

July 25, 2013

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

Open Public Meetings Act Notice: I would like to have placed in the minutes that the Open Public Meeting Requirements of Law have been satisfied by our notices dated January 17, 2013, as published in the Hunterdon County Democrat and January 15, 2013, as published in the Courier News. A copy of the notice has also been posted on the Township Website, the Bulletin Board in the Municipal Building and a copy has been filed with the Clerk.

Members Present: Ms. McBride, Mr. Bischoff, Mr. Walchuk, Mr. Nace, Mr. Ryland, Mr. Kastrud, Mrs. Church, Mr. Ford, Mr. Kirkpatrick

Members Absent: Mrs. Corcoran, Mr. Badenhausen

Others Present: Atty. Mark Anderson, Robert Clerico, Atty. Joseph Novak, Brian Plushanski, Atty. Jeffrey Lehrer, Robert Gazzale, Richard Roseberry

Approval of Minutes: Mr. Nace made a motion to approve the June 27, 2013 minutes. Ms. McBride seconded the motion.

Vote: Ayes: Mr. Nace, Ms. McBride, Mr. Walchuk, Mr. Ryland, Mr. Ford

Abstain: Mr. Bischoff, Mr. Kastrud, Mrs. Church, Mr. Kirkpatrick

Memorialization of Resolution: Celldex Therapeutics: Block 13, Lot 6, 53 Frontage Road, Building #3, F/W Site: Mr. Ford made a motion to memorialize the Resolution. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Ford, Mr. Walchuk, Ms. McBride, Mr. Nace, Mr. Ryland

Abstain: Mr. Bischoff, Mr. Kastrud, Mrs. Church, Mr. Kirkpatrick

Mr. Kirkpatrick announced the order of the agenda would be changed. Green Rock Recycling would precede P.S. Construction.

Green Rock Recycling LLC: Block 22, Lots 15 & 15.01, 3 Frontage Road: Atty. Joseph Novak, representing applicant, gave a brief overview of Green Rock Recycling and the site which includes a quarry. Mr. Novak said Brian Plushanski, managing member of Green Rock Recycling, is seeking approval for the 10' x 30' trailer/shed on site for use as an office. Atty. Novak said the motor-vehicle aspect (wheels, axle i.e.) of the trailer has been removed. Mr. Plushanski was issued a six-month temporary certificate of occupancy by the Union Township Construction official and also has NJDEP approval. He is seeking a permanent certificate of occupancy. Mr. Kirkpatrick said according to the Land Use Ordinance the trailer would be classified as a mobile home and mobile homes are not permitted in the Township. Atty. Novak said applicant does not view the trailer as a mobile home. Mr. Plushanski said the trailer had been used as an office at another site. Atty. Novak said applicant does not see it as being different from a shed.

Mayor McBride said she visited the site and observed that the trailer had been transformed into a very attractive structure. Mr. Kirkpatrick asked about the roof. Did it have asphalt shingles or was it a flat metal roof associated with a trailer? Mr. Plushanski said it has a semi-flat roof. There is no bathroom or kitchen in the structure. Mr. Kastrud asked about the Zoning Officer's input. Atty. Novak said the Officer had issued a six-month temporary permit and told his client to come before the Planning Board. The Zoning Official classified the structure as a shed. He did not indicate that Mr. Plushanski should apply for a use variance. Atty. Anderson said there was no sworn testimony for the record. Mr. Anderson also said he does not know what the application is for; is it a Planning Board or Board of Adjustment application? Atty. Novak indicated applicant was seeking a permanent Certificate of Occupancy (CO) or be given some direction to the Zoning Officer who told his client to come to the Board.

Mr. Kirkpatrick said Mr. Plushanski came to the Board informally asking what would be required of him to allow the trailer on the site. The response from the Board was that the trailer could be issued a c/o for installation of electricity and that the c/o could be issued for a period of six-months. Mr. Kirkpatrick emphasized that if the trailer remained on the site for more than six months, a use variance would be required. If a shed was installed on the property, it would require a site-plan application. Atty. Anderson said the nature of the application was unclear to him. Atty. Anderson also mentioned two legal issues. Had Notice been given and if this application was a use variance, there was the issue of the two Governing Body members participating. Atty. Novak said no Notice had been given. Mr. Novak mentioned the question of whether a use variance would be required. Atty. Anderson asked Atty. Novak if he was suggesting that this was an application for an interpretation. Atty. Novak reiterated that a temporary CO was issued for six months and that applicant should appear before the Board prior to the expiration of the CO. Mr. Plushanski had submitted a plan and an application. Atty. Novak said a structure is permitted within the Quarry District for the purposes of the operation of a quarry. Atty. Novak said the on-site structure serves the quarry and recycling operations. Mr. Novak emphasized that the structure is not a mobile home. Mr. Kirkpatrick recalled the Ordinance definition of mobile homes encompasses such things as mobile offices. Atty. Novak said applicant will return to the Board. Notice will be given to property owners and applicant will request the right to continue using the structure. Photos of the structure will be provided to the Board. Mr. Novak invited members to visit the site to see the structure/shed and see what it is being used for. Atty. Novak thanked the Board for their consideration.

P.S. Construction/Rolling Hills, Block 22, Lot 27, Race Street: Final Subdivision Resolution Compliance. Atty. Jeffrey Lehrer was present on behalf of applicant. Mr. Lehrer had submitted a letter to Board Attorney Anderson regarding Condition 1d of the Resolution granting final major subdivision, dated April 11, 2013. Atty. Lehrer recited the Condition stating that no building permit can be issued until applicant proves that access to the site is not impaired by the flood-elevation levels, as determined by FEMA. Applicant objected to the Condition claiming that Preliminary Major Final Subdivision approval had been granted and that approval granted vested rights.

Applicant's Engineer Robert Gazzale submitted an e-mail to the Board Engineer, dated March 14, 2013. Mr. Gazzale also provided FEMA Flood Maps of the Sidney Brook which demonstrated compliance with the Condition. Mr. Kirkpatrick asked the exact wording of Mr. Gazzale's e-mail that indicated compliance with the Condition. Atty. Lehrer said the e-mail stated that as per the current FEMA Maps of the site, there has not been an advisory Map issued since February 2013. He said certain areas of the State were updated in February 2013 as a result of Hurricane Sandy. The Sydney Brook area had not been updated. Mr. Gazzale also said the Floodplain does not encroach onto Race Street. Atty. Lehrer said that Board Engineer Roseberry stated in his letter dated June 10, 2013 that his office had reviewed and was satisfied with information submitted by Mr. Gazzale and that was what was set forth in the Resolution. Mr. Kirkpatrick asked for additional documentation. Mr. Gazzale provided an involved determination and confirmation that Race Street is not impaired by floods. Mr. Kirkpatrick understood Mr. Gazzale's statement indicated that Race Street, effectively, was above the one-hundred foot flood elevation. Atty. Lehrer said Mr. Gazzale stated the point of access to the development from Race Street was not impaired. Mr. Kirkpatrick said testimony during Hearings pertained to emergency vehicles being able to access the site during a storm event. Mr. Kirkpatrick said the testimony was that emergency vehicles could get to the site. He said that would mean the vehicles could get to the site from a County Road above the one-hundred year flood elevation. Mr. Kirkpatrick said if the Engineer stated in an earlier letter that the flood-hazard area does not encroach into Race Street that implied to him that the Engineer had looked at the entire length of Race Street and came to the conclusion that none of the Street is inundated during a one-hundred year flood elevation. Atty. Lehrer said if Mr. Kirkpatrick interpreted access to the site to mean the entire length of Race Street the cost of an analysis would be enormous. Mr. Lehrer asked why his client would be responsible for that mitigation. Mr. Kirkpatrick emphasized the need to ensure public safety.

Mr. Kirkpatrick asked if the entire length of Race Street was above the one-hundred year flood elevation. Atty. Lehrer said that is not the issue. The issue is access to the site. Mrs. Church, a thirty-two year resident of Patrick Drive, asked Atty. Anderson if she could make a statement. Mr. Anderson asked if Atty. Lehrer was amenable. Mr. Lehrer said if she is not within two-hundred feet of the subject property she had the ability to participate. Mrs. Church indicated her residence was greater than two-hundred feet away. Mrs. Church said during Hurricane Sandy the area of Race Street close to the Sidney Brook and Route 513 was a problem. There had never been a problem with flooding on the Street by the subject property or the access to Perryville Road. Atty. Lehrer thanked Mrs. Church. Mr. Lehrer said the Township has an Off-Tract Improvement Ordinance and if it can be demonstrated that the Subdivision necessitates improvements applicant is responsible for their pro-rated share. Mr. Lehrer said he is hearing that houses cannot be built on the site. Atty. Anderson understood that Mr. Kirkpatrick believes that testimony given at the Preliminary Hearing may not have been correct and that the application may have been approved erroneously. Mr. Anderson asked Atty. Lehrer if he was saying there is nothing the Township can do if it turns out that the application was approved based on incorrect testimony. Mr. Lehrer said that was not the case. He also said he did not recall a discussion about flooding on Race Street.

