon could work on these changes and they can be discussed at the next meeting.

#### OLD BUSINESS:

Mr. Russo explained to the Board that Mayor and Council would prefer a detailed letter describing the changes made to the original solar panel ordinance given to the Board to review and revise. A discussion ensued concerning whether Mr. Lydon could just highlight the wording added and changed in the ordinance. It was decided that Mr. Russo would draft a letter in detail explaining changes and additions made to the ordinance.

#### PUBLIC MEETING ADJOURNED AT 9:00 P.M.

Motioned by Mrs. Rowin and seconded by Mr. Baczewski, to adjourn the meeting by a unanimous vote by the Board.

Respectfully submitted by,

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Kathlyn Gurney/Administrative Assistant

\*Next meeting on March 14, 2012.