

**BOROUGH OF WOODLAND PARK**  
**PLANNING BOARD MINUTES**  
JANUARY 10, 2011  
REORGANIZATION

Meeting called to order at 7:32 P.M. by Mayor Lepore.

**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, MAYOR LEPORE, TRACY KALLERT, BILL KARP, SHERRY VAN DYK, KEITH TANSKI, RICHARD BERNSTEIN, BOB KASSAI, CARLO RENNE AND DORA DAVENPORT

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

FLAG SALUTE

**REORGANIZATION**

A motion to approve the minutes of the December 6, 2010 meeting was made by Mr. Bernstein, second by Ms. Davenport and approved.

A motion to approve the minutes of the December 6, 2010 executive session was made by Mr. Renne, second by Ms. Davenport and approved.

**RESOLUTION**

WOODLAND PARK BOARD OF EDUCATION – Review & recommendations of site plan for reconstruction/expansion of Charles Olbon School parking lot has been reviewed and recommendations have been made which are memorialized by a vote of 6 -0.

## **REORGANIZATION**

Mayor Lepore thanked the current members of the Board for their service to the community.

Mayor Lepore asked for a motion to appoint a Board Attorney and recommended Joseph Wenzel. A motion was made to appoint Mr. Wenzel by Mr. Kassai, second by Councilman DiDomenico and approved.

Mayor Lepore asked for a motion to appoint a Board Engineer and recommended Don Norbut of T & M. Associates. A motion was made to appoint Mr. Norbut by Mr. Kassai, second by Mr. Karp and approved.

Mayor Lepore asked for a motion to appoint a Board Planner and recommended Kathryn Gregory of Gregory Associates. A motion was made to appoint Ms. Gregory by Mr. Kassai, second by Councilman DiDomenico and approved.

Mayor Lepore asked for a motion for Chairman and recommended Tom Webb. The Mayor thanked Mr. Webb for his many years of service. A motion was made to appoint Mr. Webb by Ms. VanDyk, second by Mr. Renne and approved.

Mayor Lepore asked for a motion for Vice Chairman and recommend Richard Bernstein. The Mayor thanked Mr. Bernstein for his continued service. A motion was made to appoint Mr. Bernstein by Councilman DiDomenico, second by Mr. Kassai and approved.

Mayor Lepore stated Mr. Randazzo is recuperating and he hopes to see him back soon.

Mayor Lepore swore in the professionals, Chairman and Vice Chairman.

Chairman Webb thanked the Mayor and fellow commissioners.

Chairman Webb asked for a motion to approve and publish the meeting dates. He noted the February meeting will be held on the first Monday of the month. A motion was made by Mr. Kassai, second by Mr. Bernstein and approved.

## **ORDER OF BUSINESS**

DOCKET # 11-02 – GARRET POINTE – WEASELDRIFT RD. – BLOCK 85 LOT 14 – EXTENSION OF TIME ON PRELIMINARY SITE PLAN APPROVAL.

Mr. Bruce Pitman, attorney for applicant, stated they are asking to extend the approval for the preliminary site plan for Garret Pointe. After getting the approval here they applied to Clifton Board of Adjustment for a variance to install the entrance way along Paxton St. in

Clifton. It proved to be a very slow application and they were before them for about 2 years. There were over 21 hearings for the roadway and they ultimately received a denial. The denial has been on appeal for more than 1 ½ years before the Superior Court in Passaic County. They are now advised by the Judge that their preliminary legal argument is going to be heard on February 14<sup>th</sup>. They have broken the legal argument into two parts. Initially they were going to argue that based upon the rulings of the appellate division on the zoning issues that the right to have a roadway along Paxton St. is established. The argument is that the City of Clifton has the right to impose reasonable regulations for development but that right has essentially been established. If they are successful the appeal to the Superior Court is over. If they are not successful they will submit supplemental briefs on the argument that essentially Clifton's Board was acting in an arbitrary and capricious way in denying the application. All they are looking to do there is have a roadway but it happens to essentially be a use variance because of the way they have the area zoned. They are hopeful the issue will be resolved this year. If they are successful he does not know if the objectors would appeal but if they are unsuccessful they plan on appealing. He has had discussions with Mr. Wenzel regarding the permit extension act and felt they are entitled to a one year extension.

Mr. Pitman said his client is also here to answer any questions the Board may have. Mr. Wenzel said the Board is probably more familiar with this application than he is but felt because of the on going litigation in Clifton and the permit extension act there are at least one or two reasons why this extension under the law is allowed. He felt it was necessary under the statute. There was similar resolution passed the same time last year that is in the Board's packet. At this point they are still in the same position. Mr. Pitman said last year they thought they would be further along in the litigation. He also pointed out that Mr. Buglione has joined them by communicating with the court in order to move the application forward. Mr. Karp asked if this was grandfathered as a COAH project. Mr. Pitman said they came in under Round 2 of COAH and felt they would not be affected by what has been going on that affects Round 3 in the future. Ms. Gregory said she cannot be 100% sure that is true because she doesn't know what will happen in the future but she felt Mr. Pitman was correct. Ms. Gregory said the fact is there will be a COAH obligation but will be under a different division of government. She felt they should still go forward as it was so they make sure they fulfill the prior obligations before going forward.

#### PUBLIC OPEN – CLOSED

A motion to approve the extension of time on the approval for one year was made by Councilman DiDomenico, second by Mr. Renne and approved by a vote of 9 – 0.

Chairman Webb asked Ms. Gregory to comment on Master Plan meetings. Ms. Gregory said the committee met and had a productive session. Going forward they are going to meet with the Passaic County planner. They are trying to arrange this meeting and she will speak to the Mayor tonight. As mentioned back in November the county is undertaking a transportation plan and the committee wants to get involved with that. At this time there is no date set up for that meeting. Mayor Lepore said he would like Chairman Webb to be involved in the Master Plan meeting. He said as soon as he gets a date he will let Ms. Gregory know. He hoped to have the meeting in Totowa at the county planning office. Mr.

Kassai agreed that it was a productive meeting and felt having the meeting in the county office would also be very productive.

Chairman Webb said he would like to address the engineer's letter regarding 1225 McBride LLC's performance bond. Mr. Norbut said the Board Secretary informed him that the Board wanted a formal report on the performance and maintenance bonds.

Woodney Christophe stated that nothing has changed with the site since the last time he spoke to the Board. They have completed the parking on the south side of the building and the frontage streetscape improvements. The drainage for Phase I has been completed and all the curb work is done. There are supposed to be 205 parking spaces in the Phase I portion but during construction there was a conflict with the sanitary manhole that could not be relocated so they lost a parking space and at some point the applicant will have to come back to the Board and address that deficiency in parking. No work has been done on the site since December 2010.

Mr. Norbut said they have been advised they would continue working, weather permitting, through the spring in order to complete the project in its entirety. There has been a break in the action over the past month and he is not sure of the reason or whether it is financial or not. The contractor did mention to Mr. Christophe that he was waiting for payment from the owner so he could order some large drainage equipment and materials which may be part of the hold up along with the weather. The plan moving forward is to C.O. suite by suite in the building. At this point some months ago they asked the building department to get a temporary certificate of occupancy for the common areas of the building so they could invite potential doctors into the building to see it and use it as an area to show them the facility. The TCO has been issued for the common areas and it does have a limitation as far as time. He does not know how long the time was. The Board Secretary said there have been 3 issued for 30 days each. Mr. Norbut said they were advised recently by Mr. Esposito that the applicant has come in for a final C.O. for the first suite which is Suite 222. They are going to use that suite as a management office of sorts. He received a copy of the C.O. for the first suite in today's mail. He spoke to the Construction Official last week and told him they still had the bond issue and that he would be presenting it to the Board tonight. If this project was built in one phase they would be asked as the engineer to do a certificate of occupancy report for the site improvements. They do not handle anything inside the building. There are two parts to the CO approval, one is the building and one is the site. They will do separate site certificate of occupancy reports for each suite. They are currently working on the C.O. report for Suite 222. They will be looking at the size of the suite and looking at the parking in Phase I that is complete. As each suite gets approved they will subtract the required parking from the total 205 spaces. They would not recommend a certificate of occupancy be issued if they have used up the completed parking. The Board granted a waiver for parking and they will take that into account and give them the 10% as each suite comes in. They will track it that way with individual reports. The recommendations on the performance bond issue are that the applicant not be allowed to proceed with Phases 2 & 3 of construction until the proper performance bonds are posted for those phases. He stated before any additional C.O.'s are issued against the Phase I parking that the maintenance bond for the Phase I improvements be issued. The maintenance bond

requires a 2 year bond for 15% of the total construction cost for that phase. In the report on page 2 he has given the Board the numbers for the bonds. He felt the town has been more than reasonable in allowing them to proceed with Phase I on a promise of a performance bond that they have not followed through on.

Chairman Webb asked if he has any feedback from the applicant or the construction people regarding the bond. Mr. Norbut said they have advised them and calculated the bond prior to the first preconstruction meeting. They made a commitment to provide the bond and periodically they told them they were having trouble getting the bond and had one excuse after another. Most recently they committed to providing the bond but it has not been forth coming. He has had no discussions with them since early December. He can renew the discussions and he has brought the Borough Administrator up to speed seeking some input from him in pursuing this matter.

Chairman Webb asked if he provided a copy of his letter to the applicant. Mr. Norbut said he has not. Chairman Webb said they are obviously aware of it. He asked who is responsible in the Borough for enforcing this if there is a bond due. Mr. Norbut felt the checks and balances really falls on his office and the Construction Official. They work together at the preconstruction meeting and make sure all the conditions of the resolution are addressed. Everything was addressed except for the county issues with the crosswalk and the performance bond issue. They went through the first meeting and they made a commitment to provide the bond. At some point maybe they should have stopped them but working with all the Borough Officials and keeping them informed there was a consensus to continue to press for the bond but allow them to proceed. Chairman Webb asked if the crosswalk was still an issue with the county. Mr. Norbut said the county has not officially given their approval yet because of that issue.

Mr. Bernstein said they have asked for the bonds and have given them a tentative C.O. and felt they should get a little more forceful and not give them C.O.'s and make them produce the bond. They are saving money and the town does not have the protection it needs. He suggested a resolution that the construction office goes no further until this is resolved, especially on Phase I. They have asked for favors and are not following through with what the Board asked them for. He felt this has been the nature of this applicant throughout the whole process.

Mr. Karp said there is a suite in front of the building with a sign on it Woodland Park Dialysis Center and when he drove by tonight there were lights on and cartons all over. He asked if they taking it to the next level without performing. Mr. Norbut said he spoke to Mr. Esposito and he said the suite in question was a management office and if there is a dialysis center he is not aware of it. The Board Secretary said it is not open and stated that a dialysis center also needs state approval. Mr. Karp said the point is they are proceeding to the next level of renting and still not performing their fiscal responsibilities.

Councilman DiDomenico asked whose jurisdiction is was to act on his recommendations. Mr. Norbut deferred to the attorney but his knowledge of the MLUL says that the bonding issues fall under the governing body. Councilman DiDomenico said the Mayor & Council

did not have this letter before them at their last meeting but suggested the letter be brought to the Mayor & Council and if there is reasons why this applicant can't or won't provide the requisite bond he should be invited to the meeting to explain what those reasons are. He agreed with Mr. Bernstein that it looks like they are thumbing their nose a little bit but there may be some reasons for it. He doesn't know the cost of the bonds but they need to come to some understanding with this applicant that they have relaxed the regulations to a point but now that can no longer be done. He felt it should be sent to the Mayor & Council along with any Board recommendations they may have. Mayor Lepore said it works for him.

Mr. Kassai asked what the legality is for some sort of ultimatum stating they have waited for the posting of the bonds and the only thing they get is a delay. He felt they were getting excuses and they are proceeding with construction. He asked what the Board's recourse is in saying enough already.

Mr. Wenzel said to be clear this goes also to the Councilman's issue that he raised. The Planning Board has already set up the parameters with regard to this project and for whatever reason the performance bond for Phase I of this project has not been secured and the building is 99% complete. He felt you are now talking about just securing the maintenance bond because the performance bond now goes away once they are done with the improvements. Normally what you would do if there was a failure to comply you would have action by the engineer or the Construction Official. You would indicate to them they would not be able to get a C.O. until they have secured the bonds. They are now at the point where they are going to start looking for various governmental approvals. At this point it is probably the best time available to turn to the developer and say performance and maintenance bonds need to be in place. This is normally how you would go about it if there is a failure by the developer you would normally take that course of action. He felt they were in a good spot to tell them they were suppose to get these things and if you don't get them we will not give you a C.O.

Councilman DiDomenico said he would put on the councilman hat and he would agree with Mr. Bernstein you need to make sure they know they have to follow the rules but if it is 99% complete would it mean they would only have to come up with the money for the maintenance bond. Mr. Norbut said the portion of the bond for Phase I which is almost complete would probably not need a performance bond but would need a maintenance bond. They would need the full performance bond for Phases 2 & 3 but as they complete the phases they would need maintenance bonds. Councilman DiDomenico stated he wanted the ratable and felt the Mayor would agree. This project has been going on for a long time and he is not saying he is willing to roll over for the ratable but he does want the ratable. He wants the tax base so the town can get the revenue the building will generate. He wants to be careful with issuing ultimatums. He would like to invite the developer to the Council meeting to explain why he is not doing these things. They need to protect the taxpayer in either situation. Mr. Bernstein felt as much as you want the ratable you do not want to put the town in jeopardy. He felt there is a big hole there with the performance bonds for 2 & 3. Councilman DiDomenico said that is why he wants the Council to have these people in to explain what is going on and what the issue is. He felt to get a bond you have to come up

with the money. He felt the Board needs to understand what the problem is and if it is the money that makes him worry more that they will not finish the project.

Chairman Webb said they have heard that the taxes have not been paid and did not know the status of that today. He asked Mr. Norbut about the one parking space that has been lost. He asked what would trigger them to have to come back to the Board. Mr. Norbut said any change affecting parking and variances would result in them coming back. Chairman Webb asked if it is in Phase I. Mr. Norbut said they would not sign off on the project in its totality until they came back and address the issue. Chairman Webb said the way it's been going from the beginning there was always a reason why they did not have to comply with the rules and regulations. He can see this going if they let them go to Phase 2 & 3 they will be finished and there still will be no revised site plan. He asked Mr. Wenzel if there is some action of law that will force them to come back here or just the Construction Official saying stop work. Mr. Norbut has talked to Mr. Esposito and he has indicated that at some point in the near future he is not going to issue any C.O.'s. He thought he said when the current TCO runs out he is going to require them to come back to the Board. The Board Secretary thought they are working on the 3<sup>rd</sup> TCO which will expire at the end of the month. They will then have to come back to the Board.

Councilman DiDomenico felt the Board should take a formal vote to notify the Mayor & Council and thought the Administrator should invite the developer in to a meeting so they can discuss it and hear an explanation. Mr. Norbut said there has already been one concession made to allow the posting of 3 smaller bonds in phases. Councilman DiDomenico said there are 7 people on the Mayor & Council and they may want it handled in a different way.

Chairman Webb felt the TCO will expire at the end of the month which is for the common areas. If that expires they would not have access to any suites. He felt in normal circumstances then the developer should be coming back to the Board in February. Mayor Lepore felt the Board's concerns were valid but felt they should wait and see how it plays out with the Board engineer and Construction Code Office. He is confident the developer will comply. Councilman DiDomenico asked if a copy of Mr. Norbut's letter should be sent to the developer. Mayor Lepore recommended Mr. Norbut and Mr. Esposito press the developer to meet certain conditions. He felt they could get the point across. Mr. Norbut asked for input as far as a timetable to comply. Mayor Lepore felt it starts with the expiration of the TCO and that would be their deadline. Mr. Bernstein felt having the resolution transferring the responsibility to the governing body would protect the Board and formalize their actions. He did not want anyone to think the Board was remiss in their duties.

Chairman Webb felt they have to understand that when the TCO expires there will be nothing further. He would support Mr. Bernstein in voting on a resolution. Mr. Karp felt the developer should be made aware that time is running out. Chairman Webb said going back through all the meetings there was total disregard for normal process and time and again they attempted to circumvent whatever the Board was trying to get from them in the form of testimony or information.

Ms. Kallert asked if the developer has any C.O.'s for suites that are pending and if they should be put on hold also. Mr. Norbut said not to his knowledge. The only CO that was issued was for Suite 222. Ms. Kallert felt the resolution should state that all CO's should be put on hold. Mr. Norbut did not know if there is access to suites without using the common areas. Chairman Webb stated the resolution should state no further CO's should be issued as a recommendation. The Code Official could do as he chooses but he wanted the Board's recommendation to be on record.

Mr. Kassai stated in the community he lived in before coming to Woodland Park there was a developer who completed Phase I of a project and then had some financial problems and after the town had made some concessions he never completed Phase 2, 3, & 4 which are now enormous vacant lots that have been sitting there for 5 ½ years. He said when it was presented to the town they were told they would get high ratables and many other things. He said his point is if they close up shop and walk away the community is stuck with it because there are no bonds. He felt the Board should take the position that they have done things to accommodate the developer but every time they ask for something there is no response. He knows the word ultimatum is a strong word but felt the Board should take a strong position on what they want. He felt they should not just be looking at ratables but also at the proper development of the project. Chairman Webb felt the Board is at a disadvantage because they already approved the project and the time for that would be if they are successful in getting them back here. If they don't have the money it is nothing they are going to enforce on them.

Chairman Webb said they would look to send a letter to ask the Mayor & Council to be apprised of this and ask the Code Official and Engineer to meet with the developer and impress the Board's need for conformance. Mr. Karp asked if for the next meeting 2/7/11 there would be some resolution with them. Chairman Webb asked Mr. Norbut to come back and inform the Board where they were with it. It is Mr. Esposito's responsibility to stop them from occupying the building without a C.O.

A motion to send a letter from the Chairman to the Mayor & Council asking that the developer follow through on recommendations made by the Board Engineer was made by Mr. Kassai, second by Mr. Renne. Motion approved.

A motion to adjourn was made by Councilman DiDomenico, second by Ms. Van Dyk. All in favor, meeting adjourned.