

**BOROUGH OF WOODLAND PARK  
PLANNING BOARD MINUTES**

November 8, 2010

Meeting called to order at 7:33 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, GARY HOLLOWAY, RICHARD BERNSTEIN, BILL KARP, CARLO RENNE, MAYOR LEPORE (LEFT AT 8:05 P.M.) DORA DAVENPORT AND KEITH TANSKI

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

FLAG SALUTE

A motion to approve the minutes of the October 4, 2010 meeting was made by Mr. Bernstein, second by Mr. Renne and approved.

A motion to approve the minutes of the October 4, 2010 executive session was made by Mr. Bernstein, second by Mr. Karp and approved.

**ORDER OF BUSINESS**

Kathryn Gregory, Board Planner, updated the Board on the Master Plan meetings. She handed out a draft copy of the Master Plan and associated maps. The draft is about 80% complete. She also submitted a summary of what has been done to date. The committee met and identified issues and goals for the long term in town. She has collected data and has drafted a document that has 13 sections.

Ms. Gregory updated the Board on COAH. The court found that the third round methodology was flawed and remanded COAH to come up with new regulations within 5 months. They are in a wait and see period with COAH to see what the time frame would be for compliance.

Ms. Gregory said the committee has worked to do and hoped to get a date for a meeting. There are many elements that need to be discussed. Right now Passaic County is undertaking their transportation element of their Master Plan and both this week and next week they are holding public meetings. She will probably attend one of these meetings and will be coordinating with T. & M. Associates. Most of the major thoroughfares in town are county roads.

Ms. Gregory felt it was important to go green going forward and the committee will need to discuss it. They also will need to discuss the zoning ordinance and land use. Over the last few years she has talked about the zoning ordinance and certain revisions due to inconsistencies and duplications. She felt going forward it can be simplified. They should also discuss a down town mixed use area in the zoning ordinance.

Ms. Gregory said she has identified some potential recommendations that need to be discussed. The draft is for information only and nothing is written in stone. She would like to come back and discuss the document with the committee or the entire Board.

Chairman Webb asked what impact the COAH ruling will make on the Master Plan. Ms. Gregory said it is considered to be an actual element within the Master Plan. When you take a look at the community it is heavy residential already. She would recommend it only be in mixed use development because you have smaller more affordable apartments. She has visions along with the committee to have a little denser areas with shared parking. There are two ways to tackle COAH by holding off on the Master Plan until the rules come out. Chairman Webb asked what a typical reaction time was for communities. Ms. Gregory said there is a 45 day comment period. It is a problem by sort of going forward and then having COAH rules that are coming in. It seems COAH is being very much litigated. She said someone tried to abolish COAH but it is still pending. COAH may be abolished and there may be other rules in some other fashion. Chairman Webb asked if they should hold up completing the process. Ms. Gregory thought there are certain parts they can still go forward with including sustainability and transportation. She felt it was important to be involved in the transportation portion with Passaic County. Ms. Gregory said the census was done this year and does not know when the data is coming out and this is a reason to hold off with some of the parts. She is laying it all out to help the Board make a decision. Chairman Webb asked if the Board had any vulnerabilities by waiting. Ms. Gregory said the Master plan is visionary over 20 or 30 years but includes immediate goals also. One of her immediate goals would be to amend the zoning ordinance based on the land use changes but also because it is fairly complicated, there are many zones and it is actually missing regulations. She felt this is a different project that would be the next step after the Master Plan. Typically the Master Plan guides the zoning ordinance. Chairman Webb said he would leave that to the Mayor and Councilman. The Board could go ahead with parts of the Master Plan.

Councilman DiDomenico asked for Ms. Gregory's recommendation on going forward. Ms. Gregory felt it would depend on what it is. She felt it was important for her and the committee to be involved with the county and the transportation. She felt they could hold

off on the other items. They are not in a race to get it done. The document will be ready when they want it to be ready and it could be amended at any point in time. They could also focus on adopting one element at a time. Councilman DiDomenico thought they should have a meeting to discuss how they will proceed from this point. Ms. Gregory said they would also have an opportunity to review the draft she has submitted.

Mayor Lepore felt it was urgent for them to start working on the zoning. He felt the problem is what portion of the zoning is in play. He felt an applicant can challenge the Master Plan. Ms. Gregory said the re-examination would take precedent because it is more recent. The zoning board has the ability to interpret the zoning ordinance. Mayor Lepore felt the court's usually see otherwise. Ms. Gregory said she should be aware of any challenges to the ordinance by applicants. She sees no reason why they could not work in concert on both of them. Mayor Lepore felt there were key areas that needed to be addressed. Ms. Gregory agreed but there were other areas that also need to be addressed as far as regulations. She felt there was work to be done on the zoning ordinance.

Mayor Lepore asked about the Lesniak bill. Ms. Gregory said yes and the bill would abolish COAH and set up a new system. The bill did not pass in the house but it is still pending. She felt there would still be a program but may be money set up in a state fund. Mayor Lepore said the common sense answer would be the town not zoning in such a way there can be no affordable housing.

Mr. Holloway said as the Chairman of the Board of Adjustment the Board has made many recommendations. The Board feels the NC zone and the corridor along McBride should be looked into.

Chairman Webb asked if she received the annual report from the zoning board. Ms. Gregory said she did and asked if the problem was the zoning map or the ordinance. Mayor Lepore said it was both. Ms. Gregory said she put together an existing zoning map based on parcel data. Mr. Esposito marked it up for her and she suggested they meet with him. The Board Secretary suggested the wording be looked at in the zoning ordinance. Ms. Gregory agreed but felt in the short term they could utilize this map which may help going forward in the short term but in the long term there is a lot more to be done by changing the map and the verbiage. Ms. Gregory agreed that it is very outdated. It appears a large portion of the town has been developed by default. These would be some discussion items on the committee level.

Mr. Holloway asked about the county transportation element and if they were considering a transportation hub in the borough. Ms. Gregory said she doesn't know and that is why she wants to attend these meetings. It just came to her attention in the last week or so. They have project goals and objectives that she included in the Master Plan on page 50. There is no draft available now but it will be available in the spring and published in June. She felt right now it is just public sessions and public input. They have talked about creating a more downtown feel for McBride Ave. which can be discussed at the county meeting. It is important to coordinate with the county on the transportation efforts.

Mayor Lepore excused himself at 8:05 p.m. to attend a meeting in Little Falls.

Chairman Webb said it sounds like they should take a serious look at the zoning ordinance and map and get it ready for the Mayor & Council to do something with in addition to the Master Plan. Ms. Gregory said they need to establish priorities. They need an existing land use map to help alleviate issues currently at hand and amend parts of the zoning ordinance as a short term solution. In the longer term the entire zoning ordinance does need a overhaul and the zoning map will need to be updated to reflect land use changes that are proposed in the Master Plan if it goes forward. They are talking about mixed use corridors and not allowing single family homes in commercial districts. They would grandfather the existing single family homes.

Ms. Gregory felt they would have to decide how the committee would move forward and if another committee should be established. She could work with some of the council members on the zoning ordinance.

Councilman DiDomenico said he and the Mayor are already on the committee working on this and thought they should have a meeting. If there are issues that have to take place with the zoning ordinance he could take any recommendations back to the law & ordinance committee. Chairman Webb felt they could get that aspect of it going.

Chairman Webb felt Ms. Gregory has identified enough issues with regard to the Master Plan to hold off. Ms. Gregory said it does not need to be done in a hurry. Chairman Webb said he can see there are a number of things that will dovetail into it.

#### UPDATE ON 1225 MCBRIDE AVE. PROJECT

Chairman Webb asked to be updated. He said the sign read they would be open by mid-summer and he does not think they have opened yet. He has also seen letters from the county back in July and they were talking about the need of approval for the cross walk and also talking about the curbing and permits that were needed.

Mr. Norbut, Board Engineer, stated there have been parking lot improvements over the summer.

Mr. Woodney Christophe, Mr. Norbut's associate, stated the construction started in March 2010 and has been ongoing since then. As far as the site improvements they have completed most of those within the right of ways of McBride and Lackawanna which included the curb, sidewalk, landscaping, lighting and the main parking lot area is scheduled for paving this week. Once that is done they will stripe it and put in the grill stops. That section will pretty much be completed. They are working around the end of the building toward the second entrance. The majority of the drainage has been installed. Moving forward they plan to work as far into winter that the weather allows. They need to complete the second detention system.

Chairman Webb asked if there are actually 3 entrances. Mr. Christophe said yes. Chairman Webb asked if the curbing was done. Mr. Christophe said the curbing is completed. Chairman Webb said months ago the curbing was in disrepair. Mr. Christophe said they are now done.

Mr. Norbut said there are some sticky issues they are dealing with the developer on. One of them is the fact they do not have final county approval. They have satisfied all conditions except one which is the crosswalk on McBride. The county is challenging them by asking them to prove it is warranted. The developer's attorney has written a letter saying it is pre-existing and should remain. The county is holding up final approval and until they get this issue resolved they will not be able to get a road opening permit to continue. They have to post performance bonds with the county. He did not know if they allowed the work to proceed or if they don't know about it. Mr. Christophe said the county has been out there frequently. Mr. Norbut said obviously then the county knows about it.

Mr. Norbut said the second issue they are struggling with is the performance bond the developer must post. When they had the pre-construction meeting in March they went through the open issues and the performance bonds issue. They would have to post the bond to guarantee the work would be done in a proper manner. If they should stop work in the middle of the job and do some major demolition or tearing up of the property the town would have the bond to make sure the property could be repaired or made safe. The problem they got themselves into was the work began to proceed on a promise that the bond was going to be posted in a week or two. Now it has been six months and it is an ongoing issue where initially it was two weeks then two more weeks and they said they ran into a problem and they were trying to get the contractor to get the bond rather than the developer. They have had several meetings and he and Mr. Esposito have been continually trying to get this bond in place. He has also got the Mayor involved so that he was aware they had an issue. To date he can tell them they have a continued promise that shortly they will be getting a performance bond in place. The good news is and the reason he has not created a major issue of this is they know they have had an investment in the building for some period of time and know it's important to them to make the site improvements so they can get the certificates of occupancy they need for the suites. They are moving ahead full steam. The construction office has the ability not to issue certificates of occupancy for any part of the building. They knew they had that hammer at the end of the day. In fact they are approaching the point to stop the process and will not get the C.O. they are hoping to get in the next couple of weeks until the issue is resolved. They may want to incorporate this county crosswalk issue into it and really hold their feet to the fire as well.

Mr. Bernstein asked if they are not posting the bond because they are saving a lot of money by not having it in place. Mr. Norbut said the cost of the bond is definitely an issue. Mr. Bernstein felt they could keep going until they are ready for the C.O. Mr. Norbut said the originally performance bond was 1.5 million dollars. The MLUL allows towns to ask developers for a performance bond. They also give them the ability to waive the bond if they see fit. After the bond is posted and the improvements are complete then the bond can be released. It does not get released until the applicant posts a 2 year maintenance bond beyond and after construction is done in the amount of 15%. Mr. Bernstein asked if they

know how much space they have rented or sold. Mr. Norbut said they do not but they are being told that they are almost at the point of renting some space and getting people in the building. The construction office has issued a TCO strictly for the common areas. It was a special request by the developer to be able to get a series of doctors and people who want to rent the space to a wine and cheese party inside the building to show them around. It is strictly a TCO for common areas only.

Chairman Webb said this is a series of properties that have had a lot of problems. The developer has cut corners. The Nathan's building was torn down without any permits or shut offs done. The contractors did not want to buy the bond for the entire project and they were going to let them go section by section. He said the Board Secretary has shown him that the properties where they are constructing the parking lot and where the building is are in arrears over \$100,000. in taxes and he wondered if they really have the finances to complete this. They also told them all along that they were selling spaces as condos but the Board has never seen any paperwork to the affect of it and when challenged they never answered. He asked Mr. Norbut if the term he used was rent or lease. If it were up to him he would stop them until they comply with the rules. If the crosswalk is an issued he would hold their feet to the fire on that too.

Councilman DiDomenico said he would just say they have to get all approvals from the county. There could be other things too and unless the county fully blesses the project they should not get the C.O. He understands there is a possibility of this property going to tax sale. The Board Secretary said it was not this property but the property across Lackawanna Ave. where the applicant was promised 40 parking spaces. Chairman Webb said the approval here was that they had parking across the street that would be used for overflow and now it seems the property is encumbered and there is a chance it can be taken by someone else. He felt they should put pressure on them to do it the right way and get it done.

Councilman DiDomenico asked how they could address this situation. Mr. Norbut felt they could give a general consensus because the rules are in place to enforce it.

Mr. Karp asked if the county can issue a C.O. Mr. Norbut said the county does not issue a C.O. He said that approval is only a small part of what needs to be done before they get a C.O.

Mr. Norbut said there is another matter related to this project he would like to bring to the Board's attention. The applicant is looking for a phased occupancy which was something not discussed with the Board during site plan. They are hoping to C.O. several suites at a time. He wanted the Board to be aware that is the way they are doing it. Usually if an applicant comes in for a phased project he presents it that way at that time. In this case they are looking to C.O. several parts of the building and it's probably no different than a strip mall receiving C.O.'s for different spaces at different times. But because they have the issue of a parking shortage and the Board granted a waiver of several spaces they wanted to present to the Board the methodology they would use in issuing C.O.'s for this building and making sure the Board is in agreement with that. If the Board is okay with issuing several

C.O.'s at a time they would work with the construction office and the applicant so if they said we want to have 10 suites C.O.'d they would look at the square footage and apply the required parking to those spaces and then they would look at the amount of the waiver the Board gave they would then apply a percentage of the waiver and do it in that fashion.

Mr. Wenzel said the approval of this project pre-dates him but he felt there was a question raised before and he thought it goes to the issue Mr. Norbut just raised. Specifically talking to the point of whether they are going to be condo-type units or rental type units. If the original site plan and resolution called for condos and now they are looking to get a C.O. based on a rental situation the uses may be same but it may have an affect on changes of tenants more often than someone who owns a condo. He asked if they are going to proceed with rentals or condos in terms of doing these partial C.O.'s. Mr. Norbut said he was not sure. It is not something that he was tracking and he assumed it would go through the construction office but he may be wrong. Chairman Webb said they talked about it throughout the hearings but never offered a condo plan. Mr. Karp stated they never stated any sizes or number of suites during the hearings. Chairman Webb said he has seen signs at different times that said condos and then said for lease/rent. Mr. Karp asked if it could be done both ways. Mr. Wenzel said he does not have the resolution or application in front of him but his concern is if the basis for the approval was for condos and now they are doing rentals he would have to look at the information. He did not think it would stop them from doing partial C.O.s but he wanted to make sure what was approved is what they are actually doing. If they just mentioned it and it is not on the plans it is a very different story.

Chairman Webb said he believed there was no approved site plan. Mr. Norbut said until they satisfy the county and post the bond they do not technically sign off on the site plan. They have an approved site plan but it just isn't a signed site plan which would create the hammer to make them do what they have to do. They were a little lenient in this case as they were with the bond because they knew the facility is a value to the municipality. They are trying to be reasonable and making sure things are being done in the best interest of the town.

Chairman Webb said it seems to be beyond the Board's control now but they should be aware of everything. He asked if the Board should be doing something to handle this lack of performance bond. Mr. Bernstein felt they should give them a week or two to get it or they stop work. Chairman Webb said the code official could stop it at any time but asked Mr. Wenzel if there is anything the Board can do to put some pressure on them. Mr. Bernstein asked if the Board can direct the code enforcement office to do it. Mr. Wenzel said because it has been approved even though it is not signed it is sort of out of the Board's hands. Mr. Wenzel said this is a massive project for the town and based on the information about the back taxes if there was an effort to enforce the bond provision you may have this person just shutting down. Mr. Norbut said the resolution is condition upon all these items being met and if that county approval is not in place and not met the resolution of approval is not in affect. Mr. Bernstein asked if the developer went bankrupt and there was no performance bond they could have a problem. He felt the bond should be there to protect the town. Mr. Norbut said the bond is strictly there for the site improvements only and has nothing to do with the building. It is there to make sure the site can be made safe so residents would not

get hurt. Mr. Bernstein felt the performance bond should be pushed. Mr. Norbut said 10% of the bond would be cash which is valuable.

Mr. Wenzel said there is the issue of the site plan not being signed and also the county conditions not being met. He would like the opportunity to look at the file to determine what hammers they have beyond the obvious hammers they spoke about before. There is a performance bond requirement and it has been begged off but felt in this economy if you pushed it the Board would have to accept the possible consequences. Mr. Norbut said they have taken the 1.5 million and phased it into 3 pieces at a ½ million dollars a phase. There would be \$ 50,000 in cash. They would have to post a maintenance bond after they are finished to guarantee the site improvements were done correctly.

Councilman DiDomenico felt the maintenance bond is more important at this point in time because a lot of the work was done. He thought they could get a percentage of the bond to make sure they had something. Mr. Norbut said he has never seen a town waive the requirement. Usually you do not release the performance bond until you receive the maintenance bond. Chairman Webb said since there is air in one hand we would get air in the other. Councilman DiDomenico agreed they could not use that leverage if there isn't a performance bond. Mr. Norbut said he has discussed issuing C.O.'s in different fashions with Mr. Esposito. Councilman DiDomenico felt they should put some sort of bond up now. Chairman Webb said it was up to the town to decide how to issue C.O.'s.

Chairman Webb asked if they knew when they would finish the project. Mr. Norbut said they are going to work until the weather stops them and then continue when the weather improves. He felt it may be May of 2011.

Chairman Webb asked Mr. Wenzel to review this and let them know at the next meeting if there is anything the Board should be looking at.

Mr. Norbut said as a side note, Mr. Christophe brought to his attention that they ran into a little issue with regard to a parking space. They may have to eliminate a space because of a conflict which would clearly throw them back under the Board's jurisdiction. They may be coming back to the Board asking for administrative approval to eliminate the space or perhaps the 40 spaces off site may become 41.

A motion to enter executive session was made by Councilman DiDomenico, second by Mr. Holloway. All in favor.

## **EXECUTIVE SESSION**

A motion to adjourn was made by Councilman DiDomenico, second by Mr. Holloway. All in favor, meeting adjourned.

**PLANNING BOARD  
EXECUTIVE SESSION MINUTES  
11/8/10**

MEMBERS IN ATTENDANCE: Mr. Bernstein, Mr. Karp, Mr. Renne, Mr. Tanski, Ms. Davenport, Councilman DiDomenico, Mr. Holloway and Chairman Webb.

Also in attendance: Joseph Wenzel Board Attorney

The purpose of the executive session was for the Board Attorney to discuss a settlement in the O. Kaplinsky, 51 Ryle Park Ave. case. The Board discussed the settlement agreement with Mr. Wenzel. If they Board does not agree with the settlement agreed upon they could continue with the appeal. A discussion followed between the Board and Mr. Wenzel. The Board agreed they would have a re-hearing of the revised application.

Executive workshop session was closed.