

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – October 6, 2014

1-2014-10-06

Board Chairman Gary Frank called the regular meeting of the Mine Hill Township Planning Board to order at 7:30 pm and led those present in the Pledge of Allegiance.

OPEN PUBLIC MEETINGS NOTICE

Mr. Frank announced that adequate notice for this meeting had been given as required by law.

ROLL CALL: Members Present – Mr. Frank; Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Sauchelli; Mr. Willis
Members Absent – Mr. Alpaugh; Ms. Del Rio
Alternates Present – Mr. Rautenberg
Also Present – Mr. Wiener, Board Attorney; Ms. Istvan, Deputy Municipal Clerk/Acting Planning Board Administrator
Public Present – 1

APPROVAL OF MINUTES

The September 15, 2014 minutes were tabled until the next meeting on November 17, 2014 due to just being received the day before.

April 7, 2014 Minutes - Mr. Heredia noted the following corrections needed to be made:

On the next to the last page, where the reasons for denial were mentioned, Mr. Heredia wanted it to reflect all three reasons he denied it, so he requested the following wording be added, “overall size of the garage as well as applicant creditability”.

Mr. Frank: Are there any other additions, deletions, corrections?

A motion was made by Mr. Frank and seconded by Ms. Goldstein to approve the minutes of April 7, 2014 (with corrections made). The roll was called, and the motion was approved by the following vote:

Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Sauchelli;
Mr. Willis; Mr. Frank
Nays: None
Absent: Mr. Alpaugh; Ms. DelRio
Abstentions: Mr. Rautenberg

CONSIDERATION AND APPROVAL OF VOUCHER

With the printout that the Board received for the meeting, the Board asked that the following descriptions be added to the items on the Bills List/Escrow Printout after the PO number: the date, the applicant’s name followed by an abbreviated description of what the services were. The Board feels it will allow them to better understand when the services took place, what the services were for and what case they relate to. The Board also asked that a copy of each invoice be included for their review. Mayor Morris stated that he will discuss the matter with Ms. Wild and also the company that provides the software that generates the report to see if the requested adjustments can be made. Further discussion ensued in regards to why there are still bills from Dolan and Dolan.

Mr. Sauchelli: My question is are these Dolan and Dolans against the Board’s budget or against an applicant’s. If they are against the Board’s budget, we should ask some questions.

Mayor Morris: These are all out of escrows, with the exception of Larry, there is one or two of these that are from the Board’s budget. All of these Dolan and Dolan, like this one here was the, this is dated June of 19. But he doesn’t have on here.....

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – October 6, 2014

Mr. Sauchelli: My point is we shouldn't still be paying for the code rewrite, is my point.

Mayor Morris: This one is J&E Auto, the one that is \$365, is J&E Auto. I also have to tell you guys, J&E Auto and Milleli are in arrears. They did not file enough escrow, but we have to pay these. Because we can't, we are going to pursue those in court. Didn't collect enough escrow.

Mr. Willis: That is why the Dolan and Dolan bills keep popping up.

Mr. Heredia: Mr. Wiener legally if a situation arises like this where the applicant does not have enough in escrow and the Mayor said we have to pay these because we are in court, who is responsible to pay the money.

Mr. Wiener: Who is responsible to pay the money? I mean the work was done wasn't it?

Mayor Morris: The Town is going to pay the money and the Town is going to pursue it.

Mr. Heredia: So that is going to come out of the Town's budget and not the Planning Board budget.

Mr. Wiener: Until it is caught.

Mayor Morris: Until we get it back. We have them in court next week.

Mr. Wiener: I represent applicants and I see it more representing applicants where a year later I will get an email from whoever is the Amanda or Marcie of that Board, Larry your applicant so and so owes Rockaway Township, Rockaway Boro more money. It is a system that has to be caught up to because you turn around, like Congress, you bringing here, if you bringing there, you are talking more money.

Mr. Sauchelli: So effectively we, the Town floats until you get it back.

Mayor Morris: We were not supposed to. This was a flat out error. It was not accounted for as to what should have been on file for these applicants. After talking to the Town attorney we need to pay the bills, we will pursue these in court. And we will pursue these in court. We are actually are, Martinelli, J&E, particularly, is next week.

Mr. Sauchelli: So in these few instances specifically, we are floating until we get the money back from the applicants.

Mayor Morris: This is a onetime shot because now Katelyn is keeping the escrows and this won't happen again.

Mr. Heredia: So I don't have a problem with Larry's bills and I know he is honest and I have never found an error on his yet, but the four from Dolan, are they all supposed to be drawn from an applicant's escrow account, all four of them?

Mayor Morris: Supposed to be.

Mr. Heredia: So eventually if we vote to pay these, the Town at some point will recoup that.

Mr. Wiener: There is no other litigation so I am assuming that it is all of those. You just have to read it into their system.

Mayor Morris: Two of these are \$368 and \$131 are J&E. The next one for \$118 is Milelli and the next one \$518 is Milelli.

Mr. Frank: That should be it then for them?

Mayor Morris: That is four. Larry will advise me. I don't, if anything else shows up here....

Mr. Frank: The only reason I say it is, I had asked early, way, way back for her to send letters out to them to make sure they got all their bills in so we could get them cleaned up and gone.

Mr. Wiener: And if you know it is an active application, it doesn't take a rocket scientist to figure out that the best time to collect the money is before the ballgame is decided.

Mr. Frank and Mayor Morris agreed.

Mr. Heredia: Preferably at admission, at entrance before you get into the park.

Mr. Frank: We are voting on the complete list.

Mayor Morris: At the top of here you see it says Escrow, Accutrack, these are all, and I apologize, all of these are coming out of escrows. If they weren't, if they were coming out of our budget, they would actually be on a different sheet.

Mr. Heredia: Well how would we make the motion when we usually say provided there are sufficient funds in the escrow, but we know there isn't?

Ms. Goldstein: We would have to do the motions and exceptions here I think because people will have to abstain from some.

Mr. Wiener: Insufficient funds would be enough, provided the Municipality has sufficient funds.

A motion was made by Mr. Frank and seconded by Mr. Heredia to pay the Bills List as written providing the Town is paying the other invoices that the applicants at this time are delinquent, with the Town making all applications possible to collect the funds from the delinquent applicants. Mr. Heredia added he would second provided that the Town will cover the known insufficiencies in the escrow accounts. Seeing no further discussion, the roll was called and the Bills List was approved by the following vote:

Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Rautenberg; Mr. Sauchelli;
Mr. Frank

Nays: none

Absent: Mr. Alpaugh; Ms. DelRio

Abstentions: Mr. Morris; Mr. Willis

RESOLUTIONS & MOTIONS

a. Resolution Memorializing Steven Rose's Approval

Mayor Morris: I have a question and it is a procedural question. It has nothing to do with your application which I support, but the Town is in a couple of pieces of litigation with applicants that pre-billed. One in particular because the applicant went ahead and is enjoying the full benefit of the approval without having made any of the improvements to the approval. So, the question I have for Larry because what we do down here ends up down the hall and we have to deal with it. Is it possible, not in Steve Rose's case but in a resolution in general, to put at the end something to the effect that, and it is all worded, the applicant must understand and agree or something to the fact that they full well know they may not start enjoying any of this approval until they have completed everything they are supposed to do.

Mr. Wiener: You have to know the exact nature of what it is that we are talking about to make it fit.

Mayor Morris: But is that something that is appropriate you can put something like that in it?

Mr. Wiener: Sure. In a case like Rose, which is done, obviously you cannot use the garage until he builds it. There are other situations where somebody can, he has something else going on, and building X, Y, and Z is merely the tail or fulcrum to get something else legal that was going on, on the site.

Mayor Morris: We have two or three, they'll be in here, because we have two or three people in Town that are going to be told this Fall or soon that things they are doing have to stop. They won't stop anyway and which we will pursue them about, but they are going to come in here for approvals and if they get the approval, they are going to have to make the improvements before they can enjoy what they want. I will bring those cases up at the time. Some of them are Ds so I cannot be here.

Mr. Wiener: Whatever it is, it has to be voted, be fact sensitive, and the resolution will be drafted to reflect the specific facts.

Mayor Morris: I think that will help out the Town a lot in not having things that we don't. Just cause we approve something does not mean it is instant, and that's what seems to be what's happening.

Mr. Heredia: So just speaking in generalities you are talking about any applicant that might have done something without coming to the Board, then they come, and they get an approval, but with caveats, they need to do some things and they are not doing it, but they are just continuing to use.

Mayor Morris: They continue to use.

Mr. Frank: Or they increase their use without doing what they were supposed to.

Mayor Morris: Or they increase their use. They go over property boundaries.

