

February 28, 2008

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

Members Present: Mr. Mazza, Mr. Bischoff, Mr. Martin, Mr. Badenhausen (7:20 p.m.)
Mrs. Corcoran, Mr. Walchuk, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Members Absent: Mr. Taibi

Others Present: Atty. Mark Anderson, Carl Hintz, John Reymann, Ronald Lai, Stephen Souza, Anthony Rana, Atty. Lloyd Tubman, Atty. Matthew Stangar, Robert Levitsky, Atty. Jeffrey Lehrer, Robert Clerico, David Krueger, Peter DeMicco, Mike Sroka, Michele McBride, Atty. George Dilts, Robert Foley

Mr. Kirkpatrick expressed sympathy to Mr. Ford upon the death of his father. He said the Township Committee and Board had received a thank you from Mr. Ford for condolences. Mr. Ford thanked everyone for their expressions of sympathy.

Issue of Completeness: Apgar: Block 19, Lot 7, 33 Driftway: Interpretation & "C" Variance: Atty. Lloyd Tubman was present on behalf of applicant. Ms. Tubman said additional information that had been requested by the Engineer had been submitted. Mr. Kirkpatrick said he had no objection to deeming the application complete.

Mr. Bischoff made the motion to deem the application complete. Mr. Mazza seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Mazza, Mr. Martin, Mrs. Corcoran, Mr. Walchuk,
Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Issue of Completeness: Martin: Block 12, Lot 8.04, 72 Route 173 West: "C" and "D" Variances: Atty. Anderson suggested the Board carry the completeness matter until there is clarity as to what applicant is seeking. Mr. Kirkpatrick asked for a motion to carry the completeness issue until the next meeting.

Mrs. Corcoran made the motion. Mr. Mazza seconded the motion.

Vote: Ayes: Mrs. Corcoran, Mr. Mazza, Mr. Bischoff, Mr. Walchuk, Mr. Ryland,
Mr. Ford, Mr. Kirkpatrick

Abstain: Mr. Martin

Toll Bros. Block 11, Lot 8, Rupell Road & Bank Street: Extension of Final Major Subdivision Approval: Atty. Matthew Stangar was present on behalf of applicant. He said three extensions had been granted and Toll was seeking a fourth. Mr. Stangar cited various reasons why the extension was being requested and why Toll believes they are entitled to an extension. He said the Mt. Laurel Doctrine could be a factor. Atty. Anderson felt the Board could not grant an extension under Mt. Laurel.

Toll has two COAH Units on the site. COAH Regulations preclude changing zoning. Mr. Anderson understands Toll is seeking protection from any future zoning change and therefore, Toll is protected. Atty. Stangar said he believes the Regulations protect Toll. He said Toll's request was precautionary. Atty. Anderson said he would not recommend the Board grant the extension.

Mr. Kirkpatrick mentioned the problems homeowners are having with the driveways and the amount of time the Board has expended addressing their concerns. Could Toll be asked to apprise prospective buyers of potential problems? Robert Levitsky, Toll's Project Manager, was sworn by Atty. Anderson. He does not feel that prospective buyers are being misled. Mr. Levitsky invited Board members to the site to discuss the driveway issue. Mr. Kirkpatrick asked Mr. Levitsky to inform prospective buyers that because of drainage and impervious surface issues an expansion of a driveway would likely require a variance from the Municipality. Mr. Levitsky said he has done and will continue to do so. Mr. Walchuk asked when buyers were told about the situation. Mr. Levitsky said it was after the sale but before they came to the Board. He appraises buyers/prospective buyers that any improvements needed will require Township permission. Mrs. Corcoran asked if driveways were shown to scale. Mr. Levitsky explained. He also apprised the Board of reasons the remaining lots/units have not been sold.

Mr. Bischoff brought up the matter of improvements at the site, including compliance with the conditions in the Resolution pertaining to the Barn and Historic Farmhouse. Mr. Levitsky said he believes Toll has satisfied the conditions.

Mr. Kirkpatrick had a concern about setting a precedent if the Board granted the fourth extension. Atty. Anderson did not see any ramifications to Toll if the request was not granted.

Mayor Mazza made a motion that the Board not grant the extension, based upon information presented tonight and the fact that three extensions have been granted.

Mr. Bischoff seconded the motion.

Vote: Ayes: Mr. Mazza, Mr. Bischoff, Mr. Martin, Mr. Badenhausen, Mrs. Corcoran, Mr. Walchuk, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

P.S. Construction: Block 22, Lot 27, 22 Race Street: Public Hearing, Cont'd.

Atty. Jeffrey Lehrer, representing P.S. Construction, gave an overview of the application. Mr. Lehrer asked for confirmation that new members had certified that they had reviewed a recording of the October 25, 2007 Hearing and are eligible to hear the application. Members Badenhausen, Corcoran, Ryland and Ford said that had been done. Mr. Lehrer said applicant had been asked to conduct a Phase II Carbonate Rock Investigation. He said the results of the borings were positive. Mr. Lehrer said revised plans were submitted on February 15, 2008 addressing Board Professionals' comments. Atty. Lehrer said his client was prepared to address the comments.

Mr. Kirkpatrick asked about the nitrate dilution analysis that had been requested showing there would not be degradation of water flowing into the Sidney Brook from septic effluent. . Mr. Kirkpatrick said he had not seen any studies about the matter. Atty. Lehrer said his hydro-geologist has a chart with information and will also be giving testimony. Mr. Lehrer asked Robert Clerico to come forward. He had been sworn previously. Mr. Clerico gave an overview of the revised plans, dated February 15, 2008. Sheet 5 of the Plans was marked Exhibit A-3. Mr. Clerico said the Stormwater Facility has been moved back from Race Street in order to provide a conservation easement. He said two Stormwater basins are now proposed. Mr. Clerico said soil tests have been performed and wells have been repositioned. Mr. Clerico said no variances are requested. Mr. Clerico displayed Exhibit A-4, Plan Sheet 10 and Exhibit A-5, Plan Sheet 11. He explained the changes that were shown on those Exhibits. Mr. Clerico had addressed a concern of Mr. Ferriero about the severity of the crest curb of the road. A change was proposed to accommodate Mr. Ferriero's concerns.

Mr. Kirkpatrick asked Mr. Clerico about the limit of disturbance. Mr. Kirkpatrick asked for a brief overview of the Natural Resource Protection proposal. Mr. Clerico said information was included in the submitted Plans, Sheet 2. He did not have an individual exhibit. Mr. Clerico said the wooded area would not be disturbed as part of the infrastructure. Some woods will be disturbed on most of the individual lots. Adequate driveway turnarounds are provided. Applicant will comply with the Tree Ordinance. Individual plot plans in steep-slope areas will be required as per Soil Conservation. Mr. Kirkpatrick said the Ordinance requires that any Subdivision application include an Earth Disturbance Plan. That Plan includes a conservation easement that encompasses all the remaining Natural Resource Protection Land. Mr. Clerico understood the information was required to be submitted with a Final application. Atty. Lehrer said the Ordinance is not clear in the matter. Mr. Kirkpatrick said the information was required for Preliminary to protect applicant and the Board. He said it was necessary to insure that each lot was buildable. Modifications could be made at the time of final application. Mr. Kirkpatrick was instrumental in writing the section of the Ordinance pertaining to Earth Disturbance..

Mayor Mazza asked if individual septic systems were proposed and if provision was made if the system failed. Mr. Clerico said they are individual systems. He said plot plans could be provided showing a reserve if a system failed. Mayor Mazza asked the size of proposed dwellings. Atty. Lehrer said his client is proposing 3,000 square foot homes, with a 1,500 s.f. footprint. Mr. Mazza asked the location of the detention basins. Mr. Clerico said they are on a single lot and the Homeowners Association will be responsible for maintenance. Mr. Mazza asked about the garbage dump on the property. Mr. Clerico said he understood that applicant has removed debris and used a licensed firm for disposal. Mayor Mazza asked about COAH Units. Would they be built on the property, would there be a contribution in lieu of? Atty. Lehrer said he had written a letter in August 2007 stating that his client was willing to contribute \$100,000.

Mr. Bischoff indicated that he was not in favor of in lieu contributions. Mayor Mazza said the Township doesn't have any place to build COAH Units. Atty. Lehrer noted the dilemma with COAH. Mr. Kirkpatrick said contributions rarely cover the cost related to off-site construction of Units. His preference is to have Units constructed on-site. Atty. Lehrer asked for suggestions. Mr. Bischoff said Mr. Hintz had made suggestions. Atty. Lehrer mentioned the Compensatory Benefit to developers as part of an Appellate Challenge. He said the Growth Share Ordinance was struck down unless there were Compensatory Benefits. Mr. Hintz said an alternative would be to build a duplex on site.

Atty. Lehrer said he had a witness to address the wood turtle issue. David Krueger was sworn by Atty. Anderson. Mr. Krueger stated his credentials. He was offered as an environmental specialist and that credential was accepted. In response to a concern raised by Dr. Souza, Mr. Krueger presented information establishing that a suitable habitat would be identified. He described the proposed habitat and its maintenance. A split-rail fence with signs is proposed. In response to a question about mowing, it was determined that would not be done before July 15. Mr. Kirkpatrick asked if the proposed area to be mowed would include the NJDEP Transition Area. He said that typically those areas are left in a natural state. Mr. Krueger said an averaging plan would not be requested. There will be a deed restriction. The restriction will include the property on the opposite side of Race Street. Dr. Souza referenced the NJDEP Special Water Resource Protection Area (SWRPA) Regulations and the Non-Delineation of the Wetland Buffer.

Mr. Kirkpatrick said monitoring and management of open space and conservation easements is typically done by the Environmental Commission. They report back to the Planning Board of any violations. Mr. Walchuk expressed a concern about enforcement.

Mr. Hintz had a question about proposed landscaping. He thought meadow grass could be used in the area of the gas pipeline easement and would be under control of the HOA. It was generally agreed that would be acceptable. Mr. Hintz said the landscaping proposed in and around the detention basins was fine.

Atty. Lehrer called Peter DeMicco forward. He had been sworn previously. He had prepared a Phase II Carbonate Rock Investigative Report, dated February 14, 2008. Mr. DeMicco gave an overview of the Report. Test borings were performed. Mr. DeMicco explained the test boring process. He presented Exhibits. The first was entitled Boring #5, it was marked A-6; the second was Boring #7; it was marked A-7; the third was also Boring #7 and was marked A-8. In response to Atty. Lehrer's question, Mr. DeMicco said he saw nothing that would indicate there would be any structural concerns about placing roads, homes or detention basins on the site.

Mayor Mazza had a question about the depth of wells. Three wells were in excess of 200 feet deep and were very productive. Mr. Kirkpatrick had asked about nitrate dilution. Mr. DeMicco presented a Chart entitled Table 1a, Nitrate Dilution Results Applying Average Annual Recharge Rates. The Chart was marked Exhibit A-9. Mr. DeMicco explained the Chart. The development, as proposed, would not degrade surface or groundwater. Anthony Rana, Township Geologist, said he had asked for the Phase II because of the prolific nature of the aquifer. He agreed with Mr. DeMicco's assessment on the site. Dr. Souza mentioned the need to discuss the cartridge style storm water filtering system and the replacement and maintenance issues related to that system. Mr. Kirkpatrick said he understands the need to integrate the Maintenance Manual and the HOA By-Laws. Mrs. Corcoran asked if it was anticipated there would be blasting at the site. Mr. Clerico indicated that was not anticipated.

Mr. Kirkpatrick asked for comments from the Public. Mike Sroka, Race Street, asked about the amount of garbage taken from the site and the impact of any residue on groundwater. Mr. Sroka also asked about tree removal. Did the NJDEP need to be involved with closure of the dump? Atty. Lehrer said those issues will be addressed at the March 27, 2008 Hearing.

Mr. Kirkpatrick said several changes to the site plan would be required, emphasizing the Earth Disturbance and Stormwater Management Plans. Atty. Lehrer said his client would address the Board's concerns at the next meeting.

Michele McBride, Olde Forge Lane, understood the Environmental Commission is responsible for monitoring conservation easements, would the EC also be responsible for making sure filters were changed every six months. Mr. Kirkpatrick said the EC voluntarily monitors the open space. The filters would not be the Commission's responsibility. Dr. Souza said the State requires that the HOA would be obliged to report quarterly to the Township. Mr. Kirkpatrick emphasized the importance of having a mechanism in place for enforcement. Atty. Lehrer said HOA documents routinely contain such information and he will see that is done.

Atty. Lehrer asked that the Hearing be continued, without further notice, until March 27, 2008. Mr. Kirkpatrick granted that request. Mr. Lehrer signed the Extension of Time to Act until March 27, 2008.

Perryville Group LLC: Block 22, Lot 4, Route 173 East: Public Hearing, cont'd.
Atty. George Dilts was present on behalf of applicant. The Board had requested more information at the January 24, 2008 meeting. Robert Foley had submitted additional information on February 7, 2008. Mr. Ferriero had written a letter dated February 17, 2008 and Mr. Hintz had issued a letter dated February 28, 2008. Mr. Dilts had submitted a proposed Conservation Easement Form. He also asked whether the MP Road basin was grandfathered or whether the basin had to comply with new State regulations.

Mr. Foley, who had been sworn previously, displayed an Exhibit entitled Environmental Information Plan, dated February 6, 2008. It was marked Exhibit A-5. He explained the features shown on A-5. Mr. Foley said his February 7, 2008 submittal provided information, including a Proposed Conservation Easement Plan, Environmental Information Plan and Natural Resource Calculations. Mr. Foley resubmitted a Carbonate Rock Study, dated October 31, 2001, prepared as part of the original application. The Report concluded there were no Carbonate Rock features in the vicinity of the project. He displayed an Exhibit which updated previously submitted information on Steep Slopes. It was marked A-6. Mr. Foley said he would address any concerns raised by Messrs. Ferriero and Hintz. Mr. Kirkpatrick asked for questions from the Board. Mr. Kirkpatrick had a concern about the Conservation Easement associated with disturbance of Steep Slopes, as part of the Preliminary Approval. The Resolution of Preliminary Approval stated that a waiver was requested from requirements of the Steep Slope Ordinance. The Board exempted applicant from compliance at that time.

Atty. Dilts said application has been made for an L.O.I. The previous L.O.I. had expired. Mr. Dilts mentioned the Pattenburg Fire Company letter requesting access all around the building for emergency access. The Fire Company had also requested a fire hydrant. Atty. Dilts said his client could not comply with a redesign of the building. Also, public water was originally proposed. Atty. Dilts was told there is an Ordinance requiring installation of a fire tank. Mr. Foley will investigate the potential of installing a fire hydrant utilizing an off-site water source. He was told to satisfy requirements of the Fire Marshal.

Mr. Foley addressed Mr. Hintz's report. Mr. Hintz asked if there would be any blasting. Mr. Foley said blasting is not anticipated. Mr. Foley said applicant will comply with the Ordinance regarding Signage, Landscaping and Lighting. Mr. Foley addressed Mr. Ferriero's report. He said applicant will supply appropriate easements and will obtain lot numbers. Mr. Foley believes the site is grandfathered regarding the detention basin design. Mr. Ferriero believes clarification should be obtained from the NJDEP. Mr. Reymann said since revisions have been made to the preliminary approval the site would not be grandfathered. Mr. Kirkpatrick emphasized that clarification is required from the NJDEP. Mr. Kirkpatrick had a question about the pollutant removal rate of the detention basins of the previous and present applications. Mr. Foley said the rate was about 50% for both. Appropriate approval from Transco Pipeline will be obtained for any work in their easement. Mr. Kirkpatrick asked that the smallest possible trash rack be provided to control floatable debris from entering water sources.

Mr. Kirkpatrick said a motion was needed to approve or deny the application. Mayor Mazza made a motion to grant conditional approval. Mr. Badenhausen seconded the motion.

Vote: Ayes: Mr. Mazza, Mr. Badenhausen, Mr. Bischoff, Mr. Martin, Mrs. Corcoran, Mr. Walchuk, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Correspondence: Mayor Mazza's February 19, 2008 letter to Brian Mulcahy, NJDOT, regarding the I-78 Interchange Modifications. Mr. Reymann gave a brief update. He suggested that within six weeks a meeting should be held with NJDOT.

Dr. Souza's Presentation Re: Changes in NJDEP Regulations of 300 foot SWRPA (Special Water Resource Protection Areas). Dr. Souza distributed copies of his February 28, 2008 letter to the Board and gave a brief overview of the purpose of the New Regulations regarding the SWRPA buffer.

Mr. Kirkpatrick asked for a motion to go into Executive Session to discuss litigation. The motion was made by Mr. Bischoff and seconded by Mr. Mazza. (10:50 p.m.)
Vote: All Ayes

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 28, 2008, in the Union Township Municipal Building, 140 Perryville Road, Hampton, NJ 08827, for the discussion of matters relating to the specific item designated above.

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.

The Executive Session ended at 11:15 p.m.

Mr. Mazza made a motion to return to the regular session. Mr. Walchuk seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Approval of Minutes: Mr. Bischoff made a motion to approve the minutes of the January 24, 2008 Regular and Executive Session meetings. Mr. Mazza seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Mazza, Mr. Martin, Mr. Badenhausen, Mr. Walchuk,
Mr. Ryland, Mr. Kirkpatrick

Abstain: Mrs. Corcoran, Mr. Ford

Mr. Bischoff made a motion to approve the minutes of the February 7, 2008 Regular and Executive Session meetings. Mr. Mazza seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Mazza, Mr. Martin, Mr. Badenhausen, Mrs. Corcoran,
Mr. Walchuk, Mr. Ryland, Mr. Kirkpatrick

Abstain: Mr. Ford

Motion to Adjourn: Mr. Bischoff made a motion to adjourn. Mr. Ford seconded the motion. (11:20 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary