

Borough of West Paterson

Planning Board



Passaic County, NJ

5 Brophy Lane

West Paterson, NJ 07424

Office: (973) 345-8100 x209

Fax No.: (973) 345-3729

PLANNING BOARD MINUTES

March 8, 2010

Meeting called to order at 7:30 P.M. by Chairman Webb.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS PRESENT: TOM WEBB, COUNCILMAN DI DOMENICO, DORA DAVENPORT, RICHARD BERNSTEIN, CARLO RENNE, KEITH TANSKI, GARY HOLLOWAY, SHERRY VAN DYK (LEFT AT 9:30 P.M.), J. ROBERT KASSAI, MAYOR LEPORE (ARRIVED AT 8:13 P.M.), BILL KARP AND TONY RANDAZZO

ALSO PRESENT – JOSEPH WENZEL, BOARD ATTORNEY
DON NORBUT – BOARD ENGINEER
WOODNEY CHRISTOPHE – BOARD ENGINEER
KATHRYN GREGORY - BOARD PLANNER

FLAG SALUTE

A motion to approve the minutes of the February 8, 2010 meeting was made by Mr. Bernstein, second by Ms. Van Dyk and approved.

RESOLUTIONS

REQUEST TO EXTEND TIME FOR APPROVAL OF MINOR SUBDIVISION PURSUANT TO PERMIT EXTENSION ACT 2008 – V. & J. COLOMBO – 55 MERELINE AVE. – BLOCK 108 LOT 21-25 – Approved with conditions by a vote of 9-0.

Mr. Randazzo noted that the house is still standing and he was concerned.

David Amadio, attorney for applicant, stated on 2/22/10 the tenant in the house moved out and on 2/23/10 his client requested that PSE&G shut off the gas and electric and on 3/4/10 they called him back. Mr. Amadio noted that they have a new buyer for the lot and he was

present this evening. The machine is at the property and they are ready to demolish the house. Everything that is required has been done except for PSE&G cutting the line which was suppose to happen by today but it did not. The house should be down within the next 24 to 48 hours provided PSE&G comes and cuts the line. The permit to demolish cannot be issued until the line is cut. Chairman Webb asked if there was a document from PSE&G. Mr. Amadio showed the fax to PSE&G requesting the work be done. Chairman Webb noted in the resolution the condition that the house must be removed which has not been done.

Mr. Bernstein suggested they postpone until it gets done. Chairman Webb agreed.

Mr. Amadio stated they have two buyers for the properties and the new buyer for the construction lot has no problem with postponing. However, the buyer for the ranch home on the other lot has informed him if they do not get the resolution tonight they will be pulling the contract in the morning. The goal is to sell the house. They have two viable contracts and the house will be torn down in a matter of hours.

Mr. Bernstein thought they could vote on the resolution subject to the demolition. Chairman Webb said they have a resolution and asked Mr. Wenzel for his opinion. Mr. Wenzel said at the last meeting there was a clear consensus by the Board that the house had to be taken down. There is a great deal of history involved with this property and even in the prior resolutions it was noted that in order to split the property the structure had to be torn down so it was not a new concept. He noted what was provided to the Chairman was a PSE&G removal request form filled out by Mr. Colombo and sent in on 2/24/10. There is a series of pictures, one of which shows a meter box with a meter missing. He asked if they had any evidence from PSE&G indicating a date they would come out.

Mr. Colombo said he has been in contact with PSE&G since the 23rd and he does have names and numbers of people in the field. The initial person was John Keeter and he was in charge of his case. The field manager that came out was Randy White and did everything to get it done quickly. The marked it out themselves prior to them coming out because they knew there was a 3 day mark out but the boss would not buy that and he was not able to do it. There was an issue where they marked out the front house and he had to explain it was the small house in the rear. Mr. Wenzel asked who removed the meter. Mr. Colombo said as soon as he called PSE&G came out to remove the meter, but now the overhead wires need to be cut by another team.

Mr. Wenzel said there is a two step process here, the resolution has to be approved but what the attorney is really looking for is the deed to be filed and get the final splitting of these lots. In the resolution it states upon presentation of proof that the structure has been removed. The Board can decide to table it considering there was a condition placed on the project back in February but if the Board was to go forward there is the second process of providing the deed. It is a call for the members to make.

Councilman DiDomenico stated it sounded as though the potential buyer of the brick house on the other lot was going to pull out if they don't get a deed. Mr. Amadio said the buyer has been patient and they just want to know they have the resolution. The deed is another

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big step. Councilman DiDomenico said they have been saying this the entire time that if you take the house down the subdivision will be approved. He did not think any one was objecting to the approval going back to 2005. Mr. Amadio asked if would be able to jump start the mechanism of getting the deed because it is in the possession of the Planning Board. It is the only original signature deed left. He does not have it because the attorney who handled it prior did not have it to give to him.

Mr. Bernstein asked if they could approve the resolution on the condition that when the applicant submits the proof that the house has been demolished he gets the resolution. He asked if they legally could do it. Mr. Amadio said that is the mechanism he is looking for because getting the deed will be a little difficult.

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Chairman Webb asked if Mr. Norbut looked at the deed that was in the file. Mr. Norbut said he has and they did sign off on the plot plan. Chairman Webb asked if something needs to be done to it before it could be filed. Mr. Norbut said he has reviewed the description and the attorney reviews the deed. He stated the description is done. Mr. Amadio thought he would need some type of document that permits him to file out of time. Chairman Webb asked if there was a further step needed to be taken. Mr. Wenzel said normal course would be to file the deed within 190 days. The situation in this case is somewhat unusual because there is a deed, it is old, it is executed by prior persons and the additional problem with the deed is not necessarily with the Board but with the purchasers as to whether or not it matches with their needs. He does not know the answer but in his mind if the Board was to approve the resolution with the requirement to present proof that the structure has been removed before the deed can be effectuated it would be approved. Mr. Amadio said he does not have an original deed and perhaps the Board Secretary has one and knows where it is. The Board Secretary said she does know where it is. Chairman Webb said they could approve the resolution and then it must be signed by himself and the secretary so they would have something to hold. He felt it is not the right way to do it but felt after 5 years he would like it to be done. He asked if Mr. Wenzel was comfortable with it. Mr. Wenzel said obviously you have to do the right thing and they are but just a little out of sequence. The situation is such, and they have heard testimony, that they contacted PSE&G and there is written proof of that there has already been a process begun.

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Mr. Karp asked if they approved it pending the signature of the secretary and chairman is it approved without the signatures. Mr. Wenzel said once you vote on it, you vote on it and the signature is an administrative act. He said #8 in the resolution places an ongoing obligation on the applicant to present proof the structure has been demolished and the resolution cannot truly have an affect until that presentation is provided but they have in reality provided the approval by voting on the resolution. He does believe the condition in the resolution is enforceable.

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Chairman Webb did not feel there was much risk in approving the resolution. Councilman DiDomenico asked if the buyer of the house would accept that once the house is demolished the Board would vote on the resolution.

Mr. Amadio said the buyer's attorney was pretty clear that he needed an approved resolution. If the approval is subject to the house coming down he would have a piece of paper but he needs the deed and he understands he will not have a deed until the house comes down. He assured the Board that they appreciate what they are doing for them and no one will be coming after them. It would help him if he could tell the attorney that he has a resolution, the house will be coming down within a matter of hours and then he will work with the Secretary to get the process rolling to get the deed. He did not think the Board should have any concerns. The worst that could happen would be the house never comes down and the subdivision is not done.

Councilman DiDomenico said he could support it conditionally but would like to set a date for the house to be down. He thought Friday, March 12th would be enough time. Mr. Amadio stated that the permit needs to issued and the building inspector would need to do an inspection. Councilman DiDomenico said they could ask the inspector to expedite that. He was uncomfortable because they have heard it since 2005. He does not want to hurt the applicant but he must look out for the Borough.

Mr. Holloway asked if the Councilman would be comfortable by giving them to next Monday which would give them 7 days. Councilman DiDomenico agreed and stated if it is not down then all bets are off and they must come in and get it approved the right way.

Morris Pianelli, MPM Associates, stated once PSE&G comes out he will take down the house. Mr. Amadio said he is the buyer of the lot and he will also be taking down the house and constructing a new one.

A motion to approve with the condition the house be demolished by Monday, March 15, 2010 was made by Councilman DiDomenico, second by Mr. Holloway and approved by a vote of 9-0.

ORDER OF BUSINESS

DOCKET # 09-06 – K. HOVNIANIAN AT GREAT NOTCH, LLC – BLOCK 113 LOTS
4.02 & 12.01 – PRELIMINARY & FINAL AMENDED SITE PLAN – MAJOR
PRELIMINARY AND FINAL AMENDED SUBDIVISION – BULK VARIANCES

Mr. Kassai recused himself from this application because he owns a unit at K. Hovnianian at Great Notch.

John Caniglia, attorney for applicant, stated this is an application for amended site plan and subdivision approval for Four Seasons at Great Notch. Technically the application is for the entire site because it is one integrated site plan but the reality is the changes are limited to Phases 4 & 5. Phases 1, 2 & 3 infrastructure is substantially complete and what is left to be finished is the constructions of homes as they are sold.

Steve Caporaso, K. Hovnianian Area Vice President, was sworn in. Phases 4 & 5 are currently owned by Dell Materials, Inc. and up until two years ago Ticon New York was

the operator of the quarry on the property. Under the agreement that Dell & Tilcon had with them they had an obligation to leave the property at certain grades. They have not fulfilled those obligations. As a result of their failure to fulfill those obligations K. Hovnanian has instituted a litigation against them that is currently pending in Superior Court. K. Hovnanian is now prepared to step in and perform the work based on the new plan. The obligation of Dell & Tilcon consisted of excavating and removing a large quantity of material from the property. They are in the business of mining and selling that product and it is not K. Hovnanian's business. The purpose of the application is to reduce the amount of material that is to be excavated and also to redistribute that material on site.

Mr. Caporaso said approximately 350 homes have been delivered to date, 18 in Clifton and the balance in Woodland Park. The sales pace for the last couple of years has gone down to about 50 per year. Prior to 2008 they were at about 75 to 100 homes a year. As a result the completion and build out time will be extended.

Mr. Caporaso stated to date on site the 25,000 sq. ft. clubhouse and amenity package which includes indoor and outdoor pools, golf facilities and some other facilities except for the tennis courts which are in the future phases are complete to date. The water tank is complete to date and off-site sanitary and water mains have been installed. The booster station for the water system has been installed on site. The off site sanitary sewer pump station on Lackawanna has also been installed to service all five phases and part of the town.

Joseph Fleming, engineer, was previously qualified by the Board and was sworn in. He marked EX1 dated 11/11/09 exhibit A-1, EX2 dated 11/11/09 exhibit A-2.

Mr. Fleming said A-1 is the original approved site plan for the entire project including Clifton and Woodland Park. A-2 shows what is proposed. The only site plan change between what is already approved and what is proposed is the rotation of Building 1079 to facilitate the grade changes for the proposed plan. They are also proposing to add additional parking stalls. There will be a total of 26 net additional stalls. They are creating perpendicular stalls at the end of Quarry Dr. and in and around Granite Rd. He marked the additional parking plan A-3. The Woodland Park project has a total of 346 spaces. He pointed out the area where they are proposing the additional spaces. The roads will remain the same, the number of homes and bedrooms all stay the same. They are lifting the northern corner of the site so they actually have a better opportunity to have better flow of the sanitary sewers.

Mr. Fleming said they are here for an amended site plan and explained what has changed with respect to the plans. He marked EX3 dated 11/11/09 A-4. The plan shows the lifting up of the grades in Phases 4 & 5. The roadways in these phases are all compliant with RSIS. Mr. Flemings marked EX4 dated 11/11/09 titled Earthwork Evaluation exhibit A-5. The benefits of this change would mean less earthwork for the existing residents to deal with. The export of the earth would be reduced. He said with less earthwork to be done the community would be completed in less time when economic conditions improve.

Mr. Fleming said the larger cuts are at the northern and northeastern section of the property. He said being able to lift the units higher allows for more air and light. It is still a quarry wall but 25' less of an issue.

Mr. Fleming said the original application subdivided the balance of the property into Phases 4 & 5. What is being proposed is to refine the phasing and create 4 phases into what was 2 phases. Part of the reason for that is the earthwork that needs to be done. Two of the buildings that are now shown in what is now 4-A were in Phase 5 previously.

Mr. Fleming said there were some regulatory reasons why the applicant sought to have smaller phases. The smaller phases help with the secondary mortgage market as well as the escrow amounts for the improvements. It simply allows for a more reasonable setting of funds. It is fair to say in today's economic environment if a project did not have FHA or Fannie Mae approval it would be very difficult for homeowners to obtain mortgages.

Mr. Fleming said the current approvals provide for a preliminary subdivision of Phases 4 & 5 and in this application they are seeking to change the Phases to 4A, 4B, 5A & 5B as shown on Exhibit A4.

They have reviewed all review letters and have met with the Board Engineers. Mr. Norbut asked if once the project is built out if the phase lines go away. Mr. Caniglia said they do. As phases are added to the community they are added into the existing lot so at the end of the day there is one mother lot. Mr. Norbut said that is a legal issue and must have been in affect with the original approval. Mr. Caniglia said it was.

Mr. Fleming reviewed Mr. Norbut's letter. He feels comfortable with revising the plans and providing what the Board Engineer has requested. He has reviewed the police dept. letter and they agree to all comments. They have reviewed the Board Planner's review letter and for the most part it addressed variances which they will get back to. The last review letter was from the Fire Dept. which indicated there was one issue regarding the 5" Storz connection for the fire hydrants. Mr. Caniglia said he sent a letter back in November to the Board explaining what happened. Essentially when the construction started on the initial phase the hydrant detail that had been approved by George Galbraith was no longer available. The hydrant that was available did not allow for the Storz connection because of the location and proximity to Clifton. The connection was such that all the fire departments could hook up regardless of what municipality they were in. Mr. Galbraith chose another hydrant as a substitute and the Storz connection was not available for that hydrant. The manufacturer now does provide for a hydrant that allows for this connection and beginning in Phase 3 and going forward they will install those hydrants. They will also be more than happy to provide the adapters for the existing hydrants that have already been installed.

Mr. Bernstein asked in regard to the additional parking what the width of the road was now that the parking was perpendicular. Mr. Fleming said it is 60' curb to curb because there will be parking on both sides. This is at the northern most end of the community and the vehicle trips will be low in the area. They are also proposing some speed humps with

adequate signage. The benefit of getting surplus spaces is probably the best thing they can do now.

Mr. Fleming said there are 3 variances that are part of the application. All of these were previously granted during the original application. There was a variance granted at the time of the original application for the rear to rear building separation between buildings 1014 and 1015 where 40' is required and what was originally proposed was 37.07' and this variance has been eliminated. They will be moving the buildings slightly so the rear to rear separation is more than 40' and they will withdraw the variance request. The second variance is a limit on building coverage for buildings in excess of two stories, 23% building coverage is permitted and the plan provides for 29.04%. The zoning ordinance allows for up to 4-story buildings but the decision was not to have any 4-story buildings. By reducing the height they have been able to incorporate most of the parking within the structures. It is his opinion that the purposes of the land use law would be advanced by this deviation of the zoning requirements. The benefits of granting the variance would substantially outweigh the detriments. In his opinion he can see no detriment. He sees no harm to the public health or safety. The variance will not impair the zoning ordinance. The overall building and impervious coverage is well within the ordinance. The next variance is in respect to the subdivision where lots are being created without frontage on a public road which was also previously granted by the Board. At the time of the original application there were lots existing in Woodland Park that had no road frontage. Currently the lot that comprises Phases 4 & 5 has no road frontage. In his opinion there is no detriment to the granting of this variance. There are safe points of ingress and egress to the site including an emergency access. In his opinion the purpose of the MLUL will be advanced and he sees no detriments to granting this application. Most of the road frontage is in the City of Clifton on Valley Rd. and little frontage within Woodland Park. He sees no detriment to the public good.

Mr. Caniglia stated as the Board is aware this is an inclusionary Mt. Laurel site where they have a limited number of homes on site and they are making contributions to the town's Affordable Housing Trust Fund. The units are spread throughout the community and 3 of them are located in Phase 3 which is currently under construction. One of them is in Building 1015 and they would like to move it to Building 1011. He pointed the buildings out on the plan. The reason for this change is it is a better building to have market homes and asked the Board to approve the switch to Building 1011.

Mr. Caniglia said the Board had granted a 5 year vesting period for the approvals back nearly 5 years ago in April 2005. The 5 years would expire in April of this year but under the Permit Extension Act that vesting would be extended to 1/1/2013. They are requesting to extend the vesting out to April 2015 or about 2 years after the permit extension act vesting would expire. The community qualifies for the vesting based on its acreage. The statute also lists several criteria for the Board to consider in making its judgment on this application. One is the total number of dwelling units in the original approval which is 700 in Woodland Park and a total of 814 for the entire site. Approximately 350 units have been completed and delivered which would leave about 464 homes left in the community and of those approximately 370 are in Woodland Park. The other criteria are economic conditions which we are all familiar with. The last criteria are the comprehensiveness of the

development. They have accomplished a lot with off site improvements, the infrastructure installed and a comprehensive plan.

Mr. Norbut said Mr. Fleming and his associates stopped by his office and they had a very useful meeting on Friday. He agreed based on the meeting that the majority of the technical issues can be resolved and does not really have a bearing on the Board's vote. They did have a concern with 90 degree parking along a collector road and people backing out on to the roadway. They do understand the need for on site parking and looking at that need, traffic should be less in the back of the site and the speed limit is very low. They did talk and suggested speed humps on either side of the parking area. They believe the traffic calming should help and they are in agreement with the plan based on the parking need. They were concerned that one of the retaining walls behind Building 1083 & 1087 was 18' high. This is not new to the project but felt it was worth mentioning to the Board. Mr. Fleming explained the design of the walls. They have learned to provide landscaping at the top that cascades down and softens the impacts of the walls. Mr. Caniglia said the other factor is if they were to tier the wall you would be moving it closer to the back of Building 1087. Mr. Norbut said because it was a change he wanted the Board to be aware. Mr. Caniglia said whatever the Board's preference is they will do but their preference is not to tier the wall. Mr. Norbut said another thing is in regard to storm water management. Since the original plan was approved the state and federal government has come up with new regulations known as the Phase II regulations and the applicant has to comply with those regulations. They consist generally of ground water recharge requirements they did not have previously, water quality requirements and further reductions in the rate of run off from the site. It falls under the prevue of the DEP and he is telling the applicant to go back to the DEP and find out if the DEP is going to hold them to the Phase II requirements. If so they will have to deal with that and modify the site plan accordingly. If not that would be between them and the DEP. If the DEP does give them the waiver from the Phase II requirements because this site is steeper the water would be running off the roads and getting to the detention and retention basins quicker. They have asked them to go through a series of new detention basin routings just to show them that in fact they are not going to cause any downstream impact where the basins discharge. They have indicated they have gone through that and will provide the backup information to his office.

Mr. Caniglia said Mr. Norbut is correct that if you have an amended site plan or amended approval you might have to comply with the storm water II regulations. Those regulations do provide for an exemption of your amended application meets certain criteria. They believe they meet those criteria because they are not increasing impervious coverage and some other elements in the regulations. They are sending a letter to DEP requesting the waiver and they believe they will qualify. They will advise the Board regarding this matter and if some tweaking is required they will comply and satisfy Mr. Norbut's concerns.

Mr. Norbut said he was not here during the original application but it was raised by the DPW Superintendent that he thought Basin # 3 is a dry basin and all his records indicate it is a wet pond with a standing water surface at all times. Mr. Fleming stated it was originally approved as a wet pond. Mr. Norbut said they should look at the water coming into it from

the drainage system to make sure it is not backing up upstream from it. Mr. Fleming said they could look at that together. Mr. Norbut said when he looked at the revised pressure calculations for the water system they are providing adequate pressure in the system based on the new elevations on site and they are meeting fire flow requirements as well. When he looked at the overall system they modeled the entire Borough water system when they did the model for this site. He looked at it to see if all the pressures for the town are okay and he saw that some were lower than the on site pressure so he is going to work with the applicant's office to make sure they are not creating a lower pressure condition in the Borough's water system as a result of this amended plan. They indicated they have provided the water system model to Mr. Galbraith and they will work with him to look at the model just to confirm they are not making the pressures lower. Mr. Fleming agreed to look at it with them but was confident in what was proposed. Mr. Norbut said he typically looks at off site improvement issues that may be needed as a result of the development and he knows this applicant has provided many off site improvements. He did include in his letter that having spoken to the DPW Superintendent one issue they were running into a nuisance problem with was the former Browertown and McBride pump station that was taken out of service when they created a new pump station. It seems the super structure that was left in place is becoming a maintenance problem. He is recommending that the applicant look to demolish that super structure and put in some hatches to eliminate the nuisance the DPW is dealing with and he has included it in his letter.

Chairman Webb asked what the applicant's position was on that last recommendation. Mr. Caniglia said as Mr. Norbut indicated they have done extensive improvements and they were necessary for their site but they also provided municipal wide benefits to the water system, off site sanitary lines and the pump station they installed. This allowed the town's Old Rifle Camp Rd. sewer line to hook into that. The town saved a lot of expense in not having to run sanitary sewer that they otherwise would have had to run. He did not think this was an issue that was created by this community and it is miles from the site. It may be a nuisance but he did not think there was an obligation or requirement for them to demolish the structure. They think they have more than satisfied their obligations to the municipality and did not feel this was a warranted request.

Ms. Gregory, Board Planner, said she has no issues and thought the elimination of the variance was good and saw no problem with the other variances.

Mr. Renne asked about the adapter for the hydrant. He asked if it matched the hydrants. Mr. Fleming said the model that West Paterson has been using for years has been discontinued. They have a solution for it at this point with the adapters if the fire department needs multiple services on the site. Mr. Renne asked if they would have to carry the adapters. Mr. Fleming said they will be on the hydrant and they will not carry them.

Councilman DiDomenico asked about the water pressure in the rest of the town. Mr. Fleming said the system they have is working to provide pressure to the Washington Dr. tank. The reason they needed supplemental support was because the tank could not get significant pressure. The system they have now and the new pumping station are pumping at a higher rate. This is approved by DEP and the DPW is satisfied.

Councilman DiDomenico said part of the solution was to abandon the pump station on McBride and Browertown. He asked if they did not think that part of this project was to eliminate that pump station. Mr. Caniglia said he appreciates what he is saying but it seems that it is something that should have been known at the time and should have been part of the prior approval. At this point it kind of looks like some after the fact thought. He pointed out the many improvements they have already made and did not believe this was related to the original application. Councilman DiDomenico said at one point in time he thought they had a plan that discussed the possibility of sharing the forced main or the gravity main that was along Lackawanna from Grey Terrace back to the pump station. At one point in time there was some discussion that it would be part of the project with some contribution by the Borough. He felt that was a part of the original discussion and that evaporated also and the Borough does not have the benefit of that main in the street. He asked what happened to that aspect of the project. He does understand that the demolition of the pump station was not discussed but they had an aspect that was and it just evaporated.

Mr. Caniglia said it was always the intention if that gravity line going from Gray Terrace to Lower Notch Rd. was going to be installed that would be something that would be the Borough's responsibility. He said those are homes that don't have sanitary sewer today because you could not put in a gravity line going towards Gray Terrace. The discussions were always around the lines that if the Borough were going to do that project it should be done at the same time the force main was being done so you have one road restoration and one interruption of traffic. There was some discussion of them doing the work in exchange for some credits against connection fees payable to the Borough. It was never an understanding that it would be their obligation or financial responsibility.

Mr. Karp asked if the 4th & 5th phases were relatively flat in the original plan. Mr. Fleming said it was never flat but was on the average a 6 to 8% consistent rise. The original plan was to mine the material from the quarry and use it. It always had some consistent pitch toward the back and the back corner was always the high spot on the site. Mr. Karp asked if there was thought regarding suing Tilcon and making them do what they were suppose to do. Mr. Caniglia said they are in litigation against Dell Materials and Tilcon but the reality is they can't compel them to come back and complete the work on the site. Part of the suit is to compel Dell to convey title to them. But the balance of the litigation is basically a money damage claim against Dell & Tilcon. They have been advised by their Counsel in litigation to try to mitigate those damages and this would partly address their failure because they would not be incurring the cost of exporting the material but there is a substantial cost involved in just doing the excavating and processing of the material. The other aspect of this is the fact they are in a position where they are just about ready to move into Phase 4A. The only product they have left in the first 3 phases are the Garden homes and they believe there will be a demand for the other types of homes so its beneficial to them to move ahead and thought it was also beneficial to the Borough to complete the homes sooner rather than later. The litigation could be quite lengthy.

Mayor Lepore asked the anticipated cost of the demolition of the pump station. Mr. Fleming said he did not have the details so he did not know how much it would cost. Mayor Lepore

asked how much they would be saving by keeping tons of material on the site. Mr. Caniglia said they are not saving anything but are reducing their loss. In the best case and they are 100% successful in their litigation they still have the cost of time, the cost of litigation, cost of attorney fees so under no circumstances would they ever be made whole by this litigation. Mayor Lepore asked Mr. Norbut if he had an idea of what the demolition would cost. Mr. Norbut said he did not and it was brought to his attention right before the letter was put in. He did not inspect the facility so he did not know. Mayor Lepore said there are some significant changes being made on site and they talked about 8,000 truckloads of material not happening anymore. He understands they have done a tremendous amount of off site work both related to and not related to their project and he appreciates it. He thought given the fact the times are what they are that every little bit helps and he asked them to consider demolishing the pump station. Mr. Caniglia suggested that part of the issue in their hesitation is they really do not know what is there. As Mr. Fleming indicated something like this, a piece of infrastructure that has been there for many years, may look simple and straight forward at first and then you get surprises along the way. There may be things that even the Borough may not be aware of. He suggested on behalf of the company that perhaps some type of contribution to the town designated to the demolition of the structure. If it's the entire cost fine but felt it would be a fair middle ground on the issue. Mayor Lepore asked the engineers to meet with Mr. Galbraith and figure out what the cost may be and some type of stop loss measure in there would be fair to both. Mr. Caniglia agreed.

PUBLIC OPEN – CLOSED

A motion to approve with conditions discussed was made by Mr. Holloway, second by Mr. Renne and approved by a vote of 9 – 0.

BREAK – Call to order. Roll call, all present.

DOCKET # 10-02 – L.O.G., LLC – 1130 MCBRIDE AVE. – BLOCK 86 LOT 76 – PRELIMINARY & FINAL SITE PLAN/BULK VARIANCES

Joseph Mecca, attorney for applicant, said there was a question about the side set back that the engineer is looking at now. The building consists of 2 floors. The second floor houses a lot of doctors. He has an office there and there is also an accountant and a vacant office.

Lilian Dobre, applicant, was sworn in. She stated she is the owner of the property and has owned it for 6 years. Nothing has changed since she bought the building and basically they are conducting the same businesses that were operating 6 years ago. They have not made any alterations to the outside of the building and have not changed the footprint at all. They have done some work on the driveway by resealing it. They also created a couple of new parking spaces with the town's approval. They would like to expand the lobby because there are so many doctors and people who are waiting for them. They would like to install automatic doors for easy access for the handicapped. The lobby is small and crowded. They have some seats and a table but it is very small. There is an elevator and a staircase doorway along with the access doors in the lobby. There is no place for the visitors to sit inside the current lobby. It is cold in the lobby in the winter time. They would like to

expand the lobby and the hallways and common areas on the other floors as well. They are not looking for any expansion of any of the rentable space on any floor. There will be no exclusive use of the additional common area to anyone on any of the floors. The construction will be conducive to what already exists there and they are only squaring off the cut out area.

Mr. Wenzel asked that the photograph be marked A-1. Mr. Mecca stated the photo was of the outside of the building and lobby area. Ms. Dobre explained what they are proposing to do. She pointed out the wall they are proposing to push out. The building is handicapped accessible.

Chairman Webb asked if they said there would be no additional rental space in the building. He said in looking at drawing A-2 in the area that looks to be what is going to be expanded it reads office area. Mr. Mecca said the wall that you see is not correct and that area would be common area only on all three floors. It will not be rented out and will become part of the rest of the elevator area and hallway. They will amend the application to take out the word office and eliminate the wall to be open space. Chairman Webb asked if the dashed line was the existing wall that is going to be removed. Ms. Dobre said it was.

Yogesh Mistry, architect was sworn in. He stated his qualifications and was accepted as an expert. He designed the plans dated 6/2009. The plans show a separation wall and office space on the 2nd and 3rd floors. They started the project before June of last year and they have gone through many discussions and changes. He referred to the plan which was marked A-2. He pointed out on the third page the proposed second floor plan. After the plans were submitted it was decided that they would just like some additional space where patients could wait and there would be no additional space to rent. The addition is not significant enough in size to add real value to the space. It really was just to expand the lobby to make it convenient for people to wait.

Mayor Lepore asked Mr. Mistry if he was testifying to the Board that this was never going to be an enclosed area or was that determination made moments before the meeting. Mr. Mistry said originally it was meant to be a common conference room but it was decided to use the area more for an expanded elevator area. Mayor Lepore said it makes sense to expand on all 3 levels. They submitted plans that show they are enclosing the area with a door and his question is when the decision was made to make it just a lobby and not a conference or waiting area to make it easier for handicapped people to navigate the lobby. Mr. Mecca said it was recognized that if you separate the space and create more office space or rentable space they would have to increase the parking and the area is already limited. It was approved with 53 spaces and they made it 55 and the rule is they need 62 spaces. They cannot meet that requirement. Mayor Lepore agreed it is a nice building and the owner keeps the building clean. When they bought the building 6 years ago they bought it with a host of problems, one of them being the parking. They are being told they are not creating any more spaces and do not need added parking but even the spaces they count are not up to standard. If you go on site some of the spaces are not realistic. When he first saw the plans he felt they could not accommodate what they had now and wanted to add square footage. He was surprised they would submit plans to the Board knowing they do not accurately

depict the proposal. He thought an amended set of plans should have been submitted. The testimony of the applicant makes sense and thought it was a good idea to enlarge the area to help people in wheelchairs or on gurneys to navigate the lobby. He asked how the doors that open side ways are set up for emergencies. Mr. Mistry said they are designed to flip out in an emergency. He said it has been a long time they since they started the project and there have been changes. Mr. Mecca said he would take responsibility for the plans not being amended to show the proposal correctly. They will make sure the Code Enforcement Dept. has the correct plans.

Mr. Randazzo asked if the building was in a flood zone. Mr. Mecca said it was. Mr. Randazzo said Kearfort had an alarm in the building so if it flooded the people could move their cars. He asked how they could build in a flood zone. Mr. Norbut said they are suggesting they look at the DEP regulations and they must comply in order to build. Mr. Mecca said the Board engineer's letter said it is subject to DEP approval. In 5 ½ years they had one incident where the water covered the entire parking lot and came through the streets and they had to close the building. There has not been any shifting or sagging of the building and it is very well built.

Councilman DiDomenico asked if it was the intent on the 2nd & 3rd floor to keep it open, vacant space. Ms. Dobre thought they could put in a couple of chairs and a magazine stand for people to wait. Councilman DiDomenico said to be consistent with what they have done with other applications they have not allowed that. They have just allowed an open area with no seating. Mr. Mecca said he is familiar with the building and has even told people they could wait in his office. The second floor is where most of the doctors are and many times there are a lot of people waiting. So they are asking for the additional space to be used as a waiting area with seating. Councilman DiDomenico said it is his concern they have set a precedent with other applications. Mr. Bernstein said the concern is the calculation of usable square footage and the amount of parking. The concern was there would not be enough parking.

Chairman Webb said the first discussion seemed to be about the first floor and people waiting for transportation. He felt there was a distinction between that the 2nd and 3rd floor where you are designing it for overflow and that is what they don't want to encourage. In a previous application they agreed not to put seating in that space. Mr. Mecca thought the distinction could be drawn. They get a lot of elderly people who come with wheelchairs and caregivers. They do not drive themselves. Sometimes they come in a van that the towns provide. They are not looking to expand business but just looking to make things more comfortable for these people. They do not have a problem with the parking but it is a difficult design that was done many years ago. He did not think allowing a few chairs in the upstairs lobby are going to create more use for the property.

Mayor Lepore agreed that the intent as to why they would like to see more room in the common area is good but they do have issues where they have applied certain principles to other applications and for the Board to say the open area does not count for them they cannot do that. He suggested submitting an amended plan showing the correct proposal and showing the parking lot designed to the current standards and not 25 years ago. He is not

requiring it but is recommending they show the correct number of spaces they have on the site. He is not asking them to implement the new design but he would like to see an accurate depiction of what the lot can hold. He is not blaming them because they bought the building this way but if they proposed this building today it would not be approved. He would like to work with them but they really need some concrete information in front of them.

Chairman Webb said Mr. Norbut had a comment in his letter regarding the parking flow. Mr. Norbut said that is exactly what the Mayor is referring to and the fact that the dimensions of the aisle width and spaces backing up against each other just does not work. Chairman Webb agreed. Mr. Norbut said there are maybe 2 or 3 spaces you cannot use. Chairman Webb asked if the property goes beyond those spaces. Mr. Mecca said the topography just does not work and they can't find any way to get it to work any better. Mr. Mecca said he was not sure where a proposal showing today's standard for parking would take them. Mayor Lepore felt it would be helpful if they could look at a new design even if it reduces the amount of spaces. If they are going to look to redesign and correct things they should do it right. Mr. Mecca said they have gone to Kearfoot many times asking to use their parking lot and they have been close a couple of times but there are issues about insurance, changing owners and tenants so they have said no they do not want to do it. They also thought about an entrance on Bergen Blvd which would remove some spaces but it would make the flow better. Mayor Lepore agreed you can't do anything with the parking lot but felt they could clean up the lot and make it realistic.

Mr. Mecca said the side setback is 14.9' and the other side is 12' and they have an issue as to why it does not comply. Mr. Norbut will work with the Construction Official and determine whether the variance is required.

Mr. Mecca asked if the Board would like to see revised plan with a back up plan for expanding the first floor only.

Mayor Lepore agreed with Chairman Webb's observation that the expansion on the 1st floor is one thing but the expansion on the next two floors is something else. Chairman Webb said if they revised this to remove the walls on the 2nd & 3rd floor and it was found the Board wanted to see only the 1st floor expanded you just throw away the next two pages. He suggested seeing the dimensions of the parking spaces on the plan.

Application will be carried to the April 12, 2010 meeting with no further notice required. Chairman Webb asked that the revised plans to submitted ten days before the next meeting. Mr. Mecca agreed to waive the time restraints.

A motion to adjourn was made by Mayor Lepore, second by Mr. Renne. All in favor, meeting adjourned.