Atty. Lehrer said if there was an intentional misrepresentation that would be a problem. However, if the Board did not challenge and analyze information submitted to them or their Professionals, the doctrine of estoppel would apply. Mr. Kirkpatrick indicated that testimony from the Board's or applicant's engineer might be in order regarding whether emergency vehicles could access the site if Race Street was inundated during a one-hundred year flood event. Atty. Lehrer did not agree. He asked for a determination on his legal position. Mr. Kirkpatrick asked Mr. Roseberry to testify that when he offered his opinion he relied upon Mr. Gazzale's statement that the flood-hazard area of Sidney Brook did not encroach into any portion of Race Street or did he interpret it as not inundating the entrance to the site. Mr. Roseberry said the Resolution refers to the flood elevation as determined by FEMA. He reviewed the FEMA Maps. They show that the east side of Race Street is inundated by the one-hundred year flood. FEMA mapping on the west side of Race Street ends by Gebhard Farm Road and based upon that mapping, Race Street is not inundated by a one-hundred flood. Mr. Kirkpatrick asked if there were any other water courses that cross Race Street. Mr. Roseberry said there are unstudied water course to the west of Gebhard Farm Road. Mr. Bischoff asked if there was another water source that might impact the site in the event of a one-hundred year flood. Mr. Roseberry said he could not answer that question. Mr. Ford said that from Gebhard Farm Road to the site there should be no problem. Mr. Roseberry indicated it would be quite costly to make additional studies. Mr. Kirkpatrick asked if he thought it was a good idea to build sixteen houses on a site when there was a concern about access for emergency vehicles in the event of a one-hundred year flood. Mr. Roseberry indicated it would difficult to say because of the absence of studies beyond Gebhard Farm Road. Mr. Kirkpatrick said there are two parts to compliance. One part was to comply with NJDEP methods and one part was to the Board Engineer's satisfaction.

Atty. Lehrer asked Atty. Anderson if the Board Chairman could say that applicant had not provided enough information, after the Board Engineer indicated he was satisfied. Atty. Anderson said there has been a discussion tonight with the Board Engineer and that does not, in Mr. Anderson's mind, reflect a simplistic answer. Atty. Lehrer maintains that his client has vested rights. Mr. Kirkpatrick repeated his recall that previous testimony indicated that none of Race Street was inundated by a one-hundred year flood. He had reservations at the time and, therefore, voted no on the application. Mr. Kirkpatrick said deeds could note that access to the site might not be available during a storm event. Mr. Bischoff stated that the only portion of Race Street that has been closed during three major storm events in the past two years is east of the subject site. Mrs. Church corroborated with Mr. Bischoff's statement.

Atty. Lehrer said his client's Engineer has satisfied the Board's Engineer that the site access is not impaired. Mr. Lehrer would like the Board to grant his client the ability to build the houses. Mayor McBride said the Board is aware where flooding occurs on Race Street and that flooding has not occurred west of the Rolling Hills Development. Atty. Anderson said the Board is entitled to take its own knowledge of conditions in the Township into consideration. Mr. Roseberry felt that applicant had satisfied the Condition of approval. Mrs. Church said flooding has never prevented her from accessing Race Street to the west from her home on Patrick Drive.

Mr. Nace asked what would happen to the Board if there was flooding to the west of the site. Mr. Kirkpatrick said the testimony was that flooding from unstudied tributaries was shallow enough that it would not impede access to the site. Atty. Lehrer asked that the Board move forward. Mr. Kirkpatrick remained interested in hearing testimony from applicant's Engineer regarding his investigations. Mr. Gazelle was sworn by Atty. Anderson. Mr. Gazzale's credentials had been accepted by the Board previously. Mr. Gazzale said the information he provided addressed the Condition of approval. Mr. Kirkpatrick asked the basis of his determination. Mr. Gazzale said the determination was based on FEMA maps and Flood Hazard Area Act Rules that were recently amended. Mr. Kirkpatrick asked if Mr. Gazzale had looked at the depth of flooding at the site access or other portions of Race Street. Mr. Gazzale said he looked at the site entrance and east of the site. He did not have the depth. Had any other methods been used to approximate flood hazard elevations? Mr. Gazzale said that would have involved a survey. He said further analysis would be very expensive. Mr. Kirkpatrick said Board observations that flooding west of the site is not deep enough to be an impediment to access. Mr. Walchuk asked the implication of there not being FEMA Mapping west of the site. Mr. Roseberry said FEMA Mapping is generally for flood insurance purposes.

Atty. Lehrer said applicant was looking forward to proceeding. Mr. Kirkpatrick asked for a motion. Mr. Bischoff made a motion that the Board is satisfied that Condition 1d of the Resolution. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Walchuk, Mr. Walchuk, Mr. Nace, Mr. Ryland, Mr. Kastrud, Mrs. Church, Mr. Ford, Mr. Kirkpatrick

P.S. Construction: Variance for Affordable Unit: Atty. Jeffrey Lehrer, on behalf of applicant, granted a 90 Day Extension from July 25, 2013. Mr. Kastrud asked why applicant was asking for an extension. Atty. Anderson indicated he did not know the answer.

Correspondence:

Comments from the Public/Other Discussion: Mayor McBride gave an overview of a meeting with Lehigh Gas, owners of the site which has a diner, truck stop and a monopole. Representatives of Lehigh Gas said they will be cleaning the site and provide some landscaping. Mr. Nace asked about trucks making left-hand turns at Bagel Smith. Mayor McBride and Mr. Bischoff gave an update on discussions regarding the truck stop. Mr. Kastrud asked if the Township had ever investigated a transportation improvement district between Exits 11 and 15. Mayor McBride said she had attended a Hart meeting. Hunterdon County Freeholder Holt will be coming to the Township to discuss improvements along the Route 78 Corridor.

Motion to Adjourn: Mr. Bischoff made a motion to adjourn. Mrs. Church seconded the motion. (8:35 p.m.) Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary

