Borough of Franklin Lakes
Bergen County, New Jersey
Planning Board Minutes
May 6, 2015

Meeting Called to Order at 7:30PM

Open Public Meetings Statement: Read into the record by Chairwoman Vierheilig.

Salutation to the Flag

Preamble: Read into the record by Chairwoman Vierheilig.

Roll Call: Mayor Bivona, Councilman Kahwaty, Messrs. Gostkowski, Lauber, Pullaro, Chairwoman Vierheilig, Messrs. Lazerowitz (absent; arrived at 7:45PM), Linz, Sheppard, Ms. Mucci, Mr. Ochs

Fire Safety Announcement: Read into the record by Chairwoman Vierheilig.

Also in Attendance: John Spizziri Esq., Board Attorney; Mr. Kevin Boswell, Boswell Engineering; Ms. Maria Berardi, Planning Board Secretary

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Mr. Spizziri administered the oath of office to Mr. Michael Ochs, two year term, Alternate #1 and to Ms. Michele Mucci, two year term, Alternate #2.

Approval of Minutes: Carried to meeting scheduled for May 20, 2015
October 15, 2014
December 17, 2014
January 21, 2015
February 4, 2015
February 18, 2015
March 4, 2015
March 18, 2015
April 1, 2015
April 15, 2015

Resolution: Christopoulos, roof top solar panels, 746 Colonial Road, Block 1302.02, Lot 3.01.

Mr. Spizziri: reviewed the application and the resolution.

Mayor Bivona: questioned the escrow amount contained in the resolution.

Motion to amend the escrow amount to $1,000.00: Mayor Bivona, Councilman Kahwaty
Ayes: Mayor Bivona, Councilman Kahwaty, Gostkowski, Lauber, Pullaro, Chairwoman Vierheilig, Linz

Motion to approve resolution, as amended: Mayor Bivona, Councilman Kahwaty
Ayes: Mayor Bivona, Councilman Kahwaty, Gostkowski, Lauber, Pullaro, Chairwoman Vierheilig, Linz
Absent: Lazerowitz

Toll Brothers, applicant/contract purchaser, Galenkamp Brothers & David McBride, owners, 845 Ewing Avenue, Block 3104, Lot 1, Block 3105, Lot 1, Block 3205, Lot 2, Block 3206, Lots 1, 1.01, 1.02 & 2, Block 3207, Lots 3 and 5, Block 3208, Lots 2, 3 & 4

Motion to re-open the public hearing: Pullaro, Councilman Kahwaty
All in Favor

Please note: A transcript was prepared by CSR for this application.

The Alpert Group, Franklin Lakes Supportive Housing Urban Renewal, LP, 720 McCoy Road, Block 1408, Lot 1, Block 1406, Lot 2.

Mr. Bruce Whitaker: attorney for the applicant; continuation of the public hearing; testimony concluded at the last meeting; modifications made and submitted to the Board based on comments by the Board; three exhibits to be presented this evening; tree removal plan submitted and stormwater management plan submitted.

Motion to re-open the public hearing: Mayor Bivona, Lauber
All in Favor

Mr. William J. Parkhill, P.E./Mr. Whitaker: described/discussed the changes that have been prepared and shown on Exhibit A24; the pump station has been relocated internal to the site between buildings 4 and 5; have 42 parking spaces; a site sign has been added at the entrance; 6 sq. ft. in area with masonry pillars on each side; is compliant with the regulations for a sign within this zone; the new location of the pump station does not require any variances or waiver relief; specified a different light fixture; curb radius at Colonial and McCoy; agreed to speak with the County to see if this request is feasible; reviewed the April 30, 2015 Boswell report; the suggestions made on that are able to be met in connection with the applicant's submission;

stipulated to additional plantings along the roadway and evergreens; the second water line will be moved and the plans will be modified to show this;

Mr. Boswell: stated at the last meeting he was asked to follow up on the issue of sidewalks and provide a recommendation as to whether or not the frontage of this property should have sidewalks; his office spent a lot of time reviewing the sidewalks in the area, going to the site and they have found there is 800 ft. of frontage along this property; it is basically a long perimeter around the corner property; on the opposite side of the road there is a sidewalk on the easterly side of Colonial; on the westerly side there is no sidewalk at any point from this site to Franklin Avenue; on the easterly side the only sidewalk that exists is in the short run between 208 and Kiowa; in effect it provides access to the residents that live on Osio and Sioux to the Colonial Road school; there is actually a walking path from the back cul-de-sac of Kiowa into the Colonial Road school property; he looked at the other means of connecting this sidewalk on this property to sidewalks in the area and the problem is it is an "s" curve condition where vehicles are routinely exceeding the posted speed limit of 40 mph and it has very limited if not poor sight distance in that area and steep grades; there is no safe location to situate a crosswalk; he spoke to the Borough Administrator and asked what his feeling was about a cohesive plan; there are also other initiatives which are referred to as safe routes to schools; he is very considered that if sidewalks are put at this location they will go to a dead end; and it goes to an unsafe location to cross the road to get to the existing sidewalks on the other side of the road; he respectively recommend that the sidewalks are not put in unless there is a cohesive plan which would absolutely require the installation of some signal either at McCoy and an additional sidewalk on the other side and sidewalks all the way down to High Mountain with a crosswalk and a red stop condition; for that reason, in his April 20, 2015 report, he does not recommend sidewalks at the current property; noted he followed up on a comment made by a resident at the last meeting; Mr. Boswell reported that the drop was 10 ft. between McCoy road and the downstream stream; when you get upstream again the resident's property is very near the level of the downstream stream on the opposite side of McCoy Road; McCoy Road is very high; the resident has a point regarding the silting of the stream; Mr. Boswell would like to ask the developer, who is already going to be going to the DEP, to gain a stream crossing to supplement the stream crossing application to dredge the small section of that run between McCoy Road down and below their driveway access to give the resident some relief; satisfied with the changes that have been made.

Mr. Whitaker: agreed to the dredging.

Mr. Linz: asked if the fire zones were indicated on the plans.

Mr. Parkhill: stated he was not certain if they were; if they are not shown, he will work with Mr. Linz on this item.

Mr. Linz: confirmed the agreement to a second hydrant.

Mr. Whitaker: stated yes.

Mr. Linz: stated, regarding the emergency access off of Colonial, asked if a curb cut can be done so it is feasible for an ambulance to use that entranceway in addition to fire trucks.

Mr. Parkhill: stated he believed they had agreed to a rolled curb at the last meeting; it will be worked out so that all emergency responders can get over it and make the turn.

Mr. Linz: stated, for the record, he does recommend a sprinkler system in the buildings.

Mr. Pullaro: stated he believes the Board is being remiss when they state sidewalks cannot be placed at the site; he believes they have to find a way to do it.

Mr. Boswell: stated his number does not include crossing the small houses; it includes getting it to the Horizon driveway.

Mr. Whitaker: stated, for purposes of this approval, the applicant agrees with the Boswell report; if the Borough wants to get funding for sidewalks and there is a determination Borough-wide that they should be installed, obviously the applicant is not going to object to the location of the sidewalks at some future date.

Mr. Spizziri: stated we can include in the resolution and the developer's agreement an area for sidewalk construction the site but not mandating that it be paid for by the applicant; just mandating that the application will provide sufficient area for the construction of a sidewalk on their property; whether or not it gets built is another issue.

Mr. Whitaker: stated the applicant concurs with the engineer's report that a sidewalk is not appropriate to be built; if the Borough wants to get funding for sidewalks and it is a determination Borough wide that they should be installed, obviously the applicant is not going to object to the location of those sidewalks.

Mr. Spizziri: discussed a landowner who was spoke at one of the public hearings, who owns a narrow strip of land which may create a title problem connected with any sidewalk construction.

Mr. Boswell: stated this was true; he does own the "swampy" piece which is north of 208.

Mr. Pullaro: stated he would like to see the sidewalks installed on this property so it wouldn't have to be done in the future.

Mr. Spizziri: stated the other issue is that any improvements that the applicant is required to install which are off-site improvements have to pass a very severe test based on the MLUL as to what is a contribution of the applicant as compared to the cost of the off-site improvement; that is a financial number that can be worked out but it calls for the expenditure of funds by the Mayor and Council who have to be the final arbiters as to whether or not there would be sidewalks at that location.

Mr. Pullaro: stated it was not his intent that the applicant pay for sidewalks off of the applicant's property; that should be taken care of by the Borough.

Mr. Lazerowitz: asked if it were enough to get the applicant to agree that sidewalks, at some future date, can be installed; confirmed with Mr. Whitaker that he was not agreeing to install sidewalks on site at the applicant's expense.

Mr. Whitaker: stated that was correct.

Mr. Pullaro: stated the applicant is saying they don't want to do it and he is saying that could be part of the Board's approval.

Mr. Lauber: stated we have said already that if the applicant has to put it sidewalks it is the Borough's expense.

