

MINUTES OF THE
EAST BRUNSWICK TOWNSHIP
PLANNING BOARD

June 10, 2020

STATEMENT - Open Public Meetings Act

FLAG SALUTE

ROLL CALL -

PRESENT:

ABSENT:

Shawn Taylor, Chairman
Laurence Reiss
Laurence Bravman
Charles Heppel
Sharon Sullivan
Joseph Criscuolo
Steve Philips
Muhammad Hashmi
Howard Schmidt

Brad Cohen, Mayor

ALSO PRESENT:

Lawrence B. Sachs, Esquire
Loren Morace, Secretary
Keith Kipp, Director of Planning and Engineering
Colleen McGurk, Planner

MINUTES

May 27, 2020 - Motion to approve by Mr. Criscuolo,
second by Ms. Sullivan. Abstention by Mr. Reiss.
Minutes approved.

RESOLUTIONS

Amendments to Resolution - Application #18-07V -
Hidden Oak Woods-Alfieri - Proposed construction of
275 residential apartments in seven buildings
located at Harts Lane, Tices Lane, Eagle Road, and
Mill Brook Court, blocks 29.01 and 29.06, lots 1-7
and 37-42, in the MDA zone. Motion to adopt by
Chairman Taylor, second by Mr. Hashmi. Resolution

adopted.

NEW BUSINESS

Application #20-02 - Andrawis - Proposed subdivision of one lot into two 5,000-square-foot lots with a single-family dwelling on each lot located at 145 Old Bridge Turnpike, block 113, lots 34-37, in the R4 zone. Mandatory date June 11, 2020. Adjourned to the June 24, 2020, meeting.

THE CHAIRMAN: The township is using the telephone meeting format in an effort to mitigate the chance of exposure to the COVID-19. As part of the township's ongoing effort to slow the rate of transmission and avoid overwhelming our treatment centers, the dial-in information and agenda have been posted on the township web site and are posted on EBTV for members of the public. Members of the public can call in with the number provided if they have any questions for the planning board members. You will have 3 minutes to speak. Should you have any further comments or questions, the planning and engineering office is always available by e-mail or telephone. Each member of the public shall have one opportunity to speak during the public portion. Thank you in advance for your patience, and -- as we implement this new technology to continue to move the township forward during this health emergency. And the number to call for comment or question is 732-390-6777. Once again, that's 732-390-6777.

Will all those who are able please rise and join me in a pledge to the flag.

(Flag salute)

THE CHAIRMAN: Thank you. Loren, would you please call the roll while I get my stand that I knocked over.

MS. MORACE: Yes. Please unmute yourself as I do the roll call. Mr. Schmidt. Howard, you're muted.

MR. SCHMIDT: Okay. Is that better?

MS. MORACE: Yes.

MR. SCHMIDT: Can you hear me now?

MS. MORACE: Yes.

MR. SCHMIDT: Okay. Yeah, I'm here.

MS. MORACE: Mr. Hashmi.
 MR. HASHMI: I'm here.
 MS. MORACE: Mr. Philips.
 MR. PHILIPS: Here.
 MS. MORACE: Mr. Reiss.
 MR. REISS: Here.
 MS. MORACE: Mr. Criscuolo.
 MR. CRISCUOLO: Here.
 MS. MORACE: Councilwoman Sullivan.
 MS. SULLIVAN: Here.
 MS. MORACE: Mr. Heppel.
 MR. HEPPEL: Here.
 MS. MORACE: Mr. Bravman.
 MR. BRAVMAN: Here.
 MS. MORACE: Mayor Cohen. Chairman

Taylor.

THE CHAIRMAN: Here.

The next item on our agenda are the minutes of the meeting of May 27, 2020, and as we remember, we adopt minutes by voice vote. We got the -- we received the minutes in our packet. What is the board's pleasure?

MR. CRISCUOLO: I'll move them.

MS. SULLIVAN: I'll second it.

THE CHAIRMAN: They've been moved and seconded. Are there any --

MS. MORACE: Who moved?

THE CHAIRMAN: I'm sorry? They've been moved and seconded. Are there any questions, comments, deletions? Hearing none, all those in favor of the minutes as submitted, signify by saying aye. Any opposed? Any abstentions? The minutes pass as submitted.

MR. REISS: I abstain.

THE CHAIRMAN: Who was the abstention?

MR. SACHS: Mr. Reiss abstained.

THE CHAIRMAN: Oh, Mr. Reiss, okay. The minutes still pass as submitted.

The next item is a resolution. It's a resolution -- amendments to the resolution on application 18-07, Hidden Oaks Woods-Alfieri. Mr. Sachs, would you like to give us a little background and explanation on this.

