

Township of Nutley
PLANNING BOARD
Special Meeting
Meeting Minutes
Wednesday, April 14, 2010
7:00 P.M.

A special meeting of the Planning Board of the Township of Nutley was held in the 3rd floor Commission Chambers and called to order at 7:13 pm. Adequate notification was published in the official newspapers of the Township of Nutley.

ROLLCALL:

Ms. Tangorra – Vice Chairperson	- Present
Mrs. Eisenfelder – Secretary	- Present
Mr. Greengrove	- Present
Mr. Arcuti	- Present
Mr. Riccio	- Absent/Excused
Mrs. Craine	- Present
Mr. Ritacco	- Absent/Excused
Mr. Barry	- Present
Commissioner Scarpelli	- Present
Mayor Cocchiola	- Absent/Excused
Mr. McGovern - Chairman	- Present
Mr. Kozyra, Esq.	- Present

Mr. McGovern asked Mr. Arcuti to sit for Mr. Riccio.

OPEN PUBLIC MEETING STATEMENT:

The Notice of Special Public Meeting of the Nutley Planning Board was read by Chairman McGovern.

MINUTES:

None.

BILLS AND COMMUNICATIONS:

None.

OLD BUSINESS:

None.

NEW BUSINESS:

Mr. Kozyra stated that Mr. Greengrove and Mr. Arcuti listened to the available audio with respect to this meeting, and had provided certifications to that effect, making them both qualified to participate in tonight's presentation.

Mr. Kozyra noted that the only item on the Agenda was the continuation of the 65 River Road application and that this was a Special Meeting at the request of the applicant. Mr. Gaccione, who is representing the applicant this evening, will be presenting

additional information that he wants the Board to consider, and he will make some remarks of his own.

Mr. Robert Gaccione, 544 Union Avenue, Belleville, NJ, attorney for the applicant, was sworn. Mr. Gaccione recalled his first witness, Mr. Chuck Thomas, previously sworn and under oath, to review open issues from the last meeting. Mr. Thomas stated that as a result of what occurred at the last hearing, he submitted revised plans to address the issues and has reviewed the changes to the plans resulting from that meeting. He stated that there would be a change made to the Department of Public Works' fencing from 8 feet to 12 feet. He said there would also be changes made to the tot lot. Mr. Thomas noted that the area adjacent to Building 4 would remain open for unimpeded access to the monitoring wells by state and local workers. He also said that a rodent control program would be implemented for the dumpster areas and with respect to the landscaping plan, a weed eradication program would be implemented and coordinated with the Forester.

Mr. Gaccione asked Mr. Thomas speak about the status of the tot lot. Mr. Thomas stated that it was not completed and the equipment had not yet been purchased.

Commissioner Scarpelli asked Mr. Thomas if the fence would be soundproof. Mr. Thomas explained that it was a board-on-board fence but wasn't a perfectly soundproofed barrier. He also said that it would help reduce the noise and would go slightly beyond the property line. Mr. Kozyra noted that in his discussions with the township engineer, the fence was to be double-sided with soundproofing and would run the entire length of the recycling yard on the west side of the building. The fence would also be tested post-construction to the reasonable satisfaction of the township engineer as to the soundproofing. Mr. Kozyra said that the Forester is to have input with regard to the landscaping and trees. He is to examine the buffer and it would have to be to his satisfaction.

Mr. Barry's question was inaudible.

Commissioner Scarpelli wanted to know if anything was done about the walls being blended together, which was suggested by Mr. Hay at the last meeting. Mr. Thomas said that the client was going to meet with professionals to decide on some kind of facing to blend the walls together.

