

February 23, 2006

Mr. Scott called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Rossi, Mr. Martin, Mr. Lukasik, Mr. Bischoff, Mr. Rosol,  
Mr. Roth, Mr. Grossi, Mr. Scott

Members Absent: Mr. Mulhall, Mr. Brandt

Others Present: Atty. William Sutphen, Robert Bogart, Carl Hintz, Atty. James Knox,  
Atty. Carl Bisgaier, Atty. Todd Bolig, David Case, Michael McCaffrey,

**Issue of Completeness: Union Station Associates, LLC: (Wachovia Bank) Block 22, Lot 19, 2 Route 513:** Atty. James Knox was present on behalf of applicant. Mr. Knox said he believes the application is complete. Mr. Bogart had recommended that the application be deemed complete in his letter dated February 8, 2006, if the Board granted waivers. Mr. Scott asked for questions from the Board. There were none. He asked for a motion.

Mr. Grossi made a motion to deem the application complete. Mr. Rosol seconded the motion.

Vote: Ayes: Mr. Grossi, Mr. Rosol, Mr. Rossi, Mr. Martin, Mr. Lukasik, Mr. Bischoff,  
Mr. Roth, Mr. Scott

Mr. Scott emphasized that the waivers were granted for completeness only. He told Atty. Knox the application could be heard at the March 23, 2006 meeting.

**Toll Bros/Lookout Pointe: Block 11, Lot 8, Rupell Road & Bank Street:** Atty. Carl Bisgaier was present on behalf of applicant. Mr. Bisgaier said applicant is seeking a one-year extension of the final approval granted in 2003. He said a one-year extension had been granted in 2005. Atty. Bisgaier said most of the site work has been done. A model home has been constructed and most of the sewer infrastructure has been installed. The Board and Governing Body had approved the construction of ten or eleven homes. Toll anticipates that public water should be available in April or May 2006. Mr. Bisgaier said he would be willing to respond to any questions from the Board. Mr. Bischoff had indicated last year that the water service would be available in weeks. Atty. Bisgaier said that information would have been based on information from the Town of Clinton. He said that at the request of the NJDEP additional testing has been done on the well that will supply water to Lookout Pointe. Atty. Sutphen said he had discussed the matter with Atty. Bisgaier. Mr. Sutphen said that unless the Board has other questions or issues, the one-year extension would be in order. He said Lookout Pointe is a Mt. Laurel site and Toll is working on the property.

Mr. Grossi made a motion to grant a one-year extension. Mr. Lukasik seconded the motion.

Vote: Ayes: Mr. Grossi, Mr. Lukasik, Mr. Martin, Mr. Rosol, Mr. Roth, Mr. Scott  
Nays: Mr. Rossi, Mr. Bischoff

Mr. Scott asked Atty. Bisgaier if he had received information that the Board decided that the Monuments should remain as shown on the Plan. Mr. Bisgaier said he had not. He said the information could have gone to Atty. Tracy Siebold. Mr. Scott also asked Atty. Bisgaier if there was a time frame when the Board needed to get back to Toll about the review of the Barn. Mr. Scott said the issue is tentatively scheduled to be reviewed at the March 7, 2006 Workshop. Atty. Bisgaier said he believes that issue is being handled administratively by Toll. Mr. Bisgaier said the project could only go so far before the Barn has to be constructed. Mr. Scott asked Atty. Bisgaier to check and let secretary know. Mr. Bisgaier said he would do that tomorrow morning.

**Case: Block 17, Lot 2, 2 Lakeview Lane: Motion to Vacate/Modify Resolution:**

Mr. Scott asked Mr. McCaffrey to come forward. Mr. Scott said Counsel was present on behalf of the applicant. Atty. Todd Bolig (Rylak and Gianos) introduced himself. Mr. McCaffrey offered his motion for modification and a vacation of the Resolution approved by the Board in December of last year. Mr. McCaffrey said he brought the motion pursuant to the Board's Rule 3.2.2 that authorized him to bring the motion by letter and also authorizes the Board to hear his request. Mr. McCaffrey said when the vote was taken in September of last year, Atty. Rylak presented an oral modification of the application. Mr. McCaffrey said no rule was cited by which Atty. Rylak proceeded. Mr. McCaffrey said presumably Mr. Rylak proceeded under Rule 2.5.8 as it pertains to amending an application. Mr. McCaffrey said the Board or a Committee of the Board had not met to discuss the modification and whether the application was a minor or a major subdivision. Mr. McCaffrey cited Section 30-18.3 of the Ordinance relating to acting on a minor subdivision application. He said the vote must be unanimous or the application would be considered a major subdivision. Mr. McCaffrey said there was a discussion at the September 22, 2005 meeting about whether the procedure presented by Atty. Rylak was appropriate. Mr. McCaffrey said the Board's Attorney did not mention issues that he had raised, including whether the application was a minor or a major subdivision. Mr. McCaffrey said that Chairman Scott believed the application was a major subdivision and voted in the negative. Mr. McCaffrey said a plat was to have been submitted prior to the Board voting on the Resolution. The plat would show the location of the proposed Road and its configuration. Mr. McCaffrey said Atty. Rylak said the information would be submitted in thirty days. Mr. McCaffrey said it has not been submitted.

Mr. McCaffrey said the Board disregarded all the requirements of the Ordinance, apparently on the advice of their Attorney. He believes that the votes taken by the Board in September and December cannot stand.

Mr. McCaffrey requested that the Board modify its vote, vacate the Resolution and require applicant to submit appropriate paperwork and notice the Public and declare that applicant is seeking a major subdivision.

Mr. Scott asked if anyone from the Public wanted to be heard. There was no response. Mr. Scott asked Atty. Bolig, representing the Cases, to come forward. Mr. Bolig said his clients are involved in litigation in the Superior Court of New Jersey. He said the Planning Board is also a Defendant in the matter and because of the litigation he is not at liberty to discuss the merits of Mr. McCaffrey's request. Atty. Bolig said there is nothing in the MLUL that obligates the Board to hear the request. He said the Board is divested of jurisdiction because of litigation. Atty. Bolig asked if there were any questions. Mr. Grossi asked Mr. Bolig if he was saying that the Planning Board did not have jurisdiction because the matter is in Superior Court. Atty. Bolig said that was correct. Mr. Bolig said that Mr. McCaffrey has the right to bring his request to the Planning Board because of the Board's model rules; however, Mr. McCaffrey is divested of that jurisdiction at this stage. Atty. Sutphen said he had researched the matter. Mr. Sutphen cited Case Law pertaining to Atty. Bolig's statements. Atty. Sutphen said he believes it is more appropriate for the matter to be before the Superior Court. Mr. Scott asked Atty. Bolig if he wanted to say anything else. Mr. Bolig said he had nothing further. Mr. McCaffrey said that the Township has not filed an answer to litigation. He also said the Board does have jurisdiction on its own motion to reconsider his request.

Mr. Scott asked for questions from the Board. There were none. Mr. Scott asked for a motion. Atty. Sutphen said the Board could either grant or deny the Motion to Vacate or Modify the Resolution. Mr. Sutphen said that if the Motion were granted, the Board Chairman would set a date for the Reconsideration. If the Motion were denied, the matter would remain in Superior Court. Mr. Bischoff said he understood that the Board did not have jurisdiction. On that basis, Mr. Bischoff made a motion to accept the Motion for Reconsideration. Mr. Roth seconded the motion.

Vote: Nays: Mr. Bischoff, Mr. Roth, Mr. Martin, Mr. Lukasik, Mr. Rosol, Mr. Grossi,  
Mr. Scott

Abstain: Mr. Rossi

The matter will be handled in Superior Court.

**Stormwater Control Ordinance:** Mr. Bogart gave an overview of the proposed Ordinance. He said there were State and County Templates and they were not in total agreement. Mr. Bogart presented a revised Ordinance that would hopefully satisfy the State and County. He said it would be beneficial for the Committee to know that, conceptually, the Board is in agreement with the Ordinance. The Board would anticipate reviewing the Ordinance in between the Committee's introduction and the final adoption of the Ordinance.

Mr. Rosol made a motion to recommend to the Township Committee that the Planning Board is in agreement, conceptually, with the proposed Stormwater Control Ordinance, subject to receiving certain clarification as to questions raised tonight. The Ordinance will be passed onto the Committee for their consideration. Mr. Roth seconded the motion.

Vote: Ayes: Mr. Rosol, Mr. Roth, Mr. Rossi, Mr. Martin, Mr. Lukasik, Mr. Grossi,  
Mr. Scott

Naye: Mr. Bischoff

**Public Comment/Other Discussion:** None

**Correspondence:** For the Board's information

**Approval of Minutes:** Mr. Bischoff mentioned some minor changes. A motion to approve the minutes of the January 26, 2006 meeting, as amended, was made by Mr. Bischoff and seconded by Mr. Rosol.

Vote: All Ayes

Mr. Scott asked for a motion to go into Executive Session to discuss potential and actual litigation. (8:20 p.m.)

Mr. Rossi made the motion. Mr. Bischoff seconded it.

Vote: All Ayes

Mr. Rossi asked that the record reflect that he was recusing himself from the Session.

A Resolution providing for a meeting Not Open to the Public in accordance with the revisions of the N.J.S.A. 10:A-4-12.

WHEREAS, the Planning Board of the Township of Union is subject to the Open Public Meetings Act, n.J.S.A.10:A-4-6, et Seq. and

WHEREAS, the Open Public Meetings Act, N.J.S.A.10:A-4-12, provides that an Executive Session, not open to the Public, may be held for certain specified purposes when authorized by Resolution, and

WHEREAS, it is necessary for the Planning Board of the Township of Union, assembled in public session on February 23, 2006, in the Union Township Municipal Building, 140 Perryville Road, Hampton, N.J. 08827, for the discussion of matters relating to the specific items designated above: Matters related to Potential and Actual Litigation

It is anticipated the deliberations conducted in closed session may be disclosed to the public upon determination by the Planning Board that the public interest will no longer be served by such confidentiality.

A motion to leave Executive Session was made by Mr. Bischoff and seconded by Mr. Rosol. (8:35 p.m.)

Vote: All Ayes

Mr. Scott asked for a motion to authorize Atty. Sutphen and his firm to prepare an answer on behalf of the Township of Union and the Township of Union Planning Board in the matter instituted by Mr. and Mrs. McCaffrey. Mr. Grossi made the motion. Mr. Bischoff seconded the motion.

Vote: Ayes: Mr. Grossi, Mr. Bischoff, Mr. Rossi, Mr. Martin, Mr. Lukasik, Mr. Rosol, Mr. Roth, Mr. Scott

Mr. Grossi welcomed Atty. Sutphen to the Board. Mr. Grossi said Mr. Sutphen's participation was very well done, specifically on the Case matter.

There was no further business to come before the Board. A motion to adjourn was made by Mr. Rosol and seconded by Mr. Rossi. ((8:40 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary