

Chairman McGroarty called the regular meeting of April 10, 2006 of the Washington Township Planning Board to order at 7:35 p.m.

MEMBERS PRESENT

CLASS IV: Mark Bauerlein, Kathleen McGroarty, Howard Popper, Geoffrey B. Price
ALTERNATES: Sam Akin, Lou Mont
CLASS I: Kim Ball Kaiser
CLASS II: Eric Trevena
CLASS III:
OTHERS ABSENT: DiSalvo, Leavens, Nedd
STAFF PRESENT: Clerk Kesper, Engineer Denzler, Planner Banisch, Attorney Cofoni

Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 17, 2006 and posted on the Bulletin Board on the same date. Seven notices were mailed, as there were five requests.

****NO NEW CASES OR WITNESSES SHALL BE HEARD SUBSEQUENT TO 10:30 PM****

Pledge of Allegiance

MINUTES

1. Minutes from the March 22, 2006 Regular Meeting

Ms. Kaiser made a motion to approve the minutes, seconded by Mr. Price. Minor changes were made; all were in favor and the motion carried.

RESOLUTIONS

06-14 Rice – Block 59, Lot 3.08 and 3.09 – Wolfe Run Court – Approval of Request for lot line adjustment

The resolution was reviewed.

Ms. Kaiser made a motion to approve resolution 06-14, seconded by Mr. Bauerlein. A roll call vote was taken:

Ayes: Eligible: Bauerlein, Kaiser, McGroarty, Popper, Price, Trevena, Akin
Nays: None Abstentions: Mont Ineligible: Nedd
Absent: DiSalvo, Leavens

The meeting was opened to the public for items not on the agenda. There were no questions or comments and the meeting was closed to the public for questions or comments not on the agenda.

CLOSED SESSION

1. Closed session - Anticipated litigation

Ms. Kaiser made a motion to go into closed session, seconded by Mr. Bauerlein. A voice vote was taken; all were in favor and the meeting was closed to the public at 7:40 p.m.

Ms. Kaiser made a motion to go back into open session, seconded by Mr. Bauerlein. A voice vote was taken; all were in favor and the meeting was opened to the public at 8:06.

Ms. McGroarty informed the public that during the closed session the Board discussed anticipated litigation.

DECISIONS ON COMPLETENESS

1. Estates of Long Valley – Section II–Block 18, Lots 44, and 18.01, Lot 1-
Bartley Road – R/5 Zone, 88.4 Acres - Request for Final Subdivision
Approval of 12 Lots

Joel Kobert, Applicant's Attorney

Mr. Price stepped down from the application due to a conflict of interest.

The file was reviewed for completeness.

Mr. Hall reviewed his letter and stated that the administrative items were completed. He reviewed the outstanding plat issues and that they that they were not major issues and he did not object to the application being deemed complete.

Ms. Kaiser made a motion to deem the application complete, seconded by Mr. Popper. A voice vote was taken; all were in favor and the motion carried

PUBLIC HEARING/APPLICATIONS

1. Claremont Village – Block 18, Lot 18.02 – East Mill Road - Waiver of Site Plan for Child Care Center

Amy Rodriguez, Applicant
Stephanie Gonzalez, Applicant's Director
Brian Silbert, Applicant's Realtor
Steve Scietta, Landlord

Ms. Kaiser and Mr. Akin stepped down due to a conflict of interest as members of the WTMUA.

Ms. Rodriguez distributed a copy of the shopping center site plan showing the location of the daycare center and stated that she was seeking approval for outside play, which is required by the state. She pointed out the area of the playground and that it would be surrounded by a 4' high, gated fence. She explained the playground equipment. She stated that there would be 4 dedicated parking spaces for drop off and pick up of the children. She answered the board that the highest playground equipment would be the climbing piece would be 35" tall. She stated that the playground would not interfere with the other tenants and that the children would never be unattended.

Ms. Rodriguez answered Mr. Hall the spaces chosen are in front of the day care and in consideration of the other tenants and handicapping. The vinyl fence would be brown to match the ground cover and be small links that would not allow the children to climb it.

Mr. Banisch recommended brown fencing.

Mr. Hall answered Mr. Price that the sidewalk is against the building and the playground is beyond the sidewalk.

Ms. Rodriguez answered the board that there is room beyond the playground to have access behind it and that the playground fence would not block the sidewalk

Mr. Scietta stated that there is no driveway in the back of the building.

Ms. Gonzalez answered Mr. Popper that an adult would monitor the playground at all times children were present.

Ms. Rodriguez stated that the playground and daycare has been approved by the state. There will be five full time teachers and at least one office employee and two aides.

Mr. Silbert stated that signs would be used to dedicate the parking spaces.

Ms. Rodriguez stated that the property where the playground is flat and that no grading is proposed.

Mr. Scietta answered the board that a patio would be used if they get a restaurant lease and it was his opinion that the playground would not impact other tenants.

Mr. Price made a motion to grant the waiver of site plan as presented this evening. Seconded by Mr. Trevena. A voice vote was taken; all were in favor and the motion carried.

2. Elegant Homes – Block 42, Lot 11 – Hacklebarney Road – R/5 Zone, 66.8 acres – Request for Two Lot Minor Subdivision – Deemed Complete February 22, 2006 – Previously Heard February 22, 2006 – Public Hearing Continued – Expires April 30, 2006

Joseph Murray, Applicant's Attorney
Jeremy Lange, Applicant's Engineer

Mr. Murray stated that the outstanding question from the last hearing was the amount of unrestricted land between Hacklebarney Road and the conservation easement. The property is 65 acres divided into two lots with frontage on Hacklebarney Road. Total easement area exceeds 1million square feet. It is his client's position that they are not required to give easements over the wetlands or critical areas or supply equestrian train across property to the township without compensation.

Mr. Lange stated that the land area around the homes and between the road and the first conservation easement is a triangular shaped 5.8 acres. He referred to the February 17th letter from Mr. Hall, February 21st from Mr. Banisch and January 13th from Dr. Keller.

Mr. Lange referred to Dr. Keller's January 13th letter and they have no objections to changing the type of tree and vegetation along Hacklebarney as requested.

Mr. Lange reviewed Mr. Hall's letter of February 17, 2006. He concurred that if a conservation easement were granted the applicant would correct the set back so that it did not extend into the conservation easement. The applicant would comply with item C regarding shade trees and item D and will supply at the time of building plan individual lot grading plans. Regarding item E, shared driveways, it was his opinion that tree removal has been minimized by the placement of the homes on the lots. He explained that a shared driveway would make the homes s close together which was not appropriate for this area and the size of the lots. He stated that the applicant prefers the single driveway as proposed by the applicant. He answered the board that if the houses are not

moved close together there would be no savings. He stated that the applicant has two approved driveway permits.

Mr. Hall stated that it was the boards practice to have common driveways and he enumerated the latest subdivisions that the board has approved with shared driveways. He stated that it would reduce land disturbance, grading and impervious coverage. He acknowledged the savings would be minimal but there would be savings.

Mr. Banisch concurred with Mr. Hall.

Mr. Hall answered the board that the driveway permits were issued by another consultant for the township and that he must assume they have safe driveway distance, but one driveway is always safer than two.

Mr. Lange pointed out other residential uses in the area and noted that the shared driveways are not side-by-side lots. He stated that the proposed distance between driveways is approximately 290'. The area of disturbance calculations are for lot A- 2,475 sf and B, 2,474 sf. Of the 68.8 acres the area of disturbance for both lots is less than an acre. He stated that it was his opinion that the house separate shown is more consistent with the zone than if the applicant used a common driveway.

Dr. Keller stated that from his environmental viewpoint the reduction gained is so small as to be non-measurable environmentally.

The Board concurred with Dr. Keller and agreed to allow two separate driveways.

Mr. Lange continued the review of Mr. Hall's letter and stated that the applicant would comply with items F and G. Regarding item H, soil disturbance, there will be cut or fills and no import or export of soil. He did not have the cut fill calculations but would supply that information with the individual grading plans. He answered Mr. Hall that there would be no import or export of soil over 100 cubic yards.

Mr. Hall informed the applicant that if no import or export of soil becomes a condition of approval and more than 100 cubic yards is moved on or off site a new public hearing for soil disturbance would be required.

Mr. Lange referred to item I of Mr. Hall's letter and stated that the lot is 276.55' wide. Regarding Item J, 30 scale lot grading plans would be provided.

Dr. Keller stated that regarding item K of Mr. Hall's letter, endangered species, he did not see the need for additional easements.

Mr. Lange stated that he had no problems with Mr. Banisch's letter except that the applicant was not going to comply with the shared driveway request.

Dr. Keller stated that with regard to conservation easements it was his opinion that the stream corridor ordinance had been interpreted incorrectly and offered a history of the stream corridor ordinance and associated definitions. He stated that this ordinance was in development before the state regulations and that it was revised to comply with the state 300' buffer requirements. He stated that page 9 of the plans shows the township 300' buffer extending beyond the highlands buffer. He explained that after seeing that comments of Mr. Hall and Mr. Banisch he conferred with them and it was concluded that it was never the intent of the ordinance to go beyond the 300' state buffer and the intent to protect the stream with a 300' buffer. He also explained that it was the Board's staff's opinion that the highlands regulations do not apply and it is not the Township's intent to exceed state requirements and what should apply is 300' stream corridor buffer based on the states' stream encroachment permit issued previously to the applicant.

Mr. Banisch stated that Dr. Keller comments accurately reflect his opinions.

Mr. Lange stated that the 150' wetland buffer goes beyond the 300' stream corridor ordinance.

The board and the applicant looked at sheets 7, 8 and 9 of the plans.

Dr. Keller explained for the board that the wetlands buffer extends beyond the 300' category 1 stream buffer on the north side of the stream and the wetlands buffer would apply. On the south side of the stream the Category 1 300' stream buffer applies.

Mr. Lange concurred with Dr. Keller.

Mr. Lange stated that based on the ordinance interpretations discussed this evening the new conservation easement requirement would get smaller.

Mr. Murray stated that his interpretation of the function of conservation easements is to limit activities in the environmentally sensitive areas. All the conservation easement areas are now restricted by state regulations and it was his opinion that a conservation easement superimposed over the state regulations and the difference between the state and local easements would be minimums as the overall intent is the same. He agreed an applicant could seek relief from the state but if a conservation easement was granted the grantee would have to grant relief.

Mr. Banisch stated that the Township conservations easements are physically marked by easement markers, which allows for better management of the conservation easements.

Mr. Murray stated that the DEP could be alerted at times of violations.

Ms. Cofoni answered Ms. Kaiser that when the township owns a conservation easement and relief is required the property owners recourse is to go before the Township Committee if it changed the conditions of approvals.

Ms. Kaiser informed the applicant that the Township has granted exceptions to conservation easements. She noted that the conservation markers help the homeowner avoid DEP violations.

Ms. Cofoni answered Mr. Murray that the Township Attorney drafts conservation easements but to her knowledge typically there is no provision in the easement on procedures to modify.

Mr. Murray stated his client would not give any conservation or trail easements because it was his opinion that the conservation easement does not provide further protection. He stated that if the Township wants easements the Township should provide compensation to the applicant.

Mr. Akin concurred with Mr. Murray.

Mr. Banisch explained the Board's practice on equestrian easements and that this would be a connection to the adjacent property.

The board discussed the equestrian easements and concluded that they did not see the need for the equestrian easement as it dead-ends on this property.

Mr. Price summarized that the easements the board is requesting are the same as the required C-1 or wetlands and the exceptional wetland buffers required by the state and the board was not asking for anything more.

Ms. McGroarty answered Mr. Murray that if the state regulations changed they could request a change in the easement with the Township Committee.

Mr. Murray answered Mr. Trevena that his client is being aggrieved by the request for Township conservation easements because a right is being taken away from the applicant because it is another layer of restriction over the state regulations and if the board wanted this then compensation must be paid.

Ms. Cofoni stated that the easements being requested are not conservation for vistas as suggested by Mr. Murray. She further stated that there are many reasons for the public good for easements and that Mr. Murray's has just offered his opinion on easements.

Dr. Keller stated that the Township had stream corridor protection even before the state.

Mr. Banisch stated that the Planning Board's charge under the MLUL is to protect the Township.

The board took a recess to give the applicant time to review the changes to the plan as discussed this evening.

Mr. Murray informed the board that after conferring with his client during the recess his client does not wish to give any conservation easements to the Township.

Mr. Popper made a motion to request the board attorney draft a resolution of approval of the two lot minor subdivision as presented and discussed tonight with the following conditions: separate driveway; shade trees as required by the Shade Tree committee; grading plans prior to building permit; Board of Health approval; the reduced conservation easements to the Township as discussed, not to exceed state regulations; eliminating the equestrian easement; the requirement that the note on the plans regarding compensation be removed; that the area of impervious coverage be limited to ¼ acre and 1 acre of disturbance and inspection by the Township Engineer that these limits have been adhered too. Seconded by Mr. Trevena. A voice vote was taken Mr. Akin was opposed; all others were in favor and the motion passed

The meeting was opened to the public for questions and statements on the Elegant Homes application. There was no public present and the meeting was closed to the public for questions and statements.

Eligible: Bauerlein, Kaiser, McGroarty, Price, Trevena, Akin, Mont

Absent 2/22: Popper, DiSalvo

Absent 4/10: DiSalvo, Leavens, Nedd

3. Black Oak Subdivision - Four Bridges Phase II – (Hays) –Block 18, Lots 8, 21 & 21.04 - Bartley Road – R/5 Zone, 181.795 Acres - Request for Final Subdivision Approval of 12 Lots – Deemed Complete March 13, 2006 – Expires April 27, 2006 – Public Hearing

Joel Kobert, Applicant's Attorney

Robert Brightly, Applicant's Engineer

Mr. Price stepped down on this and the following applications due to a conflict of interest and left the meeting.

Mr. Kobert stated that he believes the applicant has satisfied the April 7th correspondence from Mr. Hall, except for condition 11 regarding the mid – block crossing. He stated that there is a third scenario or alternative which is that the golf course applicant could come in with an alternative design for the golf cart crossing if it is not approved by the state.

Mr. Hall concurred with Mr. Kobert on this issue.

Attorney Cofoni swore in Robert Brightly.

Mr. Brightly stated that he had no objections to any of the items in Mr. Hall's April 7th letter with the exception noted by Mr. Kobert regarding the mid-block crossing.

Mr. Kobert stated that there would be cross easements for the maintenance of the detention basins as noted in Mr. Hall's letter, item C.

Mr. Hall referred to item F of his letter and that as a result of the final plat the open space will become township open space if the golf course is not built by July 2014.

Mr. Kobert stated that if this were part of the preliminary resolution then he would agree to it as a condition of final.

Mr. Banisch stated that it was his opinion that the Board should be silent on this issue because of the number of governmental hurdles that this golf course has faced and will continue to face.

Mr. Kobert concurred that the applicant has been facing this issue.

Mr. Banisch explained how this condition came about during the preliminary hearings.

Ms. McGroarty stated that the Board wants the golf course and are not waiting for it to turn into open space.

The board discussed entertaining extending this time now or in the future.

Ms. McGroarty stated that the board concluded that they would not make condition F of Mr. Hall's letter regarding the open space a deed notification. She noted that the Board would entertain an extension of time on the property reverting to open space at a later date.

Mr. Hall stated that his letter of January 20th has been complied with. Regarding Dr. Oweis report, this does not relate to the 12 building lots. He stated that the applicant has agreed to show the perc tests on the construction plans.

Mr. Brightly informed the board that MCSCD might require further changes to the final construction plans.

Ms. Kaiser made a motion to direct the board attorney to draw up a resolution of final approval based on the discussion this evening. Seconded by Mr. Mont. A voice vote was taken; all were in favor and the motion carried.

Eligible: Bauerlein, DiSalvo, Kaiser, Leavens, McGroarty, Popper, Trevena, Akin, Mont
Absent: DiSalvo, Leavens, Price, Nedd

4. Estates of Long Valley – Section II-Block 18, Lots 44, and 18.01, Lot 1-
Bartley Road – R/5 Zone, 88.4 Acres - Request for Final Subdivision
Approval of 12 Lots - Public Hearing -Deemed complete April 10, 2006

Joel Kobert, Applicant's Engineer
Robert Miller, Applicant

Mr. Kobert stated that the applicant has no comments on Mr. Hall's letter of April 7th.

Attorney Cofoni swore in Robert Miller.

Mr. Miller stated that Chancellor Way is under development and a developer's agreement is in place. The trees have been cleared within the right of way and lots. He acknowledged that before building permits could be issued the curbing and base course of pavement must be installed. He stated that the required cash bonds had been posted.

Mr. Kobert stated that all requested changes to the plat would be made.

Mr. Hall concurred that the right of way has been cleared and that is the first step in construction of a roadway.

Mr. Kobert read the wording of the stipulation of settlement page 2, paragraph 3 regarding the roadway construction of this application and section III.

Ms. Kaiser made a motion to authorize the board attorney to draw up a resolution of approval of this final subdivision based on discussions this evening, seconded by Mr. Popper. A voice vote was taken; all were in favor and motion carried

Eligible: Bauerlein, DiSalvo, Kaiser, Leavens, McGroarty, Popper, Trevena, Akin,
Mont Absent: DiSalvo, Leavens, Nedd, Price

5. Estates at Long Valley – Block 18.01, Lot 5– Ridgeline Drive – Request for
Soil Disturbance – Export of Soil

Joel Kobert,
Robert Miller, Applicant

Attorney Cofoni swore in Robert Miller.

Mr. Miller stated that the only concern they had with Mr. Hall's correspondence is the hours of operation. He explained that their construction contract is an eight-hour day, which Mr. Hall's requested hours would, did not allow.

Mr. Trevena did not see a problem with allowing the soil movement between 8:30 a.m. and 4:00 p.m.

Mr. Miller answered the board that most of the soil movement will take place in June and July.

Mr. Hall agreed to the hours of operation suggested by Mr. Trevena.

Mr. Miller referred to Item L of Mr. Hall's correspondence regarding no soil movement within 48 hours of a rain/snow event. He stated he understood the reasons for this requirement but stated that the trucks would be loading and unloading on pavement and would therefore not be tracking mud. He asked that this issue be dealt with on an inspection basis.

Mr. Hall agreed as long as all loading and unloading was on paved area.

Mr. Kobert noted that Mr. Norton's letter of April 10, 2006 approved the soil disturbance application.

The meeting was opened to the public for questions and comments on this application. There were no questions or comments and the meeting was closed to the public for questions and comments on this application.

Mr. Trevena made a motion to direct the board attorney to draw up a resolution of approval of the soil disturbance application presented, seconded by Mr. Bauerlein. A voice vote was taken; all were in favor and the motion carried.

Eligible: Bauerlein, DiSalvo, Kaiser, Leavens, McGroarty, Popper, Trevena, Akin, Mont
Absent: DiSalvo, Leavens, Nedd, Price

6. Regency at Long Valley I - Block 28, Lots 46 & 47 – Request for Soil Disturbance Permit for Import of soil

Joel Kobert, Applicant's Attorney
Robert Miller, Applicant
Barry Skoultchi, Applicant's

Ms. Kaiser and Mr. Akin stepped down from the application due to a conflict of interest.

Attorney Cofoni swore in Robert Miller and Barry Skoultchi.

Mr. Miller referred to Mr. Hall's letter and wanted confirmation that soil could come from sections I, II or III.

Mr. Hall stated that this application was just for fill to be moved and the topsoil was to stay at the Estates of Long Valley

Mr. Miller stated that the imported soil would not be used under any roads, sidewalks or dwellings.

Mr. Hall agreed but wanted a certification from the applicant's geo-tech that the soil was not used under any roads, sidewalks or dwellings.

Mr. Kobert stated that they objected to item 2 in Mr. Norton's April 10th letter and item Q of Mr. Hall's April 7th letter regarding DEP Memorandum of Agreement.

Mr. Skoultchi stated that his firm specializes in contaminated brownfield sites. He presented his qualifications to the board.

Mr. Skoultchi explained that his involvement with the project started with the initial phases of the environmental assessment and that he had look at information as far back as the 1940's. As a result of the review his firm identified several areas of environmental concerns and that such issues are not uncommon, and they are underground storage tanks. The applicant had applied for a Memorandum of Agreement with the DEP, subsequently they met with DEP, Senate and Department of Treasury and entered into an agreement with the State of New Jersey for Brownfield rehabilitation. The MOA was filed and now they are at the point that they can start doing the remediation work. He stated that this was a voluntary agreement; non-voluntary is the requirement to remove the underground tanks for which they are getting the DEP permits. Under the MOA they can proceed with the removal of contaminated of soil once they have approval of the DEP they can remove the tanks. He explained the procedure under the terms of the MOA that once work has been done reports are issued to the DEP for review and approval. The ground water will have on-going monitoring. He stated that the "no further action" letter is issued by the DEP much later after monitoring wells are installed. He stated that there may be a requirement to monitor the wells for up to two years. Letter of no further action will not be issued until the end of the monitoring period. He explained that rehabilitation of Brownfield sites with contamination are being done throughout the state and that typically the remediation is concurrent with construction and monitoring goes on past construction. It was his opinion that Certificate of Occupancies may be issued prior to the no further action letter being issued. He answered the board that monitoring continues for 2 rounds of sample events, which is quarterly, or two years. If they get contaminates after two years it just may take longer to clean the groundwater after the source is removed. He answered Dr. Keller that if the ground water does not respond there is non-soil excavation remediation. The groundwater at this site indicates contamination is at 15' - 20'. He answered the Board that this site will be served by public water and sewer systems and that there is no possibility of public contamination.

Mr. Glenn answered the Board that Toll Brothers hopes to have the first Certificate of Occupancy issued within a year.

Mr. Skoultchi stated that the monitoring wells will go in this June and they would have only three quarterly reports prior to the first CO. He stated that he

has never seen the kind of condition regarding building permits or certificate of Occupancies for a Brownfield site as requested in Mr. Norton's letter. It was his opinion that this was not a heavily contaminated site. He reiterated that the monitoring wells requirement is common.

Mr. Kobert gave a copy of the MOA application to Ms. Cofoni.

The board concluded that this issue is not an issue of the soil disturbance permit requested this evening.

Mr. Hall answered Mr. Kobert that his comment regarding the MCSCD approval was for the applicant's information.

Mr. Kobert stated he would work on clarifying Mr. Norton's letter and that he had no other issues with Mr. Hall's or Mr. Norton's reports.

The meeting was opened to the public for questions and comments on this application. There were no questions or comments and the meeting was closed to the public for questions and comments on this application.

Ms. McGroarty noted for the record Mr. Messler's letter regarding his objection to the application and flooding issues in the area.

Mr. Bauerlein stated that as to the issue of flooding in this area, Township volunteers removed last week 4 tones of debris from the brook above this property.

Mr. Kobert stated that they would reply to Mr. Messler's letter.

Mr. Trevena made a motion to authorize the board attorney to draw up a resolution of approval for soil disturbance/import application as presented this evening, seconded by Mr. Popper. A voice vote was taken; all were in favor and the motion carried.

Eligible: Bauerlein, McGroarty, Popper, Trevena, Mont

Absent: DiSalvo, Leavens, Nedd Ineligible: Price, Kaiser, Akin

***DISCUSSION /
CORRESPONDENCE***

1. Vouchers

Ms. Kaiser made a motion to approve the vouchers reviewed by the Chairman and Vice Chairman and send same on for payment. Seconded by Mr. Bauerlein. A voice vote was taken; all were in favor and the motion carried.

April 10, 2006

2. RO-04-06 – Amendment to Growth

Ms. Kaiser made a motion that this ordinance is not inconsistent with the master plan and should be adopted by the Township Committee. Seconded by Mr. Akin. A voice vote was taken; all were in favor and the motion carried.

3. ANJEC Seminar on TDR – April 29, 2006 –

Mr. Banisch encouraged the board to attend.

4. Farmland Questionnaire

Noted for the record.

5. Golf Course Letter

Mr. Banisch was asked to send this correspondence as soon as possible.

6. Agriculture Industry

Mr. Akin stated that Morris County will hold a seminar with Rutgers at the Washington Township Municipal Building on April 20th.

Mr. Banisch encouraged the board to attend and will e-mail information.

7. Agenda

The April 18th work session was discussed. Mr. Trevena made a motion to cancel the April 18, 2006 work session. Seconded by Mr. Popper. A voice vote was taken; all were in favor and the motion carried.

8. Scudese vs. Washington Township Litigation

Ms. Cofoni stated that the court has awarded Washington Township \$2500 for court costs reimbursement in connection with the appeal.

Ms. Kaiser made a motion to adjourn, seconded by Mr. Bauerlein. A voice vote was taken and the meeting was adjourned at 11:15 p.m.

Virginia R. Kesper, Clerk