Mr. Gaccione called his next witness, Mr. Greg Rogerson, 171 State Route 173, Suite 201, Asbury, New Jersey, and he was sworn. Mr. Rogerson stated that he is a principal of J.G. Petrucci Co., Inc. Mr. Rogerson said that he was willing to discontinue the construction of the tot lot and turn it into landscaping. He also stated that he was aware that Building 4 was closer to the town-owned property than proposed and it was located in a place different from what was required by the original approval. Mr. Rogerson stated that he understood the municipality could fine his company for the placement of the building at its current location contrary to the site plan approved location. Mr. Rogerson understood that without a tot lot on the property, there may be residents that will be using recreation facilities in the community. Mr. Rogerson agreed to provide the monetary consideration for recreational funds if imposed.

Mr. Arcuti asked Mr. Rogerson if the potential tenants would be informed of the condition of the property with respect to the DEP. Mr. Rogerson agreed that there would be representation in the lease. Mr. Rogerson confirmed that if the tot lot is taken out, there would be some kind of landscaping put in its place. Mr. Arcuti asked Mr. Rogerson if he was present at the preconstruction meeting and if he reviewed the prior testimony regarding the moving of Building 4.

Mr. McGovern said that it was his understanding that the applicant agreed with a document stating facts and findings with respect to some of the problems that have arisen due to the location of Building 4 and has agreed with the Township to the payment of certain penalties as a result of that action. Those stipulations have been set forth in a stipulation of settlement that the parties will enter into. Mr. Gaccione said that he didn't believe it was a stipulation of settlement but rather a Resolution prepared by Mr. Kozyra that has been agreed to by his client. With respect to the fines, Mr. Gaccione stated that his client would provide the funds after the hearing, should it be approved.

Mr. Kozyra stated that the proposed Resolution contains the stipulation that the applicant, Mr. Rogerson, has agreed to in order to remediate the violations of the site plan resolution as a condition of this amendment and that he agrees to pay the Township \$120,000 as a satisfaction of whatever fines, penalties, and sanctions the town could have assessed with respect to the violations. Additionally, it includes the permissive encroachment on the Township's rear yard setback and the deviation from the original height requirement.

After assessment of all the facts, Mr. Rogerson stated that he has accepted the proposal as a fair and reasonable decision, in lieu of being assessed the penalties. Mr. Kozyra added that with respect to Building 4, if there is ever a calamity, natural disaster, fire, or storm that would require the building to be rebuilt by 50% or more, the permissive use would end and the applicant would be subject to the Township ordinances at that time. Mr. Rogerson said that he understood and agreed.

Mr. Barry asked Mr. Rogerson some questions about the moving of Building 4, most of which was inaudible. Mr. McGovern stated that he didn't think tonight's session should be about the rehashing of testimony as to what has happened. Mr. McGovern noted that Mr. Gaccione has presented 2 witnesses for the purpose of finalizing the testimony and suggested that the Board's questions be limited to the testimony being elicited this evening.

Mr. Gaccione noted that he had a difference of opinion with regard to some of the wording of the Resolution prepared by the Board counsel. He further stated that his client was not planning to challenge the Resolution, but if he had drafted it on behalf of his client, he would have used different wording in a number of places. He said his client was satisfied with the Resolution assuming the Board approves the amended site plan and the change in the variance, and that he receives his temporary Certificates of Occupancy.

There was no further discussion by the Board or any comments from the public. Mr. McGovern closed the public session.

Mr. Gaccione gave his summation. Mr. McGovern closed the testimony portion and opened the matter for discussion by the Board. There were no comments or discussion from the Board.

A motion to approve was made by Ms. Tangorra and seconded by Commissioner Scarpelli. All ayes on a roll call vote except for Mr. McGovern who abstained.

Mr. Kozyra circulated the proposed Resolution for signature. The Resolution was signed by the Board members.

MEETING OPEN TO PUBLIC

PUBLIC COMMENTS:

None.

COMMITTEE & SUBCOMMITTEE REPORTS:

None.

ADJOURNMENT:

A motion to adjourn was made by Mr. Greengrove and seconded by Mr. Arcuti. All ayes. The meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Linda Posternock

Linda Posternock
Recording Secretary