

**UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
JUNE 21, 2012**

The regular meeting of the Upper Township Planning Board was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:30 p.m.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

RESIGNATION OF DONALD KISSLING

Chair Scrocca announced that unfortunately Mr. Kissling has resigned from the Board. Mr. Harney will take the seat of Mr. Kissling. Mr. Harney was sworn in as a new Board member.

ROLL CALL

Present: Daniel Bready, William Brown, James Kelly, Gary Riordan, James Schroder, Susan Ragan, Joseph Harney, Janet McCrosson, Committeeman Anthony Inserra, Mayor Richard Palombo and Chair Renee Scrocca.

Also in attendance were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; Joanne Heron, Acting Board Secretary.

APPROVAL OF THE APRIL 19, 2012 MEETING MINUTES

A motion to approve the minutes was made by Mr. Kelly, seconded by Ms. McCrosson, and approved. Abstain: Harney.

SWEAR IN PAUL DIETRICH

APPLICATIONS

1. LOUIS ALTOBELLI – BLOCK 567, LOT 57.03 – PB03-12

Applicant is requesting a site plan waiver and variance to permit a 175 sq ft building mounted sign at 1231 Route US 9 South, Seaville.

Daniel Scull, General Manager for the Corporation, was sworn.

Chair Scrocca stated that Mr. Scull is representing the corporation, however the application is in the owners name. She stated that the law requires that an attorney

represent a corporation. The Board cannot hear this application without the applicant or his attorney present.

Mr. Scull requested to table the application until the July 19, 2012 meeting. He agreed to waive the tolling of time.

A motion was made by Mr. Kelly and seconded by Mr. Brown to table the application until July 19, 2012. No further notice will be required.

2. DISCUSSION REGARDING ZONING DISTRICT CHANGES ALONG TUCKAHOE ROAD IN MARMORA FOR BLOCK 652.01, LOTS 16 THROUGH 19

Solicitor Marcolongo stated that due to the recent election he has spoken to Mayor Palombo and Mr. Inserra who have agreed that their participation in this matter may result in the appearance of impropriety. Both have agreed that to avoid any possible claim of conflict they will step down during this particular application.

Fred Heyer, P.P., AICP, of the firm of Heyer, Gruel & Associates, indicated that he has been practicing for over 20 years. He has served as the firm's principal representative in dozens of communities. He has been qualified as an expert witness in Superior Court of the State of New Jersey. He is a professor at Rutgers University and has been published nationally by the American Planning Association.

Mr. Heyer explained that they were asked to examine whether or not a certain area along Tuckahoe Road should be considered for a rezoning to something other than its present residential zoning.

The property in question is four lots located in Block 652.01. They include lots 16, 17, 18 and 19. The maps he prepared show portions of lots 16 and 18 as being in the study area along with all of lots 17 and 19. Lots 16 and 18 are substantially larger than the area they were asked to look at and include two residences.

Mr. Heyer reviewed the map titled "Study Area". He stated that lot 19 is a bagel/deli business with an accessory parking lot and retention basin. Lot 17 is currently vacant. They have reviewed the previous study from 2008 and Master Plan Reexamination from 2011. They also reviewed the zoning ordinance and their own files since they were involved in the Marmora Town Center DOT Form Based Code Project.

He stated that it was the community's position on several occasions to not rezone the area commercial. This stated a much smaller area and involves a total of four lots and is approximately 2 acres. They feel that if the Board were so inclined there is a planning basis that would justify rezoning this property to a commercial zoning district. Across the street from the post office property all the way to Route 9 are either zoned for commercial development or have commercial uses on them. He would not advocate

moving the line any further north or to the other side of the street because of the residential development and the church.

He went on to explain that there did not appear to be any environmental constraints in the previous report. The depth of the zone is approximately 120 to 140 ft, which is consistent with what is across the street. This is an area they felt could be developed quickly as a main street when they were looking at form based code.

Mr. Schroder asked who requested the zone change and why it is needed. Mr. Dietrich stated that a request was made to Township Committee to take another look at the rezoning of the 4 lots fronting on Tuckahoe Road, from Ralph's Bagels to Stagecoach Road. The Township Committee asked the Board to take a look at the study area. The Board felt it was appropriate to hire a planner.

Mr. Heyer believes lot 19 should be entirely in a commercial zone since it is developed commercially. If the Board is in favor of the rezoning there are two options. One option is to go to the depth of lot 19 and do the full frontage, however this would create split zone lots. Option 2 is to include all of lots 16 and 18 in the commercial zone even though they contain residential uses. Ultimately if this area were to be developed commercially it would make more sense since there would be greater flexibility in terms of buffering the adjacent residential properties and parking. The commercial buildings could be located close to the road so that most of the improvements could be put behind to keep a substantial residential buffer.

Mr. Brown asked if the Board were not to act on the rezoning if it would restrict the activities at Ralph's Bagels. He asked how rezoning these lots would help Mr. Holt.

Mr. Heyer stated that it is irrelevant whether or not it helps an individual or not. It does not make sense in terms of the zoning scheme and where the Township is going. He stated that this piece of property right now is a pre-existing non-conforming use that has zoning board approval. If the zoning does not change then every time there is a significant change or alteration to the property (lot 10) they would have to go back to the zoning board.

Mr. Schroder asked if this would be spot zoning. Solicitor Marcolongo stated that it is not since spot zoning is defined as a rezoning of a lot for the benefit of the owner for a use incompatible with the surrounding uses and not for the purpose or effect of furthering a comprehensive zone plan.

Mr. Heyer further expanded on this by saying that spot zoning has a couple of components; it has to be a small piece of property which it is; it has to be a benefit or to punish someone; it must be not in accordance with the comprehensive plan. He stated that paragraph 12 in the report indicates that if the Board is in favor of the rezoning they must amend the Master Plans Land Use Element to justify this and put the basis in writing.

UPPER TOWNSHIP PLANNING BOARD

JUNE 21, 2012

PAGE 4 OF 8

Ms. McCrosson stated that if the Board was in favor of Option 2 that would then make the other 2 lots non-conforming and the property owners would have to ask for variances to do any improvements. Mr. Heyer responded conceivably yes. He says this since he knows the town center zone is in a state of flux and he does not know if the Board will allow some residential use in the TC zone.

Mr. Schroder asked what block 651 is zoned. Mr. Dietrich responded this is zoned TC and is where Shop Rite is located. The corner on Tuckahoe Road and Stagecoach is their deed restricted preserved area that will stay vegetated.

Ms. McCrosson stated that lot 17 received approvals to construct a house on it. Mr. Heyer stated that he was not aware of that. Mr. Dietrich indicated this was a court order. Solicitor Marcolongo explained the court order required that the applicant for that property receive all the variances that they needed in order to develop a residence. If they do not develop the residence within two years the variances will expire. Mr. Schroder believes that if a house is developed on lot 17 it makes it more of a residential use. Mr. Heyer stated that if and when the house was built would alter his opinion since that is the only whole lot there. If it is going to be developed residentially and there are homes to the rear it makes more sense to keep the zoning as it is. In regards to the size of lot 17 he indicated that it was unlikely it could be developed commercially without substantial relief due to its size and probably couldn't produce the required driveways, parking, etc.

Mr. Heyer envisions the area developing by assembly. The TC zone has a problem with dealing with these small lots. The grand vision involves assembly. He feels it may be problematic having a home on lot 17. If this were to become part of the Town Center he sees a single comprehensive development for all of the properties including lot 19 in terms of shared driveways, parking, and cross access easements. His recommendation is if the Township is doing this one bit at a time then don't change the zoning. If the Township is going to wait for an assembly then it makes sense to rezone. He stated that each of the lots could not support a freestanding commercial development on their own. He stated that a single project would be more manageable at the car dealership properties on Route 9.

Mr. Heyer stated that if the Board is banking on the home on lot 17 not going forward then the rezoning may be appropriate. Having the house on lot 17 changes his opinion. He thinks the house would frustrate the development and the assembly of the area and given the other two homes he would recommend against rezoning.

Solicitor Marcolongo stated that lot 17 has recently sold. The original owner sold the lot and he is not sure if they have any intentions of building on the lot. The relief granted to build a house goes with the property. The owner could apply for up to three one-year extensions of the relief that was granted.

The meeting was open to the public.

Mark Stein, Esquire, represents Keith and Sally Jack, owners of lot 16. He believes the referral is pre-mature. He commented that lot 17 required relief since it is an isolated undersized lot with no additional land to purchase to make it conform. He believes the new owner of lot 17 bought it to build a house. He stated the only lot that is benefiting from a rezoning is the Ralph's Bagel lot. He stated that the lot with Ralph's Bagels is in the residential zone so anything that he does has to go back to the zoning board. If the zoning were changed then all the residential lots would have to go to the board to make changes.

He stated that Keith and Sally Jack have lived here for 32 years. An assemblage of lots would not happen since the Jacks are not leaving. Keith and Wayne's parents gave these parcels to them. Along the way Ralph's Bagels comes in and gets approvals to operate a business.

If this were changed for the benefit of one lot it would amount to spot zoning. He stated there is no reason to do a Master Plan Review since the Township has just done one. The purpose of a review would be for one lot, which is not good planning.

Mr. Heyer asked for clarification. He asked if he meant that the Jacks are not interested in pursuing or assembling or developing their properties commercially. Mr. Stein agreed.

Mr. Heyer explained that his recommendation has changed. If there is no ability to comprehensively plan for development then he advised to keep the zoning the way it is currently. There are other lots further down that are in a commercial zone and would be best be served going to the commercial lots first.

He further explained that even if Ralph's Bagels were a TC zone it would still be non-conforming in regards to lot coverage and other things, but the use would be allowed.

Solicitor Marcolongo stated that Ralph's would only require C variances to make certain changes rather than a D variance.

Mr. Stein asked that the Board follow Mr. Heyer's recommendations.

Wayne Jack, 115 Tuckahoe Road, Marmora, owner of lot 18, was sworn. He testified that he has lived here for 30 years and his family has lived there for 80 years. He has no intention to develop his property commercially and plans to give the house to his son.

Robert Lea, 46 Stagecoach Road, Marmora, owner of lot 15, was sworn. He asked if this were to be zoned commercial what protection would he have as being a residence behind a commercial lot.

Mr. Dietrich responded that he would have the benefit of increased buffers.

Ralph Holt, 121 Tuckahoe Road, Marmora, was sworn. He testified that he is the reason for the request. He stated that the Jacks objected to the house on lot 17. They didn't have a problem with the Shop Rite. He stated that every time he tries to make a change

UPPER TOWNSHIP PLANNING BOARD

JUNE 21, 2012

PAGE 6 OF 8

such as expanding the parking or hours they object. He has spent \$65,000 so far. He stated that he has a business that doesn't affect the neighbors. One year ago the County made a request to the Planning Board to consider rezoning this area. He wants the Board to look at both sides of the street like Dale Foster told them. His business has 325 ft of frontage. He stated that the rezoning would not impact his neighbors since they haven't done anything to their houses in 30 years. He handed in a petition to the Township Committee that has 1,100 signatures. He stated that Sally Jack wrote a letter last week indicating that the rezoning would only benefit him and that it would affect the other sixteen neighbors. He stated that Rob Lea told the Board a year ago that it does not make any sense to only rezone a strip.

He stated that the zoning board has not been receptive to his needs. There were comments made about Paul Casaccio that Solicitor Marcolongo disagreed with.

Ms. McCrosson asked what type of effect it would have on his business whether the request was approved or denied.

Mr. Holt responded that if approved he would be able to utilize his upstairs for additional seating.

Mr. Dietrich explained that if the zoning were changed Mr. Holt would come to the Planning Board to get site plan approval under the ordinance. If the rezoning is not approved he would go to the zoning board for a D variance for the expansion of a non-conforming use. Mr. Heyer stated that even if it came to this Board it is likely other relief would be necessary since this lot would not fit neatly into the TC zone. When asked if having heard Mr. Holt's testimony does it change his opinion he stated no it does not.

Hearing no further comment the meeting was closed to the public and returned to the Board for findings of fact.

MR. BROWN – This hearing is to make a determination whether to change the zoning in this particular area. Residential property owners have testified that the rezoning would be detrimental to their properties. Testimony was given by the owner of Ralph's Bagels that the reason he is making the request is so that he can expand his business to the second floor.

MR. HARNEY – He concurs with Mr. Stein that it is premature to rezone this commercial if the residential properties would not be assembled. He does not agree with splitting a property. He feels the Board should consider all the lots. Who ever is going to assemble the lots should buy them then come to the Board.

MR. KELLY – The Board contacted Mr. Heyer after they received a request by Township Committee to review the documents and make a recommendation about rezoning. Mr. Heyer provided the Board with a memorandum that included twelve points and two options for the study area. There was public comment by Mr. Stein who represents Keith and Sally Jack who have no intention of selling their property. Wayne Jack, owner of lot 16, also does not want to sell his property. Mr. Lea is concerned about his property if the lots were rezoned. Mr. Holt testified that he asked Township

Committee to reconsider the rezoning. He also stated that one year ago the County asked the Board to consider rezoning this area. He is not in favor of rezoning 120 ft of some lots to match the zoning across the street and making part of the lot commercial and part residential as described in option 1. Option 2 sounded more realistic although he was not aware that a home was going to be built on lot 17. He believes the Board needs to know what is going to happen with lot 17 before proceeding further.

MS. McCROSSON – One of the statements in the 2008 study is that the benefits of the zoning change at this time would be outweighed by the detriments. The 2011 report states that due to the nature of the existing lots redevelopment of these existing residences to commercial would require at least some lot assemblage under private redevelopment project as the lots are too small to be redeveloped by right. Mr. Heyer has stated that the boundaries do not necessarily make sense and it would be difficult to piece together enough small lots to make something in that specific area. She does not feel it makes zoning sense.

MRS. RAGAN – She thought that option 2 in the report by Heyer and Gruel would be a good fit but only if the owners of 16, 17 and 18 agreed. A house will now be constructed on lot 17 per a court order. She feels it is not the time to rezone.

MR. RIORDAN – Mr. Heyer indicated that he became aware that a residence could now be built on lot 17 during this presentation. Mr. Heyer indicated that that fact changed his opinion and we should not change the zoning at this time. It was also stated that one of the four lots being reviewed is non-conforming. If the zoning were to be changed there would be one conforming lot and three non-conforming. Mr. Stein mentioned that it would be spot zoning if the four lots were rezoned.

MR. SCHRODER – He stated that lot 19 is a non-conforming use. The entire parcel is residential. The owner of lot 19 received variances to put the bagel shop in a residential zone. The applicant now wants to change the entire zone to benefit him. The owner of lots 16 and 18 stated they are not going to leave. The professional stated that because of lot 17 the rezoning should not change. In his opinion it should remain as it is and it should not be changed.

MR. BREADY – With everything that has developed throughout this meeting he feels the zoning should remain as it is and not do anything at this time.

MRS. SCROCCA – The purpose of the hearing is to see if a particularly small parcel could be rezoned to advance the purpose of our comprehensive zoning ordinance. This is an area where we are concentrating commercial development. After 18 years on the Board she finds expert hired by the Board to be the most eminently qualified expert that she has seen. She finds him to be very creditable and relies heavily on his opinion. When she read Mr. Heyer's report she was inclined to consider the options but facts have come out tonight that changed Mr. Heyer's opinion. The problem with lot 17 and the representation of the neighbor's attorney has impacted Mr. Heyer's opinion since it does not make sense if the lots would not be assembled. She was concerned about option 1 and making it a split zone. She feels this is premature. She is not saying that at some point it might happen but right now the facts are against us. The duty of the Board is to protect the entire Township. If the Township based their decision on favoritism or anything other than the facts we could be sued and that could cost the taxpayers money.

UPPER TOWNSHIP PLANNING BOARD

JUNE 21, 2012

PAGE 8 OF 8

A motion was made by Mr. Kelly and seconded by Mrs. Ragan, to recommend to Township Committee that a portion of Block 652.01 should be changed from its residential zoning to a TC zone. In favor: Opposed: Bready, Brown, Kelly, Riordan, Schroder, Ragan, Harney, McCrosson and Scrocca.

BILLS

A motion to approve the bills for payment was made by Mr. Kelly, seconded by Ms. McCrosson and approved.

ADJOURNMENT

The meeting was adjourned at 8:38 p.m.