

MINUTES OF CLINTON TOWNSHIP BOARD OF ADJUSTMENT

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PUBLIC MEETING

December 10, 2001

*PRESENT:* John Matsen, Frank Senske, Ira Breines, Joe Arancio, Antje Doyle, Mark Ciarlariello, William Honachefsky, Jr., Sharon Stevens  
Professionals: Melanie Reese, Engineer; Michael Bolan, Planner; Jonathan E Drill, Attorney; Alice Oldford, Secretary.

*ABSENT:* Virginia Monsul-Barnes

*CALL TO ORDER*

Mr. Matsen called the meeting to order at 7:30 p.m.

*PUBLIC NOTICE*

This is a public meeting of the Zoning Board of the Township of Clinton, County of Hunterdon and State of New Jersey. Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that an Annual Notice was published in the Hunterdon County Democrat on January 11, 2001, and the notice of and agenda for this meeting was posted on the bulletin boards in the vestibule of the Municipal Building and outside the Planning and Zoning Office on the 2<sup>nd</sup> Floor of the building and faxed to the Hunterdon County Democrat, the Express Times, the Courier News, the Hunterdon Review, the Star Ledger and the North County Branch of the Hunterdon County Library the Friday prior to the meeting.

*MINUTES*

The minutes from the meeting of 11/26 were approved

*PUBLIC HEARINGS*

**LAW TRANSIT** – Continued hearing and consideration of proposed approval Resolution No. 2001-10

D(2) variance to expand a pre-existing non-conforming use with “c” variances, exceptions and preliminary and final site plan approval. Hearing commenced on 07/30/2001 at which time the Board directed its counsel to draft a proposed approval resolution with conditions. Hearing has been continued to consider the proposed resolution and formally vote on the application.

Donald W Morrow, Esq., introduced himself on behalf of the applicant.

Mr. Morrow reviewed the proposed resolution and concluded it was acceptable except for the provisions of paragraph 20.

Mr. Morrow opposed allowing additional testimony by Mr. Kingsley's environmental expert. He noted that the hearing process had extended for a number of months, at which time Mr. Kingsley had an opportunity to introduce testimony. Mr. Morrow contended that it is unreasonable to suggest testimony at this time. Mr. Morrow also pointed out that he and his client had taken the time to meet with the Board professionals and ascertained that the professionals had no problems with the site plan.

Jon Drill explained that the Board took a straw poll at the meeting of 11/26 and the Board determined that the hearing be continued for additional testimony.

Mr. Morrow contended that the public portion of the meeting was closed. He discussed the patent unfairness of allowing the applicant to submit last minute filings.

Mr. Drill explained that the only matter in dispute is condition #20. Mr. Kingsley appeared. Mr. Kingsley claimed that applicant had requested an expansion of the content of condition #20. Mr. Kingsley said he is seeking accountability. Mr. Kingsley was sworn. Mr. Kingsley called Robert Lippencott, Environmental Scientist, who was sworn and his credentials accepted. Mr. Lippencott's area of specialization is in environmental compliance for groundwater and hazardous materials handling.

Mr. Lippencott testified that his client asked that he review the site plan and apologized for the lateness of his findings. He explained that the Kingsley site is somewhat down gradient from the Laidlaw site.

Mr. Lippencott testified that he found that Federal regulations had not been incorporated in the terms of approval. He contended that these regulations are in place to prevent spills. He suggested that there are operational aspects that might not be initiated except via written requirements. Further, there is clean-up equipment that should be placed in case of a spill.

Mr. Lippencott contended that the regulations provide for SPCC in the case of storage of more than 1,000 gallons of oil products. He observed that applicability should be spelled out.

As to NJDEP permits, Lippencott testified that there was a relationship to SPCC. The State is delegated authority by the Federal government relating to New Jersey permits. Mr. Lippencott cited NJAC 7:14 re discharge permitting.

Mr. Lippencott summarized that the appropriate agencies should be queried as to jurisdiction rather than allowing applicant to make the determination unilaterally.

Mr. Lippencott clarified that a plan be maintained on the site for management of a spill. Further, he noted that the Environmental Protection Agency does not require that the plan be filed. The Board noted that the plan does not seem to be enforceable by EPA or the local zoning officer. Mr. Lippencott emphasized that personnel needed to be trained to implement the plan.

Mr. Ciarlariello noted that the County has a Hazardous Material team, which would be contacted in case of a spill. Clean-up cost is typically borne by the owner of the property where the spill originated.

Mr. Lippencott testified he had reviewed the design of the new tank and agreed that the likelihood of a spill is minimal. He said the most usual incidence of a tank spill would occur at the time of filling. Mr. Lippencott contended that over time very small spills, i.e., 1 or 2 gallons could create a build-up of pollution.

There was discussion as to regulatory compliance.

Mr. Lippencott testified that he was retained approximately 5 days prior to the November 26 hearing.

Mr. Morrow contended that applicant has complied with local, State and Federal regulations.

Board engineer, Melanie Reese, confirmed that the Board professionals had met with applicant's professionals. Further, she suggested that the environment is better protected with this plan than previously. Mr. Lippencott agreed that there is less environmental risk related to the current plan.

Mr. Lippencott did not do a site inspection but rather conducted a paper review. The issues focus on fuel spillage.

There being no further questions or testimony, the public hearing was closed.

Members of the Board concurred that the Board should not set precedent as to liability issues. Other members agreed that applicability be determined.

The Board polled itself as to removing condition #20 with 5 being in favor. Those opposed to removing #20 – 2.

Motion was made by Ira Breines and seconded by Antje Doyle to adopt Resolution No. 2001-10

Members in favor: Arancio, Breines, Ciarlariello, Doyle, Senske, Matsen

Members opposed: William Honachefsky, Jr.

Applicant, Laidlaw, has requested an extension of Resolution No. 2001-6 to continue use of the tank to coincide with condition #17, the time within which applicant must complete its improvements. The Board agreed to extend to 12/31/02.

Motion was made by Joe Arancio and seconded by John Matsen to grant the extension. Members in favor: Arancio, Breines, Ciarlariello, Doyle, Honachefsky, Senske, Matsen.

#### NEW BUSINESS

1. Exxon station at Payne Road.  
Bohler Engineering has asked for some changes based on the merger with Mobil as set forth in letter of 11/29/01. Ms. Reese suggested that the changes are not significant. She will prepare a letter documenting the changes proposed and approved.
2. Mr. Matsen recommended that the vouchers be approved for payment and the Board concurred unanimously.
3. Reorganization will occur on January 7. The calendar will be adopted at the time of reorganization.

#### ADJOURNED

The meeting was adjourned at 9:45 p.m.



