

PLANNING BOARD MINUTES
PUBLIC MEETING
AUGUST 11, 2016 - 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:

John Madden, Robert Knapp, Jason Shafron, Lee Haymon, Nicholas DiLandro, Dan Hagberg, Elaine T. Rowin, John Morris, Councilman Jensen, Mayor Linda H. Schwager and Chairman Thomas Potash.

FLAG SALUTE, MEETING OPENED AT 7:01 P.M., ROLL CALL:

Present: Mrs. Rowin, Messrs. Madden, Knapp, Mr. Shafron, DiLandro, Haymon, Hagberg, Morris, Mayor Schwager and Chairman Potash.
Absent: Councilman Jensen.

Motioned by Mrs. Rowin and seconded by Mr. Hagberg, to excuse the absence of Councilman Jensen.

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

Mr. Knapp sitting in for Councilman Jensen.

Motioned by Mrs. Rowin and seconded by Mr. DiLandro, to open the meeting to the public regarding matters not on the agenda was voted unanimously by the Board.

No Comments.

Motioned by Mrs. Rowin and seconded by Mr. Morris, to close the meeting to the public regarding matters not on the agenda was voted unanimously by the Board.

PUBLIC HEARING:

1. A & E Ventures of Oakland – Plaza Road, Block 2702, Lots 1.01 and 1.02.
Public hearing for an amended preliminary and final site plan.

Mr. Thomas Herten, Esq. with Archer & Greiner from Hackensack, N.J. explained that the Board granted relief back in November 2010 to A & E Ventures to subdivide the subject property allowing two principle uses on one site. Also granted was permission to construct a bank and expand the existing Burger King at the site.

Mr. Herten explained things have changed and they were prepared to proceed to amend the resolution of their original application by consolidate the two lots to a single lot. He also reminded the Board of the many constraints that required variances because of the unusual shape of this property.

Detailed notice, by way of publication, was given for the hearing this evening. In that notice, they recapped variances as well as fully explained the application to the public of for the demolition of the Burger King building and the installation of the fuel dispensers for the Wawa. Mr. Herten believes the notice given was sufficient under MLUL and conferred with the Board Attorney, Joe Russo, who also agreed. However, there are two objectors represented by counsel and one of the objectors implied that the notice is confusing because of the word “amend”. They were under the impression that the Wawa was already approved back in 2010. He tried to explain to the objector’s attorney but she informed him that this issue would need to be decided by a judge and her client would do whatever was necessary to object to the application.

Mr. Herten expressed that being faced with the threat of litigation for his client and the Board, it would be prudent to re-notice for the September 8th public hearing for the protection of the town and his client. They will take out the word “amend” in the notice to clear up any confusion.

Since the issue of notice is the Board’s jurisdiction, he requested that no comments, testimony or argument of counsel on the issue of Wawa that evening. He informed the Board that since the threat of litigation, he will have a court reporter present at all hearings beginning September 8th to protect the record.

Chairman Potash responded that the Board grants his request to re-notice for the September 8th public hearing and having a court reporter present. He announced to the public that new notice would be provided by A & E Ventures for their application which

will be heard September 8th. The public can call and confirm with the Planning Board office that the meeting has not changed

MEMORIALIZATION:

1. 2016 Master Plan Reexamination Report

Eligible Voters: Messrs. Madden, Knapp, DiLandro, Haymon, Hagberg, Morris, Councilman Jensen, Mayor Schwager and Chairman Potash.

Motioned by Mr. Morris and seconded by Mr. Haymon, to memorialize the above resolution of approval.

Roll Call: Ayes: Messrs. Madden, Knapp, DiLandro, Haymon, Hagberg, Morris, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: None
Absent: Councilman Jensen

PAYMENT OF BILLS:

Motioned by Mayor Schwager and seconded by Mr. DiLandro, for the payment of bills subject to the availability of funds.

Roll Call: Ayes: Mrs. Rowin Messrs. Madden, Knapp, Mr. Shafron DiLandro, Haymon, Hagberg, Morris, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: None
Absent: Councilman Jensen

APPROVAL OF MINUTES:

Motioned by Mr. Morris and seconded by Mr. Hagberg, to approve of July 14, 2016 minutes.

Roll Call: Ayes: Messrs. Madden, Knapp, DiLandro, Haymon, Hagberg, Morris, Mayor Schwager and Chairman Potash.
Nays: None
Abstain: Mrs. Rowin and Mr. Shafron.
Absent: Councilman Jensen

NEW BUSINESS:

Mr. Lydon expressed that he was hoping to have a copy of the Highlands Regional Master Plan Element available for Board members tonight but should have it by Monday. He requested that a review of the Highlands Regional Master Plan Element be discussed at the next Planning Board meeting. Mr. Lydon advised that he would give a brief overview since the Board has covered a lot of this subject during the Master Plan Reexamination.

Mr. Lydon informed the Board that they are trying to schedule mediation with the Fair Share Housing Center concerning affordable housing. Unfortunately the town Chester has been relying on Highlands Council and overstated their situation and the judge did not buy it so the Borough will really have to work on their affordable housing issue. The Borough will have to figure out how to accommodate affordable housing with what they have. This issue will be before the Board by the end of the year. Chairman Potash questioned if the Highlands Plan Conformance was going to have any impact on the Borough's affordable housing obligation. Mr. Lydon responded during mediation, he believes that Chester expressed that they were exempted since their Highlands Conformance was in effect and the judge did not buy it. He explained that Chester should have focused on the second round rules by offering the mapping of soils and septic for a reduction of their housing obligation.

OLD BUSINESS:

Mr. Hagberg referred to the last meeting and a question from Councilman Jensen concerning if research that additional funding were approved by Mayor and Council. Ms. Gurney responded that a resolution approving additional money for the Housing Plan was adopted by Mayor and Council.

Chairman Potash referred to a letter from the state challenging the Borough's Solar Panel ordinance claiming that parts of the ordinance was unacceptable and questioned if the ordinance needs to be revised. Mr. Hagberg responded that there was a complaint to the Division of Fire Safety, they contacted him and told him he cannot put regulations on setbacks. He informed the state that this is a Borough ordinance and the Division of Fire Safety has no jurisdiction over a borough ordinance.

He received an email from the Division of Fire and Safety confirming he was right, a week and a half later, he and the Mayor received a letter from Mr. Hillser of the DCA Council stating that the Borough's ordinance is in conflict with the International Building Code. He never said what the change needs to be or what we are in violation is, no details were given.

Mr. Hagberg informed the Board that he has used this ordinance in the four towns he works in and there has been no communication from the state for the other three towns.

He expressed that there may have been miscommunication from the state level and is not sure the Board should or needs to do anything. He continues to follow the ordinance as adopted and since the letter, his department has denied two other applications concerning solar panels with no further contact.

Mr. Hagberg believes the issue is the concerning the setbacks from the edge of the roof. A discussion ensued concerning the discrepancy whether the Borough is in violation or can proceed as normal with the ordinance in place.

Mr. Knapp expressed that when he began as a Board member, he duplicated the setbacks requirements from the Wyckoff ordinance. He believes that many towns have the setback requirement in their ordinances.

Mr. Russo questioned if there was a threatening last paragraph at the end of the letter. Mr. Hagberg responded no and that he even forwarded a copy of the ordinance. It continues to say we are in violation with the Construction Code and this is not a construction code.

A discussion ensued concerning if the International Building Code could not be superseded by a municipal ordinance and if it is addressed in the International Building Code. Mr. Hagberg responded that International Building Code does not address it but it does not require it either.

He expressed that the letter needs to be more specific and if push comes to shove, we will need to get rid of the 3-foot setback on the roofline edge. Mr. Knapp expressed that the e-foot setback is very important to have from a safety standpoint. Mr. Lydon agreed that it is important to protect the first responders. Mr. Hagberg suggested to just leave the ordinance as it is for now and continue to do what we have been doing.

PUBLIC MEETING ADJOURNED AT 7:30 P.M.

Motioned by Mr. Morris and seconded by Mayor Schwager, to adjourn the meeting by a unanimous vote by the Board.

Respectfully submitted by,

Kathlyn Gurney/Administrative Assistant

*Next meeting on September 8, 2016.