

CLINTON TOWNSHIP MAYOR & COUNCIL
AND THE PLANNING BOARD
MINUTES OF SPECIAL JOINT MEETING

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PUBLIC MEETING

DATE: February 24, 2010

PRESENT:

(Mayor & Council): Dawn Apgar, Peter Marra, Jim Imbriaco and Spencer Peck.

(Planning Board): John Higgins, Chris D'Alleinne, Michael Brady, Charles Howard, Phil Sumner, Dawn Apgar and Colleen Filak.

ABSENT:

(Mayor & Council): Kevin Cimei.

(Planning Board): Kevin Cimei, Sharon Simmons, John Sladicka and Sam Mardini.

PROFESSIONALS: Trishka Waterbury, Attorney, Marvin Joss, Administrator, Trisha Houck, Deputy Clerk, Jon Drill, Attorney, Michael Sullivan, Planner and Rebecca D'Alleinne, Administrator.

CALL TO ORDER

Council President Apgar called the meeting to order at 7:04PM.

Chairman Higgins called the meeting to order at 7:04PM.

PUBLIC NOTICE

Ms. Apgar and Mr. Higgins read the Open Public Meetings statements into the record.

PROPOSED SETTLEMENT AGREEMENT OF BRADLEY/LEMAD LITIGATION

Trishka Waterbury, Esq. introduced herself as the township attorney. She identified the parcels in question, Block 68, Lots 3 and 6. Michael Sullivan, township planner, displayed an aerial map that labeled the properties and pointed out the current status of the lots. Ms. Waterbury went through the chronology of the zoning changes. She reported that in 1980, there was a landscaping business on Lot 3. In 1983, the zoning was changed to residential and a lawsuit ensued. The litigation was settled by a consent order in 1999 and the zoning was then changed to OB1. She explained that in 2004, the Highlands Water Protection and Planning Act was adopted by the legislature, which placed both properties in the Preservation Area. The Planning Board's Re-examination Report in 2005 recommended that the properties should be zoned as residential and subsequently, under the 2006 Land Use Plan the parcels were rezoned as RC.

Ms. Waterbury reported that the current lawsuit had been filed August, 2006 claiming that the rezoning was arbitrary and capricious and, further, that it was in violation of the 1999 consent order. The Township attempted to purchase the property for open space, but funding was not available. She noted that in 2009, that the Township had made a motion in court to have the suit dismissed, but stated that the court did not agree with the township's position, and indicated that the township could request relief from the consent order. The trial began in August and during the case, the judge asked whether a settlement was possible. The Plaintiff made an offer for limited commercial development on Lot 3.

Ms. Waterbury explained that the Highlands exemption limited the building to within 125% of the existing footprint. The first provision on Lot 3 would be for a 10,000 square foot building, which was the maximum that the Highlands regulations would allow. The building must also be in the previously disturbed area and limited to 35 feet in height. The application would have to go through the Planning Board process and would be subject to site plan requirements. She noted that the application must comply with township zoning and Highlands regulations. The applicant must file the application within 5 years or the township may change the zoning. Ms. Waterbury commented that the agreement stipulated that challenges to the Preservation Area designation must be dropped. She explained that the parties must go back to trial if the settlement agreement was not approved tonight. She discussed potential outcomes of the litigation and what the judge might decide.

Michael Sullivan displayed exhibits showing the existing conditions. Peter Marra asked if the lawsuit was lost, what could be developed on the property. Permitted uses in the OB1 zones were listed by Michael Sullivan. The settlement agreement limits the applicant to an office building. Jon Drill indicated that the suit about the Preservation Area boundaries had already been withdrawn. The potential size of the building in the OB zone versus under the settlement proposal was discussed.

Council President Apgar opened the floor for public comments and questions.

PUBLIC COMMENT

William Honachefsky, Sr., Echo Lane, discussed his letter to the Council. He noted that in 2009, the township had spent a great deal of money and time to determine whether to opt in to the Highlands Master Plan. He stated that the RC zone designation had been determined by an extensive water study. He expressed the opinion that the proposed settlement agreement was out of context with township Master Plan, noting that there was no public water or sewer in the area. He commented that traffic would increase on Route 31 and recommended that the township should buy the property for open space.

Greg Nelson, 1 Cambridge Dr., stated that he represented the Sierra Club, and commented on development in the Highlands Preservation Area. He discussed the rush hour on Route 31 and expressed concern for the future of the township.

Elliot Ruga, 508 Main Street, Highlands Coalition, expressed the opinion that the Highlands area designation lines would not be changed and that the Act would not be overturned. He asked the township to wait to see whether the applicant received DEP approval before changing the zoning. Jon Drill explained the metes and bounds dispute.

Chris Leo, 18 Round Top Drive, discussed Lake Hopatcong and the development on the lake and commented that he loved Spruce Run Reservoir.

Mike Gronsky, High Bridge, stated that he was a former resident of Clinton Township, and expressed the opinion that the developer was telling the town what to do.

Tom Cobin, Charlestown Road, discussed a trail near Spruce Run Reservoir and stated that traffic was already congested on Route 31.

Steven Balzano, Clinton Township, stated that the Planning Board in 1983 had forethought in the zoning the property at the time for low density. He expressed the opinion that litigation begets litigation. He indicated that township's ability to determine the intensity of use was taken when Highlands Act was enacted. Mr. Balzano noted that the site was not in the wastewater service area and that the township could not enter into an agreement wherein there was an expectation that township would support sewer allotment. He discussed the pros and cons of continuing the suit. Mr. Balzano recommended rejection of the settlement agreement and that the township should take its chances in court.

Nick Corcodilos, Old Mountain Road, discussed sprawl and rationalization. He noted that an approval based on later approvals from state agencies made it easy for the developer. He suggested that the township should let the court determine the outcome pointing out that the Highlands Act had been supported through several legal attacks. Mr. Corcodilos commented on water quality and the value of Spruce Run Reservoir. He recommended that the township spend the money on legal fees to defend itself.

Eileen Sekach, High Bridge, noted that she was a photographer and asked that the Spruce Run Reservoir not be changed.

Council President Dawn Apgar closed the Public Comment period and asked for deliberations from the Council members.

Council President Apgar expressed the opinion that the proposed settlement agreement was not beneficial to the township, and moved that the agreement be rejected. Jim Imbriaco seconded the motion. Mr. Imbriaco stated that prior to the vote, that it was important to note that the agreement did not approve development of any kind. He indicated that there was no expectation of approval by the township if there were no approvals forthcoming from state agencies. Mr. Imbriaco stated that as a member of the Planning Board when the zoning had changed, that he felt an obligation to defend the zoning designations that he had helped to create. He expressed the opinion that the township should reject the proposed agreement and force the developer to present his case in court.

Peter Marra stated that there had been an active challenge to the Highlands boundary line designation and that now that there was currently less risk in pursuing the court case.

Spencer Peck discussed the reasons that Spruce Run Reservoir had been created and expressed the opinion that the State should have condemned and purchased all neighboring property to protect the groundwater. He stated that the Council must stop the legal bleeding of funds and should not continue the lawsuit. He indicated that the protection of the reservoir should have been the obligation of the state water authority, not that of the township. Mr. Peck commented that the proposed settlement agreement was not unreasonable.

Deputy Clerk Trisha Houck called the roll. Members in favor of rejecting the proposed settlement agreement: Apgar, Imbriaco and Marra. Against: Peck.

Planning Board Chairman Higgins commented that there was no need for a Board vote, as the Council had rejected the settlement agreement and thus, the matter was moot.

ADJOURNMENT

Chris D'Alleinne moved and Michael Brady seconded a motion to adjourn. The motion passed unanimously, and the meeting was adjourned at 8:24PM.

These minutes were approved by the Planning Board on April 5, 2010.

These minutes were approved by the Council on _____, 2010.

Rebecca E. D'Alleinne
Administrator