MR. SACHS: Yes. Thank you, Mr. Chairman. If the board will recall, I believe this resolution was initially adopted on May 13 of 2020. That was based upon the remand by Judge McCloskey prior to that date, and I believe it was pursuant to a court order of May 1. Subsequent to the adoption of this resolution on May 13, there was a subsequent

motion filed by Hidden Oak Woods requesting certain revisions to the resolution that was adopted on May 13. As well, the township and the planning board also filed a motion to stay all of the proceedings on this matter pending the appeal that was filed back in April.

On May 29 of 2020, there was oral argument on both of those motions before Judge McCloskey, and with respect to the stay, I will just indicate to the court that Judge McCloskey refused to enter a stay. That matter is -- has now been appealed to the Appellate Division as an emergent application, and I expect that the argument on that particular motion will occur probably early next week.

With regard to the Hidden Oaks motion requesting certain changes to -- certain additional changes to the resolution, that motion was granted, and as a result of that motion, there are just a few changes that are now going to be encompassed in this resolution. Let me just basically indicate what they are.

On page 6 of the resolution you have in front of you this evening, there was just the change of the exhibits from A-1 through A-62. We originally had A-61, but that was more or less just a typo, so that's now been corrected.

On pages 9 through 14, and it's paragraphs 1 through 9, one of the requests of the judge was that we add a summary of the narrative testimony of all of the expert witnesses who testified at the various hearings, and that included the testimony of the applicant's engineer, the applicant's architect, the applicant's environmental expert, the applicant's planner, and the applicant's traffic engineer. As well, there is now the inclusion of language that was actually back in the resolution, which was adopted back in February -- April of 2019, when the application was turned down, and that references the objector's testimony. It reflects the testimony of Jim Watson, who was the board -- our board traffic engineer, and Mr. Joseph Giddings was the board environmental expert.

On page 17, there's a new paragraph dealing with a tree removal permit that has to be issued by the municipality, and that language is as per the court order from judge McCloskey. And as well, I think -- oh, on page 17, as well, there's the inclusion of certain dates in paragraph 11 and 12.

By the way, all of this has been underlined for you, so that anything that you see underlined are the changes.

And on page 22 of the resolution, there was a rewording of the -- of one of the technical review recommendations from CME, which is also -- has also been -- was part of Judge McCloskey's court order; however, CME has no objection to this language.

And then finally on page 25, there was also the inclusion of a date, which is now in the resolution.

So essentially, I think I added -- I think I indicated this last time. This is not something that is really discretionary by the board. This resolution does have to be approved with these amendments as per Judge McCloskey's court order of May 29. I know that the board has certain feelings about how this is come down from the court, but again, I think I said it last time, it's not the time for any civil disobedience. I don't think we need to run into further issues with Judge McCloskey.

Suffice it to say, if the Appellate Division with an open mind looks at whether a stay should be issued, if the stay is issued, that will put a stop to anything further with respect to this project until the underlying issues on the appeal are decided. So we'll hope that the Appellate Division will look at this with a clear head and with clear eyes and without any type of predisposition, and we'll see what happens with that, and I'll report back to the board I'm sure at the next meeting as to what happens with that.

So at this point, Mr. Chairman, I think somebody does have to make a motion to approve the amended resolution and a second and then vote in favor of it.

THE CHAIRMAN: Larry, I will make a motion to move this resolution.

MR. SACHS: Thank you, Shawn.

MR. HASHMI: I'll second. It's Muhammad.

MR. SACHS: Thank you, Muhammad.

THE CHAIRMAN: Any questions before we vote on this?

MR. BRAVMAN: Real quick. I'm sorry.

THE CHAIRMAN: Sure, no, please, Larry. I was also going to ask if anyone has any questions on explaining where we are with the Appellate and

the stay -- the Appellate stay to the stop the work from being done, please take an opportunity now to ask Larry. I want everyone to be clear on it.

MR. BRAVMAN: I guess, Larry, that's sort of along my lines. I guess I did -- what was Judge McCloskey's reasons or findings to not grant the township and the board the stay? We spoke about this I think initially when you brought it to our attention.

MR. SACHS: Right.

MR. BRAVMAN: And, you know, not granting it, proceeding with the appeal arguably makes everything an exercise in futility, it's academic, if the Appellate Division then overturns. Granted now you're going to the Appellate Division asking for the stay, but I think we were all under the assumption that Judge McCloskey would grant the stay.

MR. SACHS: Yeah, well, I think both Mr. Baker and myself were under the same assumption, but essentially, Judge -- and you know what, I can provide a copy of that court order. I think I did send it to our staff, but I can provide it by the next meeting just so everybody has it, and it will give an explanation, but he wanted to preserve the status quo of the applicant. My thinking is -- and again, it's sort of moot at this point with respect to the trial court, but the status quo really should run to the favor of the municipality and its 48,000 residents. You know, Judge McCloskey's got his views on this case. I can't question him on it. The fortunate thing is that there is -- and, Larry, you know this as an attorney. There is a procedure that when you ask for a stay, the first recourse is to go to the trial judge.

MR. BRAVMAN: Right.

MR. SACHS: If the trial judge refuses to grant it, then you go to the Appellate Division. So, you know, the Appellate Division will take a fresh look at this, and we'll see.

MR. BRAVMAN: Okay, and I guess the other question I just had, if you can just fill us in a little more. How did it come to be that the resolution that we all voted on last time -- I think it was May 13 you said -- which I assume was reviewed and approved by applicant's attorney, then got before the judge by a filing of a motion by I guess the applicant's attorney.

MR. SACHS: Great question, Larry. My understanding, and I think Mr. Baker's

understanding, is on the afternoon of May 13, after having an hour-long conference with the special master, Ms. McManus, that the resolution that was before you was actually the resolution that we had agreed upon. I will tell you that shortly after the meeting, I received an e-mail from Mr. Petrino maybe 5 minutes after the meeting -- well, I'd like to request these changes, these changes, and these changes, and the resolution that you adopted is not the resolution I agreed to. So anyway, that was his prerogative to file the motion. You know, from a substantive standpoint, I didn't really have any objection to any of this language that's going in here, particularly -- you know, the narrative I didn't feel was necessary on pages 9 through 14 because we had already provided a narrative in the April 2019 resolution denying the approval -- denying the application. Judge McCloskey saw differently and wanted us to put it in. At least he enabled us to put in the narrative from the board's witnesses, which I didn't think he was going to do, but he did, so that's fine. But it's only a narrative. In fact, if you read it, it says the following represents a summary of the narrative testimony of all expert witnesses who testified at the various hearing. This is not a finding of fact, by the way. That's one thing he agreed that we didn't have to make it, that it's just a narrative. And the other ones are just -- the other ones really are just, you know, minor clarifications on traffic. The tree removal permit language emanates totally from the motion that was filed on -- or that was heard on May 29. So that's essentially where we're at.

MR. BRAVMAN: Thanks, Larry.

MR. SACHS: Thanks, Larry.

THE CHAIRMAN: Any other board questions.

MR. KIPP: If I can ask one question, Larry.

MR. SACHS: Sure.

MR. KIPP: On -- in section 11, it says the town is going to approve plans by June 13, 2020?

MR. SACHS: Yup.

MR. KIPP: What are we approving by then?

MR. SACHS: Well, actually, I've spoken to -- no, I've spoken to John Kriskowski. They're working on providing a compliance review letter back to the applicant, and I guess they'll have it either

by Friday, or they'll have it by Monday, the 13th, being the Saturday, so under the rules of court, we actually get a 1-day extension to that Monday. So they will be able to provide a comments back to the applicant. There's also language that says that after they resubmit, we have another 15 days to provide responses. So we'll be fine with respect to that.

MR. KIPP: Okay.

MR. SACHS: And also, I have an obligation, as well, to send a letter to the applicant's attorney by the 13th, or in this case it will be the 15th, stating that no additional agency recommendations that have to be complied with. So we'll be fine. We'll be able to comply with that.

MR. KIPP: Okay. My only real concern is the Tices and Harts Lane plans, which there's language in here about that, but we haven't seen anything so there's nothing we certainly can approve by the 13th.

MR. SACHS: No, I don't think you'll be able to, right. It's just going to be the technical reviews.

MR. KIPP: And I just want to point out to everyone that they don't have to start those road improvements until the CO for the 84th apartment --

MR. SACHS: Right.

MR. KIPP: -- which means that people are going to be living in them, driving in and out, with no improvements, upgrades to the Tices Lane or Harts Lane.

MR. SACHS: Yeah. Listen, I'm hopeful, Keith and board, that the Appellate Division is going to grant the stay. I will tell you that the applicant objected to the quick nature of this and wanted to adjourn the stay hearing, and the Appellate Division sent us an e-mail today stating that, no, this is going forward, and it's going to be heard on an expedited basis. Read into that whatever you think, but it's -- you know what, it's a fresh look at it, which is really what we need here.

THE CHAIRMAN: Thanks, Larry. Any other board members have questions?

MR. REISS: Yeah. So essentially, no work will be done until -- they won't be able to start until the Appellate does its review or --

MR. SACHS: Well, no. The appellate -- no, that's the issue. If the Appellate Division does not grant a stay, then they can proceed forward

at their own risk with completing this project. So they'll be able to do that. I actually threw a question back to the judge during the motion hearing that, you know, Judge if you don't grant the stay, you know, the applicant can go ahead and start working on this project, and what if the Appellate -- I asked a rhetorical question, what if the Appellate Division reverses, you know, reverses the trial judge and there is no longer an approval, how is the town protected. Judge couldn't answer that. He refused to answer it. So anyway, it's -- listen, there is -- we know what's going on. It is what it is, all right, and, you know, we'll deal with it. We're through the legal system now and the legal process, and hopefully the stay will be granted, and at that point, hopefully the appeal will be successful if the stay is granted. If the stay is not granted, then the applicant can proceed at his own risk, and if we are ultimately successful in reversing the trial judge, then that's his problem. Sort of our problem, as well, but it's his problem, too.

MR. REISS: Thank you.

THE CHAIRMAN: Any other questions? No? Okay. Thank you. Then moving on.

MR. SACHS: Well, we need a -- we have a motion. We had a second. We need a vote.

THE CHAIRMAN: We need a vote, that's right. Loren, please call the roll. It's been moved and seconded.

MS. MORACE: Mr. Schmidt.

MR. SCHMIDT: Yes.

MS. MORACE: Mr. Hashmi.

MR. HASHMI: Yes.

MS. MORACE: Mr. Philips.

MR. PHILIPS: Yes.

MS. MORACE: Mr. Criscuolo.

MR. CRISCUOLO: Yes.

MS. MORACE: Mr. Heppel.

MR. HEPPEL: Yes.

MS. MORACE: And Chairman Taylor.

THE CHAIRMAN: Yes. The resolution is approved.

MR. SACHS: Loren, one question. I know Shawn moved it. Who seconded the motion again?

MR. HASHMI: Muhammad.

MR. SACHS: Thank you. Okay.

THE CHAIRMAN: Okay. Moving on to new business. We have -- first of all, I must say that Marc Leber gets the best dressed award for the Zoom

meeting. Got the tie, got the jacket.

MR. KIPP: He's wearing shorts.

MR. SACHS: He's wearing shorts.

THE CHAIRMAN: That's the key.

MR. SACHS: I think he's wearing shorts, also.

THE CHAIRMAN: My key is he's charging Pressler more because he's got the tie on. He can afford it so I'm not worried. How are you, George. Nice to see you.

MR. PRESSLER: I'm very well, your Honor, Mr. Chairman.

THE CHAIRMAN: The next item of new business is application 20-02. Larry, do we have jurisdiction to hear this application this evening?

MR. SACHS: Yes. Thank you, Mr. Chairman. I've reviewed the affidavit of publication, proof of service, and the notices. We do have jurisdiction for this application, yes.

THE CHAIRMAN: Then, Mr. Pressler, I will throw it to you.

MR. PRESSLER: Thank you, Mr. Chairman. My name is George Pressler. I represent the applicant, as the board members probably realize. With much regret this evening -- I'm sure you're going to be upset with me, but I'm requesting an adjournment, and basically, the purpose of the adjournment is -- we received the memo from your planning and zoning team, and we feel as though some of their issues that they raised in the reports need to be further addressed and modified to make it a little bit more palatable for the -- your professionals and for the board to hopefully grant this application. So again, Mr. Chairman, my apologies, and please don't be upset with me.

THE CHAIRMAN: Of course not. Not at all concerned or angry or -- happy to have a short meeting.

Now, Mr. Sachs, is there any renoticing needs to be done for this application?

MR. SACHS: No, I think the -- no, it's still essentially seeking the same relief. There's going to be some shifting perhaps of some buildings or whatever, but -- and elimination of some variances, but the only thing I do note is I think the mandatory date expires on June 11, tomorrow --

THE CHAIRMAN: Which is tomorrow.

MR. SACHS: -- which is tomorrow. So I think -- and I think Mr. Pressler alluded to the fact that he would sign a consent that Loren will

send to him tomorrow extending the mandatory date, so I'm just going to put that on the record that the applicant will agree to extend the mandatory date for an additional 30 days.

MR. PRESSLER: That's correct.

THE CHAIRMAN: Thank you.

MR. SACHS: All right, and I guess, you know, I guess the applicant should be ready to proceed quickly. So, Loren, is there -- can we put them on for the 24th?

MS. MORACE: 110 Tices is supposed to be on for that evening.

MR. SACHS: Right.

THE CHAIRMAN: That's going to monopolize the evening I think.

MR. SACHS: Yeah. I don't know what the story is with 110 Tices yet because from what I gather, I don't think they've submitted anything yet, and I think they have to get it in by Friday. You know what we can do, Mr. Chairman, we can list this on for June 24. If to some reason 110 Tices is going to monopolize, then we can carry it again, but if not, at least we can have the meeting that evening.

THE CHAIRMAN: That's fine. Is that all right with you, Mr. Pressler, and your client?

MR. PRESSLER: Absolutely fine.

THE CHAIRMAN: Okay. Great. Loren --

MR. SACHS: Marc, are you -- I'm sorry.

MR. LEBER: No, I already started work on the plans, and I will have them in this week.

MR. SACHS: Okay. Great. Great.

THE CHAIRMAN: Good. Thank you, Marc. Loren, has any member of the public called in?

MS. MORACE: The lines are open, so I'll let you know if anybody calls. Give them a couple minutes.

THE CHAIRMAN: Okay. We will do that. Is -- yes.

MR. BRAVMAN: One question. I'm sorry.

THE CHAIRMAN: Yeah, no problem.

MR. BRAVMAN: Larry, I just wanted to confirm, Larry. I know you did the proof of service -- the affidavit of service and proof of publication. The staff memo indicates back from February taxes are delinquent. Has that been updated? I guess Mr. Pressler should look into that and make sure it's (audio interruption)

MR. SACHS: Well, yeah, he can make

sure.

MS. MORACE: The taxes, yeah, they still are delinquent.

MR. SACHS: All right, so --

MR. PRESSLER: Before the hearing, I'll make sure that they're current.

MR. SACHS: As long as they're current, exactly.

MR. BRAVMAN: Good thing we're adjourned.

THE CHAIRMAN: That's true.

MR. SACHS: Good point.

THE CHAIRMAN: That's true. All right. Everyone is well I assume and --

MS. MCGURK: Chairman.

THE CHAIRMAN: Yes, sure, Colleen.

MS. MCGURK: Speaking of 110 Tices, they did call and say they're going to get revised plans in at the very last second on Friday, so I reached out to John Kriskowski at CME, and he feels that he might not be able to do a complete memo if there's significant changes.

THE CHAIRMAN: Okay.

MS. MCGURK: Planning might also have the same issues. So you're aware.

THE CHAIRMAN: Yeah, and that would be fine. Larry I think made a very good suggestion. If 110 isn't ready to move forward, then we can slide this application in. Hopefully it will be reviewed by then. So we'll either do that, or, you know, maybe there will be no business to come before us, but we want to give 110 Tices the thorough review that it deserves. Significant application in our redevelopment plan. Right, Councilwoman? I see you got a big smile on your face.

MR. SACHS: Anyone call in?

THE CHAIRMAN: Loren, anyone call?

MS. MORACE: No calls.

THE CHAIRMAN: That's enough filibustering from the chairman this evening, so any other business to come before us by any staff member or board member?

MR. KIPP: Chairman, I just want to add that with the governor relaxing some of the laws, we're looking -- or some of his orders, we're looking at potentially sites that we could have an in-person meeting. That doesn't mean that, you know --

THE CHAIRMAN: Wonderful.

MR. KIPP: -- it will be possible, but

we're just evaluating that right now.

THE CHAIRMAN: That's great. That's great. Well, everyone, please be safe. Next time you see me, I will have a haircut.

MR. SACHS: Me, too.

MS. SULLIVAN: If you can get an appointment.

THE CHAIRMAN: Before we adjourn, I just have a very quick haircut story. The guy who cuts my hair, Mario, owns His & Her Preference on Route 18, which is on the opposite side of Route 18 from Brunswick Square Mall. He has been cutting my hair since I was in the 8th grade with the exception of when I went away to college, and I talked to him today, and this is the long -- except when I was away at school, this was the longest we have gone since 1970 for seeing each other. So I get a giant kick out of that, that he has been cutting my hair since I was in the 8th grade.

MR. SACHS: Shawn, your hair is just a little bit shy of what it was in the 1970's when you had that long hair.

THE CHAIRMAN: Not only the hair but the color, but that's all right. It's still pretty well represented.

MR. SACHS: You'll get that pony tail. If you don't get it cut, you're going to have a pony tail soon.

THE CHAIRMAN: Exactly. On that note, everybody please be safe. We'll see each other soon. Do we have a motion to adjourn?

A BOARD MEMBER: Motion to adjourn.

THE CHAIRMAN: All right. We're out of here, gang.

MR. SACHS: Good night, everyone. Be well.