Mr. Frank: Let's get back to Steve Rose. Are there any comments, anything at all on his....

Ms. Goldstein: There are two changes already.

Mr. Wiener: Those comments came from Engineering.

Ms. Goldstein: Changes already noted.

Mayor Morris: So we need to call Paul.

Mr. Wiener: Only if someone has questions.

Mayor Morris: I don't know if we have to call him as he already weighed in. I can just text him and say don't worry about it. Does anyone have anybody have any questions for the Engineer?

Mr. Heredia: I am just curious what the one circle is and the writing. I obviously didn't read it word for word as we just got it.

Ms. Goldstein: The changes.

Ms. Istvan: It is because, Larry sent it to the Engineers, to Paul, and Craig, who was here last time. He made those corrections, but they came in just like, soon before the meeting started tonight.

Mr. Wiener: Just so you know the process generally is with a resolution like this is, I will send it over to the Engineer to look at, they will invariably add something. Normally it will come back to my office. We'd have

the changes and you wouldn't even know it happened. In this case, we didn't get the changes, I should say, Marcie didn't get the changes until this afternoon.

Mr. Sauchelli: The part that is circled, he took out the part that said its proximity of a stream on the property, he took out on the property.

Mr. Willis: So it is just to the North. That is all that is.

Mr. Gorman: On the other one he just defined drywell.

Mr. Willis: Frading, the word grading and drainage were added.

Mr. Gorman: I don't see a problem with that.

Mr. Heredia: Mayor are you good with this, did you read it?

Mayor Morris: I know the changes.

Mr. Frank: Larry are you good with it?

Mr. Wiener: Sure.

The motion was made by Mr. Gorman and seconded by Mr. Willis to have the resolution memorialized, accepted as written with the minor changes. A roll call vote was taken with the following results.

Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Rautenberg; Mr. Sauchelli; Mr. Willis; Mr. Frank
Nays: none
Absent: Mr. Alpaugh; Ms. DelRio
Abstentions: none

b. Resolution Appointment of Planning Board Administrator / Recording Clerk

Mr. Frank explained that Ms. Macchia wishes to step down from the position of Planning Board Administrator / Recording Clerk and that Ms. Istvan is willing to take over the position.

A motion was made by Mr. Frank and seconded by Ms. Goldstein to approve Ms. Istvan to be the Planning Board Administrator / Recording Clerk. A roll call was taken with the following results.

Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Rautenberg; Mr. Sauchelli; Mr. Willis; Mr. Frank
Nays: none
Absent: Mr. Alpaugh; Ms. DelRio
Abstentions: none

OLD & NEW BUSINESS

None

COMPLETENESS REVIEWS

Application 002-14 Pine Tree Nails & SPA (SPA Application)

Mr. Frank: We have a completeness review, which as far as I can see should be deemed incomplete per the letters that we have.

Mr. Wiener: We have a recommendation and report dated, September 29th, from our Engineer.

Mr. Frank: That is severely lacking.

Mr. Wiener: I don't know about severe, I hate to characterize this. It speaks for itself.

Ms. Goldstein: Somewhat lacking.

Mr. Wiener: Somewhat lacking. I don't think any of the things that are lacking should be a herculean task to any applicant to apply here.

A motion was made by Mr. Frank and seconded by Ms. Goldstein to deem Application 002-14 Pine Tree Nails and SPA incomplete at this time based on the reasons set forth in the September 29, 2014 report.

Ayes: Mr. Gallerano; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Rautenberg; Mr. Sauchelli;
Mr. Frank
Nays: none
Absent: Mr. Alpaugh; Ms. DelRio
Abstentions: Mr. Morris; Mr. Willis

PUBLIC HEARINGS ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE

None

OPEN TO THE PUBLIC

John Paschal of Thomastown Road: When you calculate square footage, is it by the outside dimension of a structure or the inside dimension of a structure.

A number of the Board members responded: Outside.

Mr. Sauchelli: said, we just had that question with the last application.

Ms. Goldstein: That is how I remembered the answer.

Mr. Paschal: Well, alright, so what we did, my daughter and I with the help of her boyfriend here really, at the end of our property, down by the brook, they constructed a little shed. It is 9x10 inside, 11x10 outside. But any way we were under the impression that it was a 100 square feet you did not need a permit. We were figuring the inside calculation. So, anyway we were told we had to get a permit and we already had done it. Anyway, the Zoning Officer then denied the permit. Oh, oh, I filed for a permit as we were supposed to, because I gave her the fee, I gave her the application. She said it was in or too close to the wetlands.

Mr. Frank: Well, you said you built it down by the stream, how close....

Mr. Paschal: By the brook...

Mr. Frank: Okay how close to the brook are you?

Mr. Paschal: About 15 or 20 feet, but it is up about this high from the brook and the brook only comes up this high.

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – October 6, 2014

7-2014-10-06

Mr. Frank: Here is the thing. We can't get real crazy with this. If you were denied, Larry is going to correct me if I am wrong, if you were denied you are going to have to go have an application and come in, you are going to have to file an application and come in.

Mayor Morris: It was denied zoning.

Mr. Frank: He was denied zoning, you are going to have to file an application and come in John.

Mr. Willis: Either that or cut a foot off of the building and move it.

Mr. Gallerano: He is by a stream.

Mr. Willis: That is why I said cut a foot off and move it. What is the name of the stream?

Mr. Paschal: Jackson Brook.

Mr. Frank: How far does he have to be away from the stream?

Mr. Gallerano: Three hundred.

Mr. Wiener: Trout producing?

Mr. Morris: Yes.

Mr Wiener: Three hundred feet.

Mr. Willis: Three hundred because he can be three hundred. If he couldn't be three hundred, I don't believe he would have to be, if there was an existing house on the lot.

Mr. Wiener: He would have to still make application.

Mr. Willis: Right, right, so it should be three hundred on that.

Mayor Morris: John what is your property, commercial industrial, right?

Mr. Paschal: Industrial.

Mayor Morris: Okay industrial. I don't know what that does, but you have two problems, John. You have to file to be heard in front of the Board and you also have a DEP issue.

Mr. Wiener: This is industrial.....

Mayor Morris: The guy that was just in, he got approval from us for a building, it is grass right now, he still has to go to Trenton.

Mr. Wiener: This is non-residential property?

Mayor Morris: It is non-residential.

Mr. Wiener: There may be another issue as to whether or not you need a site plan. I really think you need to....

Ms. Paschal: It is a farm.

Mayor Morris: But, it is not zoned a farm, it is taxed as a farm.

Mr. Wiener: Beg your pardon.

Mayor Morris: It is taxed as a farm, but it is not zoned as a farm. That is the issue.

Ms. Paschal: It is taxed as a farm right, but do you remember what the rule was?

Mr. Paschal: I think with the farm, with the farm requirements, is if you use it in conjunction with the farm you can have it, but they don't say where.

Mr. Wiener: You very well may, but there is nothing in front of the Board, so you can only speak in generalities. The bottom line from the Board's perspective is, the Zoning Officer has denied you. You have a couple of remedies. You can go do something else that he approves, which is some of the Board members made reference to, perhaps if you can relocate this and you don't need any other approvals, fine. Otherwise, if you get involved with the DEP and wetlands, and those issues, it is a lot more involved than the average citizen can even take on. You have to get an engineer involved and there are all kinds of issues that you'd have to deal with. So, I mean unfortunately there is not much the Board can do or even consider right now with your problem.

Mr. Paschal: Well if I were to present the Board with an application. Would that be step one?

Mr. Wiener: Yes, you can always present the Board with an application. But, I think this is one that you really need to contemplate before you start spending a lot of money. Maybe you need to sit down with an engineer to find out alternatives, what they might think of what NJDEP may or may not let you do over there. No one wants to see you spend a lot of money and wind up with a lot of frustration and nothing else to show for it.

Mr. Frank: Even if you come in to us, just saying you were approved for the shed, you still have to get DEP approval to be that close to the stream.

Ms. Goldstein: Just like the last one.

Mr. Frank: Because that is what he is going to go fight with now. He got approval for his garage, but he has a stream right by.....

Mr. Willis: That is right, now he is going to spend some real money.

Mr. Paschal: Well here is a catch for you, you don't have electricity, you don't have any sewer, you don't have any water. It is just a little shed, you know nothing.....

Mr. Wiener: No, no, you have to understand, even if the Board approved it, that is just the appetizer. The main course really is with the NJDEP.

Mr. Heredia: Mr. Paschal please, I mean I have known you since I was a little kid. You are going to get the State involved and you could be in for a big headache. Like, we are saying even if we did approve you, the State can always deny you and it could run into thousands of dollars for you and I would hate to see that happen to you, I really do, just to have it denied in the long run. That Jackson Brook, which is part of the Rockaway River Watershed Cabinet, which is a separate body, I mean they're pretty protective of that particular stream that leads into the Rockaway River, so. I just don't want to see you spend thousands of dollars only to be denied by the State, that we, as a separate Board, have no say in.

Mr. Paschal: Well, I think that would be step number two, would it not? For us to come here and you say it is okay with you, but you have to go to DEP and get their blessings. If we went to them and they said no dice and then we tear it down.

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – October 6, 2014

9-2014-10-06

Mayor Morris: Well now, it is not that simple, you already built it.

Mr. Paschal: Right.

Mayor Morris: You are in violation.

Mr. Wiener: You are right, but anybody, under the land use law, sometimes it is counter intuitive people, if someone is in violation, the municipal land use law encourages them to do one of two things. Either get rid of the violation or come to the Board to make it legal. So then you consider it as if it weren't built. You don't get a leg up because it is built and you also don't get an automatic denial because you did something you shouldn't have done. You just consider it that way. There are separate agencies that deal with violations, fines, etc.

Mr. Frank: Understand.

Mr. Paschal: So, how does the application process proceed? You get an application from...

Mr. Wiener: You would have to come in during normal business hours, get an application, read through the application, see the materials that you need, present it, our engineer will tell us if it is complete or not. There might be some things you might have to add to the application. Then you would have a public hearing. You would notify adjacent property owners, utilities, publish it in the newspapers, then on a night like this the Board would consider your application.

Mr. Heredia: And I will tell you Mr. Paschal, the packet is quite comprehensive. It is probably like what 12 pages long or something like that and that is the reason you heard us deny one tonight because they did not fill it out properly.

Mr. Sauchelli: And the other thing would be, the gentleman that was just here, broad terms was the same type of a structure, with possibly the same type of an issue with a wetland, he affectively did his own engineering work, but even with just coming here and paying the expenses out of escrow, it had to have been three grand. So just \$3,000.00 to get past us before he went to the State and that's with doing his own engineering work. So maybe that is something to file when you do your mental arithmetic to see if this is something you really want to pursue as opposed to just move it.

Mr. Paschal: Well, it was all done in good faith on our part because we were under the presumption that 100 square feet. We had the calculations.

Ms. Paschal: We thought it was 10x10 inside.

Mr. Wiener: Nobody is saying that.....

Mayor Morris: You should not discuss all that.

Mr. Wiener: Nobody is saying that you didn't do anything not in good faith, okay. This is not the forum for that.

Mr. Paschal: I know I understand. It was a discussion at one of the Council meetings somebody had built a big shed. And I asked the question, well how big was the.... It was a 100 square feet. And I asked the question to the Council, how many square feet did he build? He said, oh, hold on. And she was here at the meeting too, so we heard 100 square feet so we're figuring we're okay. So, we didn't know you had to be so far back from, you know, it is not a wetland where we are, but we are close to a brook, but we did not realize all that. We thought we'd be okay.

Ms. Paschal: Well, thank you for your time.

Mr. Willis: I just had to get a wetlands delineation to put a septic in my existing house.

Mr. Paschal: Well you've got a brook back there too.

Mr. Willis: Yeah, but the house has been there since the 50's. But, I still had to get the delineation and if I was going to be 300 feet away from that brook, I had to.

Mr. Heredia: Mr. Paschal, that 300 feet with a trout producing stream that is not us that is not a Town ordinance that is the State that says that.

Mr. Paschal: Alright well we'll decide. Thanks.

Ms. Paschal: Thank you.

Mr. Frank: Thanks John. We will close to the public. I don't think we need a closed session tonight.

Mr. Wiener: No.

Mr. Heredia: Do we need to do anything with this Planners, I know we have done this before. Do we do this as a group or as an individual? It is to vote for the State Planning Officials, the State Planning Board. I just figured because this was due before our next meeting that is why I asked.

Mr. Heredia was referring to the Correspondence entitled, New Jersey Planning Officials.

The Board discussed they did not know any of those nominated last year, so they did not vote, and it is the same situation this year.

ADJOURNMENT

There being no further business, a motion was made by Ms. Goldstein and seconded by Mr. Willis to adjourn the meeting at 8:09 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Marcia H. Istvan
Planning Board Administrator / Recording Clerk

Approved on this _____ day of _____, 20____

Planning Board Chairman