

**TOWNSHIP OF WASHINGTON, BERGEN COUNTY
PLANNING BOARD MEETING MINUTES
October 24, 2018**

CALL TO ORDER: Welcome to Special Planning Board Meeting by Brian Murphy

SALUTE TO THE FLAG

OPEN PUBLIC MEETING ACT

In compliance with the Open Public Meetings Act of the State of New Jersey, notification of this meeting has been sent to The Ridgewood News, our official newspaper in the Township of Washington and notice has been posted on the bulletin board at Town Hall.

ROLL CALL: Mr. Golick (Absent), Mr. Pinnick, Mr. Sabino, Mr. Scudieri (Absent), Mr. Sears, Mr. Vinagre, Mayor Calamari, Councilman Cumming, Chairman Murphy

Board Engineer- Paul Azzolina

Board Attorney- Louis Lamatina, Esq.

Attorney for Viviano Project- Allen Bell, Esq.

MOTION TO OPEN THE PUBLIC PORTION: No Motion to Open The Public Portion as this is a Special Meeting for the Applicant.

OLD BUSINESS

JAMES A. VIVIANO, Current Applicant for 463 Van Emburgh Ave., Lot 2, Block 1306; Lot 1.05, Block 1305

This is a Continuation of hearing on the application to amend the preliminary subdivision/site plan approval and grant final subdivision/site plan approval.

Mr. Murphy- Advised the public that there would be no Motion to Open the Public Portion as this meeting is a Special Meeting exclusively for the Applicant.

Mr. Sears objected and stated the citizens had the right to speak on the Application before the Planning Board. Mr. Murphy clarified that the Open Public Portion of the meeting is for items other than what is on the current Agenda. The Application is on the Agenda, and the public will have an opportunity to speak after all testimony by the Applicant has been completed.

Mr. Sears further objected to a letter dated Oct 11, 2018, from Mr. Shimanowitz to the Planning Board stating that the Planning Board should not "enter into any public comments regarding the elimination, reduction or prevention of the proposed development on the Subject property.... and that public comment should be limited to the issue of the sewage service and final approval". Mr. Murphy responded that the public would be permitted to speak tonight after testimony had been heard.

Mr. Sears – Stated that he had an issue that the Applicant's Court Reporter had sworn two people in for testimony at the previous meeting for this Application, and was done without proper authority. He requested that that testimony be struck from the record.

Mr. Bell- Stated that the Court Stenographer is authorized by Statute to give Oaths, but offered to swear in any further witnesses.

Mr. Sears- Reiterated his request that the minutes be removed.

Mr. Bell- Stated this was not proper procedure.

Mr. Sabino- Asked If there is a discrepancy in the minutes, which takes precedence.

Mr. Bell- The verbatim transcript on tape by Planning Board would be used if it was ordered; however, it may contain inaudible conversations. Stated it was not unusual for an Applicant to ask for a Court Stenographer to be present to take a verbatim transcript to have a full transcript. Added that a Court Stenographer transcript is typically more accurate than a recorded transcript.

An unidentified resident asked the Planning Board if he would be permitted to make a Motion. Mr. Murphy denied this request. This resident informed the Board that many of the residents affected by the Development would be retaining counsel to protect their interests, and requested an adjournment to consult with the Attorney.

Mr. Murphy -Uncertain if a decision would be reached by the Board this evening, but did intend to keep a 10 PM deadline tonight.

Mr. Bell- Municipal Land Use Law dictates that Boards have a limited time to decide on applications. This Applicant has the right to proceed with the application at this meeting, and it is up to the Applicant to agree to the requested adjournment.

Mr. Shimanowitz – Objected to adjournment. Stated the Applicant had properly Noticed residents on this matter. Additionally, Mr. Shimanowitz requested that the public conduct themselves politely as the meeting moves forward and stated he would leave this proceeding and have a hearing in the courthouse if the public made it difficult for him to proceed.

Mr. Bell – Echoed this request of the public.