Mr. Spizziri: stated you could include in the resolution and the developer's agreement an area for sidewalk construction on this site but not mandating that it be paid for by the applicant; if it gets built is another issue.

Mr. Whitaker: stated the applicant is not funding the sidewalks; the applicant concurs with the Boswell report that a sidewalk is not appropriate to be built; the Board does not have to accept the Boswell report; that is the Board's decision.

Mr. Spizziri: asked if his client had any objection to delineation of a sidewalk area on his property.

Mr. Whitaker: stated on the right of way or in that area the applicant would have no problem at all; the applicant would object to being responsible for the construction of the sidewalks.

Mr. Lazerowitz: stated he believes the issue at this time is if the applicant is okay with having sidewalk construction within the right of way and take it from there.

Mr. Pullaro: asked, if this Board, as a condition of approval, state sidewalks must be installed on the applicant's property.

Mr. Lauber: stated he believed that would be too complicated; you are putting another obligation on this application and you do not know where that obligation lands.

Mr. Boswell: stated, not to make a recommendation that you either need to agree with or ignore, there is construction that is occurring in that 10 ft. area which is within the right of way; that work is already occurring within that area that would be situated for a sidewalk; so what the Board may consider is that while the installation of the force main is going in that an area 5 ft. wide may be considered to be left in a graded position to allow the future installation of a sidewalk should that be determined by the Borough to be appropriate; some of the work that we are discussing is the grading that goes into it and since it is being disturbed anyway to put in the force main maybe that is an idea that works.

Mr. Whitaker: stated the applicant's position is that we do not offer to put in the sidewalks or offer to do the grading there but to allow for a future sidewalk if the Borough wants to install one at a future date.

Poll of Board taken at this time regarding the sidewalk situation:
Chairwoman Vierheilig: stated did not believe sidewalks should be installed; should be done in a Master Plan approach; if it is done it must be done in a responsible manner.

Mr. Lazerowitz: stated there is already a right of way so we do not need anything from the applicant; agrees with Chairwoman Vierheilig.

Mr. Sheppard: stated sidewalks to nowhere are dangerous; agrees with Chairwoman Vierheilig.

(Mr. Boswell discussed the area in regards to sidewalks to a member of the public who had a question.)

Motion to close the public hearing: Linz, Lazerowitz
Ayes: Gostkowski, Lauber, Pullaro, Chairwoman Vierheilig, Lazerowitz, Linz, Sheppard

Mr. Spizziri: asked Mr. Boswell if this plan as presented sufficient for the Board to grant preliminary approval.

Mr. Boswell: stated yes.

Mr. Lazerowitz: stated there was an issue regarding striping for fire; asked if that should be on the plan or the developer's agreement.

Mr. Whitaker: stated before the developer's agreement is executed he will reference it in the plan and have Mr. Linz approve it.

Motion to approval of the site plan with the proviso that the plan will be amended to note the fire striping and that the applicant include dredging as part of their DEP permit: Lazerowitz, Linz
Ayes: Gostkowski, Lauber, Chairwoman Vierheilig, Lazerowitz, Linz, Sheppard
Nay: Pullaro
Recused: Mayor Bivona, Councilman Kahwaty

Oral Communications: None

Board Discussion:

Solar Energy Systems Ordinance
Completeness Hearing Process

Mr. Spizziri: stated a letter has been received from the Borough Administrator dated April 15, 2015 which discusses Mr. Spizziri's recommendation to the Mayor and Council from this Board on solar energy; however the second part of the letter refers to the procedure by which this Board conducts its completeness determination; Mr. Hart cites the appropriate statute which discusses the completeness determination; it is accurate the Board may designate someone other than the Board to do the completeness determination; had received opinions years ago talked about the fact that people come to hearings on applications affecting their lives and their property and having their first instance in front of an orchestrated proceeding whereby the Board goes through an application process which determines the approval process of the particular applications; those opinions lamented the fact that there was not some way by which the people who were within the 200' radius of the property would receive notification at the time the matter first comes before the Board; at that point he gave considerable thought to this and his solution, which this Board has followed, was have the Board make the determination as to completeness and to require the applicant to notify, notice in newspaper and certified mail to the 200' list and the utilities, that there is an application to be discussed by the Planning Board at a particular meeting; at that meeting, there would be no appropriate input from the public; that would be reserved for the public hearing; that procedure has worked well and provides a tremendous amount of transparency to the residents of the Borough; understands it may be an additional cost to the applicant but that is not his concern; the applicant is

making an application; it is an economic benefit to that applicant no matter who the applicant might be; it is not his feeling to dissuade the Board from going any further with this; his opinion is it works, it is a good thing and it provides transparency.