Mr. Murphy- Stated the Board will be going through the 21 outstanding items; and agreed to the marking of the Exhibits as follows:

Opinion letter dated Oct 11, 2018, entered as Exhibit A-4; and 21 Items Letter reviewing the conditions dated Oct. 11, 2018, entered as Exhibit A-5.

Mr. Brian Murphy is sworn in, and qualifications as an Expert in his field agreed to.

Review of the 21 Conditions of Approval commenced:

Condition #

#1- Amendment of the Preliminary Major Subdivision Plat and Preliminary Site Plan Plat to include approvals of all government agencies having jurisdiction:

Mr. Murphy stated revisions have been made as requested. Town Engineer's revisions have been completed. No comment back from Township Architect who is no longer employed by the Township. Nothing back from Fire or Police Departments. Mr. Bell inquired about the name change of Andrea Ct. Mr. Brian Murphy stated that few alternate names had been submitted but no response received and will resubmit the names. Mr. Sabino inquired about how Planning Board can proceed since the Applicant has not yet met all of the requirements. Mr. Bell explained that the Planning Board can grant Final Approval or Final Approval subject to meeting those conditions. Mr. Shimanowitz clarified that the Applicant has not "not" complied with the conditions, but rather that the Applicant has submitted but has not heard back from Police and Fire Departments as stated in his letter. Mr. Brian Murphy stated he can provide proof of submission to the Fire/Police Dept.

#2- Approvals by outside Agencies:

Mr. Brian Murphy responded.

(a) Township of Washington has granted Preliminary Approval

(b) Amended preliminary and final subdivision and site plan currently pending before the Planning Board

(c) Bergen County Soils Permit- Mr. Brian Murphy had not been copied on this notice and was not previously been aware of this outstanding item, but will follow up to resolve.

(d) Bergen County Planning Board approval has been obtained.

(e) Water pending Township approval- there is a Master Permit

(f) Sanitary Sewer-Treatment Works Approval (TWA) is before the Planning Board at this time.

(g) Application for Permits from NJDEP and TWA Cannot occur until Township and Ridgewood sign the Application.

(h) NJ Turnpike Authority- approved

(i) NJDEP Wetland permits- approved

Mr. Sabino asked if Board has copies of all approvals. Mr. Azzolina confirmed that he does have copies of all of the approvals that Mr. Brian Murphy stated he has. Regarding Soil Conservation, Mr. Azzolina recommended that Mr. Brian Murphy speak directly with that agency. Mr. Sears asked if the Planning Board should have the copies of the approvals. Mr. Murphy stated that Mr. Azzolina always testifies to the existence of Approvals, and all approvals are also available in the Planning Board office. Mr. Azzolina stated the Bergen County Approvals are similar to Planning Board conditions and are independent of the Planning Board. All correspondence with Bergen County are contained in the Planning Board files. Mr. Bell suggested to the Applicant that all copies of Approvals be sent to the Planning Board to ensure clarity for the Board.

#3- Payment of all fees and escrows due:

This is a condition of Final Approval which Applicant does not yet have.

#4– Posting of the Performance Bonds:

Mr. Bell stated this would come post the Final Approval after Developer's Agreement is executed with the Township and the Planning Board, and the amount of the Bond is determined. Mr. Sabino asked if a Developer has been selected. Mr. Shimanowitz responded “no”.

#5-No removal of landscaping without prior approval of Township. The applicant shall execute a Conservation Easement:

Mr. Shimanowitz stated this is more properly done after Final Approval and would be premature until after the map is filed; Mr. Azzolina concurred. Mr. Bell explained that typically after approval is granted and during the negotiation of Developer Agreement, the requirement for a Conservation Easement ensures that future developers are aware of areas restricted against development. This would be a condition of any Developer's Agreement.

#6- Compliance by Applicant with all stormwater management regulations including those made effective on February 2, 2004:

Mr. Brian Murphy explained that the DEP enacted stormwater requirement on Feb. 2, 2004, and explained these requirements. Mr. Azzolina agreed with Mr. Brian Murphy's statement regarding major modification to stormwater management, water quality and reductions. The initial design did not comply with all the parameters. The DEP required the Applicant to modify the flow from the basin, and this modification has been reviewed and approved by many agencies, including the Turnpike Authority. Mr. Sears asked for a letter from the Turnpike Authority granting approval. Mr. Azzolina stated the letter does exist. Mr. Sabino asked for the specific location of the basins. Mr. Brian Murphy demonstrated on the map A-1 where the basin exists (on the East side of the property against the Parkway boundary line), and discharge goes out to the GSP property. Mr. Sabino asked about the possibility of water seeping onto Kennedy Drive, and Mr. Brian Murphy stated this was not likely. Mr. Murphy asked if there have been any other changes to the water requirements since this last change. Mr. Brian Murphy confirmed no other changes had been made.

#7- Footprint shall remain as shown on approved in plans:

Mr. Brian Murphy confirmed and still agrees.

#8-Applicant to remove wood chips and other debris under the guidance of Township Engineer:

Mr. Brian Murphy said much of debris and wood chips have been removed by Permit and approved by the Building Dept. Mr. Sears inquired as to when this was done. Mr. Brian Murphy replied at various times over the last ten years.

Mr. Sears- Then noted the following:

Review of the OPRA permits of the last years 20014- 2018 indicates there are five permits. 7/23/18- tank remove permit-still pending; 8/15/2018 demo of a building foundation- still pending; 3/14/2016 removed above ground storage tank- still pending; vacuumed out 50 gallons of fuel and storage with no soil sample or follow up ticket from the Township. 3/1/16- demo house foundation never done. Mr. Sears questioned why there are no Permits for the removal of vehicles. Mr. Brian Murphy stated no permit is required to remove vehicles and stated the Applicant followed all permit requirements. Mr. Sears stated that the community is concerned about what may be in the soil and asked for clarification of what has been removed over the years. Mr. Brian Murphy responded that Applicant removed trees, leave and material dumped on the property over the years. Mr. Shimanowitz clarified that wood chips and debris were removed under the supervision of the Township Engineer. Other environmental requirements regarding the site will be complied with but are not under the jurisdiction of the Planning Board. Mr. Azzolina stated he had witnessed various items being removed over the years including vehicle, wood chips, and debris. Tanks were removed, building foundations were proposed to be removed and done recently. The Applicant had to reapply for demolition Permits for two masonry structures. Site not 100% clean at this point. Mr. Brian Murphy reminded the Board that wood chips and tree stumps are only items to be discussed regarding #8. Mr. Sears expressed concern that the Township Engineer had permitted cars being pulled from the property and asked for clarification. Mr. Azzolina confirmed he did witness cars being removed and performed the incremental daily inspection of the site. Some vehicles were removed while others remain to date. Mr. Sabino asked about the risk of environmental damage due to cars sitting on the property and inquired about a Geotechnical study. Mr. Azzolina stated the Geotechnical

study is done to determine the soils strength and ability to support the proposed structure. Stated a Soil investigation would be more appropriate, but this is identified during an assessment of the property. Mr. Sabino asked if Planning Board currently has authority to have the soil tested. Mr. Bell explained that environmental issues are not usually part of the subdivision application, and the DEP has jurisdiction of this. Mr. Sabino asked if the Board has the right to require soil testing. Mr. Bell did not think they did. Mr. Bell stated the Board is looking at the condition of the Preliminary to see if they were complied with, and looking at the Maps submitted to determine if they are the same as was Preliminary Approval as these are the elements of approval under Land Use Law. Additionally, the Board is reviewing the Amendment to the Preliminary Approval for the sewers, which must be approved by the Township and by Ridgewood. Clarified for the Board that this is a Mt. Laurel obligation and part of a Settlement Agreement, and therefore the Township has specific obligations with the Application. These obligations require that the Board do what is practical and reasonable to expedite the Application and not add any cost generating features to it. Mr. Sears voiced concerned about the length of time the application has been pending. Mr. Bell explained some of the circumstances surrounding the length of time; and reminded the Board of its obligation to make sure the Applicant has complied with all Conditions of Approval.

#9-Submission of structural design for concrete and modular block retaining walls: Mr. Brian Murphy in agreement with is, customarily done at the Building Permit process.

#10- Applicants shall submit a Geotechnical analysis:
Mr. Brian Murphy stated this will be done after Building Permits issued.

#11-No Decks:
Mr. Brian Murphy –Agreed

#12- The Applicant shall make reasonable effort to construct one family houses on lots 2.58 to 2.74 on the south side of Genevieve Court as far north as possible: Mr. Brian Murphy agreed Referencing Exhibit A-1. Units on Southside of the property will be pushed as far north as possible to give larger backyard providing greater separation between the new house and existing house. Mr. Azzolina concurred with Mr. Murphy testimony. Mr. Murphy asked Mr. Brian Murphy to explain the term "north envelope" and the positive impact it will have in the community. Mr. Brian Murphy explained the concept of an "envelope" as an allowable area where a house can be built. This Condition #12 requires that houses to be pushed as far forward toward front setback line as is possible to increase separation from existing house and new homes.

Mr. Thomas Massano (3 Katherina Place) requested specific changes to the plans as it relates to his house.

#13-Concrete wall in retention basin area to be colored to blend in with the plantings:

Mr. Brian Murphy- Agreed

#14- Relevant documentation pertaining to parking and drives:

Mr. Brian Murphy stated this is a condition of CO and will be met at the appropriate time.

#15- Complete purchase of Township parcel and easement:

Mr. Brian Murphy stated easement is no longer applicable.

Mr. Shimanowitz added regarding the Township parcel; this is not done prior to Final Approval. Mr. Sabino asked if the Township has received the required deposit. Mr. Calamari stated he would follow up to confirm this was received.

#16- Utility Easement:

Mr. Brian Murphy-Moot point.

#17-Installation of addition tree in the area of 48 one-family lots, 96 tree and 912 shrubs:

Mr. Brian Murphy this can be achieved only after Final Approval is granted.

#18- Work to minimize or eliminate disturbance in lots 2.08, 2.11, 2.14, 2.19, 2.58, 2.60, 2.61 and 2.63:

Mr. Brian Murphy- Agreed.

#19-No trees to be removed other than those indicated on the Tree Removal Plan:

Mr. Brian Murphy-Agreed.

#20- Relocation of hydrants in front of lot 2.60:

Mr. Brian Murphy- completed and reflected in the plans.

#21- With a Final Site Plan and Subdivision Approval applicant to provide quitclaims deeds to the Hoovers and the Schumanns:

Mr. Brian Murphy- Agreed.

Mr. Sabino asked if Approval for this project has already been granted to the Applicant. Mr. Bell explained that there are two stages to be approved by the Planning Board: Preliminary Approval process and Final Approval process. In the Applicant's case, they applied for Preliminary and Final Approval simultaneously. The Planning Board did not grant Final Approval as there were conditions that had to be met before the Board would grant Final Approval. These Conditions are before the Planning Board tonight. The Planning Board cannot change subdivision or site plan at this point. The function of Board on this Application is reviewing the Amended Preliminary application for the sewer only. This amendment is necessary because Applicant cannot go through the Green Acre property for sewage disposal. Final Subdivision approval is also being sought to give the Applicant the right to go ahead with the project. Mr. Sabino asked if there was any other viable alternative to the pumping station being proposed. Mr. Brian Murphy stated other options were explored by the Applicant but because the Property is within the Ridgewood Service Area it must go to

Ridgewood, and this can only be done by Pumping Station. Mr. Pinnick asked when the Green Acres meeting took place. Mr. Brian Murphy stated he did not know the exact date of this meeting, but added the Applicant would not get approval to cross the property since there is a feasible alternative to the crossing. Further exploration would be a waste of money for Township and Applicant.

Mr. Sears questioned the amount of time that has passed without any action on the Green Acres approval. Concerned that Applicant did not do a good job to investigate crossing Green Acres property. Asked about the Fund for maintenance of the Pumping Station, and the process in the event the Homeowner's Association does not maintain the Pump Station. Mr. Brian Murphy stated the Homeowner's Assoc. would remain responsible in the event of a failure and reminded the Board that a licenses professional is required to oversee/maintain the pump station and provide reports to the DEP. Mr. Sabino asked how responsibility would be assessed in the event of any sewage backup. Mr. Brian Murphy explained Gravity Station is Township anything on forced main is the Homeowners. Mr. Cummings inquired about the possibility of the Homeowner's Association going bankrupt and not being able to finance maintenance. Mr. Brian Murphy stated the Fund is designed for this eventuality and additionally, liens can be put against the houses if necessary. Further explained the process in the event of a failure as testified to by Mr. Martone at the previous Planning Board meeting. Mr. Cummings voiced concerns about the Homeowner's Association being able to finance the pump station in the event of failure, and the Township having to pay for the repairs. Mr. Shimanowitz stated that Township Attorney did come to an agreement on how to handle this and there was a Resolution on this matter with which the Mayor and Council agreed.

Mr. Murphy invited the Public to speak and ask questions:

Mark Mathusek (477 Van Emburgh)- Asked that the proposed house near his home be moved more toward the street on the north side.

George Zorovich (666 Kennedy) - Concerned about potential sewage going through Kennedy Drive and does not want to see hook up through Kennedy Drive.

Tom Maisano (3 Katherina Place) – Took issue with the "Envelope" and the lack of clarity on the Map, asked if the Applicant should be required to redo the Map. Inquired about the pump operator's on-site hours and the cost to pay pump operator. Mr. Shimanowitz stated that any Developer is bound by the terms of the Resolution. Mr. Brian Murphy explained that the Operator does not live on site, but has a backup for vacation/emergencies; and is retained by Homeowner's Association.

Ralph Schumann (495 Van Emburgh Ave.) Concerned about how the sewage system will affect the storm drainage system, and the number of fire hydrants required. Asked if Planning Board feels the Applicant has met all requirements to approve. Mr. Brian Murphy stated they are separate systems and have been reviewed by multiple agencies. Location of hydrants is determined by the Fire Dept. Mr. Bell cautioned that the Planning Board could not respond until they have heard all the testimony.

Navjot Singh (10 Katherina Place) Asked who approved the 76 homes and complained about the number of homes on the 18 acres of property. Mr. Bell stated a previous Planning Board had approved.

Todd Compesi (378 Colonial Blvd.) Questioned the density of the development being proposed and asked if there were other Pumping Stations in town yet. Mr. Azzolina stated none in the township.

George Mouravieff (691 Kennedy Drive) - Echoed concern about sewage capacity at Kennedy Dr. for the size of the Development being proposed.

Frank Gozel (464 Van Emburgh Ave.)- Concerned about the Homeowner's Association not living up to the obligations and Township having to assume responsibly for the sewage system.

Louis Melendez (5 Katherina Place) Stated this project does not belong at this location. Cited numerous problems with Homeowner's Associations. The obligation of the Planning Board is to look at the possibility of contamination on the property and the safety of the residents. Questioned if the 2004 traffic study should be redone given the increase in traffic in 2018. Mr. Brian Murphy claimed

that these questions are not relevant to the Application. Mr. Bell clarified his role to advise the Planning Board as to what the Law is on this matter; and that Mr. Azzolina should make sure Planning Board has all approval the Applicant has received.

Megan Callea (6 Katherina Place) -Asked for an extension of time since the original plan was for 38 home and now increased to 73. Asked Planning Board to be socially responsible in making a determination. Stated resident with wells should have baseline testing done. Asked about the five open permits on the property, a time frame for approvals; and what zoning changes have happened since this initial approval. Mr. Bell stated that the Zoning Ordinance was created after this Settlement and cannot be rescinded. Once the Developer gets Preliminary Approval, there is a length of time town cannot change the Zoning Ordinance. If Zoning is changed it would put the town in violation of the Settlement Agreement. Mr. Bell stated courts granted a waiver for the sidewalks.