Mayor Bivona: stated the first part of the letter received from Mr. Hart goes to the solar issue; this Board wrote a letter to the Council and the Council agrees that conforming applications should not come before the Board; an ordinance has been drafted; if the panels need to be put on the front part of the roof, then a variance would be needed from the Zoning Board; basically we can't turn down an application; if a homeowner wants to place the solar panels on the front part of their roof then we could turn it down but it could be overruled because it is inherently good; respectfully disagreed with Mr. Spizziri regarding the completeness review process; we are somewhat unique in that we require completeness hearings with a full Board as opposed to a subcommittee and our engineer's input; what he is trying to do is simplify and reduce costs for our applicants; a completeness hearing is not a public hearing yet there is discussion of the application and he feels that is wrong; he feels if someone is coming in for completeness then they shouldn't go through an overview of the application; a completeness is strictly to know if we have all the documents, plans, etc.; that is no interest to the public at that time because nothing is ready to be presented; it is his feeling that it would be a more streamlined process and more consistent with other jurisdictions and cheaper to our applicants.

Mr. Lauber: stated the Board has pointed items out, we knew the property; and applicants have changed things before they drew up their final plans.

Mayor Bivona: stated he understands that but is that appropriate at a completeness hearing.

Mr. Spizziri: stated yes; it is a public forum, the only stipulation is that the public cannot comment at that time; in the past the engineer's letters which come to the Board state the application is now deemed complete; that letter may go to the Board two weeks after they make that determination; that is 14 days out of the 45 days that the Board has to consider the application after it is deemed complete; that is a significant time piece taken out of the allotted time frame that the Board has to work on the application, unless the applicant grants a time extension; if the Council is going to change the ordinance, it has to be done in such a way that Boswell's letters of completeness are dated in such a way that it is dated as of the date of the public meeting so the time frame starts then.

Mayor Bivona: stated that is important; first of all, the Council can't determine this; Mr. Hart's letter relayed the general feelings of the Mayor and Council to

the Board; this Board does not have to take that recommendation; would like the Board to take it into consideration.

Mr. Spizziri: discussed all of the jurisdictional requirements an applicant has to comply with for a public hearing.

Mayor Bivona: stated homeowners have received letters regarding the completeness review; if they didn't come to the completeness review, then they wouldn't know when the public hearing would take place.

Mr. Spizziri: stated the next notice that the applicant sends is the notice for a public hearing.

Mr. Lauber: asked why an applicant would have to notice for a completeness hearing.

Mr. Spizziri: stated this way the homeowner's on the 200' list are aware of a pending application.

Mr. Lauber: stated he was never aware that a notice was sent for completeness reviews; stated the point is the notice for a completeness review is not necessary.

Mayor Bivona: stated we are requiring them to come for a non-public hearing, yet everyone has been noticed; the completeness review could be done by a subcommittee or the Board Attorney or the Board Engineer; stated it is a recommendation.

Mr. Pullaro: stated in the past the Board had committees and every January 1st we approved those committees; one of them is a Site Plan Committee which Mr. Lauber is a part of; at that time we reviewed plans and recommended to the Board if it was complete or not; we disbanded that when Mr. Spizziri suggested we change it.

Mayor Bivona: stated it is a recommendation and feels it should be discussed.

Chairwoman Vierheilig: stated she believed a subcommittee was a good idea.

Mr. Boswell: stated his understanding of the MLUL is, when the application comes in, the phrase is "the designated official of the town," makes a determination as to completeness and that official definition is different things in different towns; discussed other towns and their designated officials.

Mr. Lauber: suggested the Board set it up that Mr. Boswell continues what he is doing; he sends the Board a letter and at that meeting we set up the public hearing but we don't have the applicant notice their 200' list.

Mr. Boswell: stated he would not follow that procedure for all cases; cited the High Mountain Golf Course application; if something doesn't work, it is not getting deemed complete.

Chairwoman Vierheilig: stated the Board can think about it and the matter can be tabled.

Motion to approve voucher: Councilman Kahwaty, Mayor Bivona
Ayes: Mayor Bivona, Councilman Kahwaty, Gostkowski, Lauber, Pullaro, Chairwoman Vierheilig, Lazerowitz, Linz, Sheppard

John Spizziri, Esq.
4/15/15 Meeting Attendance $200.00

Motion to adjourn: Councilman Kahwaty, Mayor Bivona
All in Favor

Meeting adjourned at 10:50PM.

Respectfully submitted by:

JoAnn Carroll
Recording Secretary