Diane Grimaldi (441 Van Emburgh Ave.) Asked if Pumping Station plans have been drawn yet, more details and if oil testing is going to be done. Concerned about the proposed house which appears to be right up against her property line. Mr. Brian Murphy stated the plans are drawn up, and the system sits below ground; the only noise is when the generator kicks in. Stated the homes are depicted where they are for representative purposes only. Ms. Grimaldi stated she felt there are enough changes in the Application that it should be considered a new application.

Mary Ann Ozment (960 Adams Place) Asked when will Homeowner's Assoc. come into being, concerned about not enough funding for the Assoc. Asked if this community would be governed by the Kelley Law. Stated the Board should have a Landscape Architect look at what needs to be done. Mr. Shimanowitz explained the Association could not come into existence until after the sale of the first home. Discussed the Condominium Statutes, and the mechanism to transfer from the development to the Homeowner's Association. Stated the Municipal Services Law would apply to this Development. Discussion ensued about the Kelley Law and how it affects the Municipality.

Donna Lilien (17 Katherina Place) - Asked about any odor from the system. Mr. Brian Murphy stated system is designed not to have an odor emitted.

Janet Sobkowicz (849 Robin Wood Road) - opposed to the Pumping Station and stated the \$73,000 in escrow would be used up very quickly.

Mat Linger (11 Katherina Place) Asked Mr. Brain Murphy if he had a viable egress of waste from the property at the time of the original application, and was the drainage diagram made up before or after the pumping station. Mr. Brian Murphy stated it was designed before, and they are separate systems. Mr. Linger spoke about the relevance of the traffic safety study report; and the issue of dealing with the larger volume of vehicles in an overcrowded area with only one route in and out. Asked if there are any other Mt. Laurel units in Washington Township and why all affordable units had to be on this one site. Mr. Shimanowitz clarified that there are no affordable house units on this site. Mr. Linger asked if this was at the cost of putting more units on the site and insisted that an updated traffic study be done. Also thought the Property owner should have to put up a bond in the event the Homeowner's Assoc. goes bankrupt. Mr. Brian Murphy explained his understanding of the original Agreement; and stated the Green Acres issue came up after the original Application. Mr. Shimanowitz stated that the Applicant had a viable plan at the time of the application; but was discarded after determining that the subject property was in Green Acre property. Any discussion about what transpired is not relevant to the discussion before the Planning Board.

Rupin Singa- 10 (Katherina Place)- Inquired about the parking capacity on the site. Mr. Brian Murphy stated they must follow the parking rules already in place.

Joe Durso (12 Loyola Terrance) Wanted to understand the change of Attorney and the appointment of a Special Council. Mr. Bell explained how he was appointed as Special Council.

Mr. Bell requested that the Application be carried until the next Planning Board meeting on November 28th, 2018. Mr. Shimanowitz agreed to Mr. Bell's requests.

MOTION TO CLOSE THE MEETING:

| MOTION | | SECOND | | | AYES | NAYES | ABSTAIN | ABSENT |
|--------------------|---|-----------------------|---|-----------------------|------|-------|---------|--------|
| Mr. Golick | | Mr. Golick | | Mr. Golick | | | | X |
| Mr. Pinnick | | Mr. Pinnick | | Mr. Pinnick | X | | | |
| Mr. Sabino | | Mr. Sabino | X | Mr. Sabino | X | | | |
| Mr. Scudieri | | Mr. Scudieri | | Mr. Scudieri | | | | X |
| Mr. Sears | X | Mr. Sears | | Mr. Sears | X | | | |
| Mr. Vinagre | | Mr. Vinagre | | Mr. Vinagre | X | | | |
| Mayor Calamari | | Mayor Calamari | | Mayor Calamari | X | | | |
| Councilman Cumming | | Councilman Cumming | | Councilman Cumming | X | | | |
| Chairman Murphy | | Chairman Murphy | | Chairman Murphy | x | | | |

ADJOURNMENT