

TOWNSHIP OF WASHINGTON, BERGEN COUNTY
 PLANNING BOARD MINUTES
 JUNE 27, 2018

CALL TO ORDER

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 (Absent), Mr. Sabino (Absent), Mr. Sears, Mr. Vinagre, Mayor Calamari, Councilman Cumming, Chairman Murphy

Board Engineer- Paul Azzolina, Board Attorney- Louis Lamatina, Esq.

MOTION TO OPEN PUBLIC PORTION

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

Mr. Murphy asked if anyone from the public in attendance to discuss anything other than Agenda items.

No one from the public spoke.

MOTION TO CLOSE THE PUBLIC PORTION

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

OLD BUSINESS:

Mr. Murphy read the Resolution denying the application made by Cedar Smoke, Inc. for property located at 293 Pascack Road in the Township of Washington, being Lot 1 in Block 3403 and Lots 18-20 in Block 3402 on the Township of Washington Tax Assessment Map, Unit 261B.

Mr. Murphy asked the Planning Board if there were any issues or concerns with the Resolution in the form presented to the Board.

No questions or concerns raised by the Planning Board.

Mr. Murphy requested a motion to accept the Resolution as written.

Mr. Sears asked if the public should have an opportunity to speak before Resolution is voted on.

Mr. Murphy agreed the public should have an opportunity to speak.

No one from public spoke.

MOTION TO ACCEPT THE RESOLUTION

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

Mr. Murphy presented proposed Ordinance No. 18-10 from the Mayor and Council for discussion and review by the Planning Board.

Mr. Lamatina asked for comments from the Planning Board as they relate to zoning aspects of the Ordinance. Stated that Planning Board comments could be "approve"; "disapprove" or "we have the following recommendations". The Mayor and Council are looking for the Planning Board's position on the proposed Ordinance. Suggested that any recommendations/comments made by the Planning Board as a body should be communicated to the Borough Administrator.

Mr. Lamatina made the Planning Board aware of a potential issue with the proposed Ordinance as written. Specifically, in reference to Sub section "s" "Sex or adult entertainment shops". He noted that the U.S. Supreme Court does not permit the complete banning of "adult sex shops". Cited U.S. Supreme Court rulings that found a complete ban on sex shops (theaters) is unconstitutional; and a violation of free speech. The Court found it was acceptable to restrict the location of the shop to "no closer than 1,000 feet of a residential area". Explained that a Borough can dictate where a sex shop will be permitted but cannot ban them entirely.

Mr. Murphy asked if the Planning Board can request that the Mayor and Council include a 1,000 foot restriction in the proposed Ordinance.

Mr. Lamatina explained that the Planning Board can make a recommendation to the Mayor and Council to revise the proposed Ordinance to restrict "sex or adult entertainment shops" to be at least 1,000 feet from any residential area in town. The Planning Board requested that the Mayor and Council consider the two cited cases as the basis for their recommendations; in light of the unconstitutional nature of a complete ban on these shops.

Mr. Lamatina added that the three additional prohibited "uses" being proposed, Sale of retail or wholesale marijuana, vaping products and hatchet throwing are not in jeopardy by the previously cited Court decisions as they are not free speech issues and can therefore all be legally banned.

Mr. Murphy asked for any additional comments from the Planning Board.

Mayor Calamari asked Mr. Cumming if the Supreme Court Decisions discussed by Mr. Lamatina would be brought to the Mayor and Council by Mr. Pollar Esq., in light of these Planning Board discussions.

Mr. Lamatina stated that Mr. Poller has indicated that the Mayor and Council seemed to want to pass this Ordinance.

Mr. Lamatina referenced the "Land Use Liability Seminar" received by the Planning Board members; and noted the cases he had previously cited were included in the Seminar material. Mr. Lamatina recommended that the Planning Board members either take this Land Use Liability Course on-line; or that it is presented by Mr. Lamatina. The Liability Seminar advises caution when banning applicants to a Planning Board in situations similar to those referenced to Subsection "s" (Sex or adult entertainment shops) of the proposed Ordinance.

Mayor Calamari asked Mr. Cumming if he would bring the Supreme Court decision up at the next Mayor and Council meeting and includes Mr. Poller in that discussion.

Mr. Cummings stated he would do so.

Mr. Murphy asked if there were any additional comments or questions about the proposed Ordinance.

Mr. Murphy asked Mr. Lamatina if the Planning Board should consider recommending that the 1,000 foot restriction be incorporated as part of the *entire* Ordinance given recent testimony by residents concerned about the Vape Shop's proximity to residential areas, schools, libraries and other areas. Inquired if this would be prudent in order to avoid potential problems in the future.

Mr. Lamatina explained that doing this could create a situation whereby otherwise banned sales would then be permitted *outside* the 1,000 foot restricted locations but still within the Township. The Courts have not yet addressed the legality of a Borough banning these products entirely. He explained that if the Mayor and Council establishes a location where these items *can* be sold, then they may be *permitting* sales in the Township provided those sales are within the designated areas. This is clearly not the intent of the Mayor and Council; as their intent is to prevent these sales in the Township. The Mayor and Council are asking the Planning Board if they agree to ban sales throughout the Township.

Mr. Murphy expressed concern about the possibility of “loop holes” in the Ordinance.

Mr. Lamatina added that the Ordinance does contain a provision which ensures that if any part of the Ordinance is found to be unconstitutional, the balance of the Ordinance remains valid. A challenge to a specific section of the Ordinance could not potentially invalidate the entire Ordinance.

Mr. Vinagre asked if the cases referenced by Mr. Lamatina were 1,000 foot restrictions from a residential area *and from a school zones*.

Mr. Lamatina stated the cited case limitation was for residential areas only. Recommended that the Mayor and Council look at the community and determine where these kinds of retailers can be permitted without restricting free speech. The Planning Board may ask that the prohibition be extended to residential and school zones.

Mr. Murphy asked if there are mechanisms in place; or in the proposed Ordinance to prevent a current retailer from offering banned items within an existing retail location without Planning Board knowledge.

Mr. Lamatina advised that when the Ordinance is approved, the sale of all of these items would become prohibited. The Township would then able to prohibit current sellers from continuing sales and this becomes an enforcement issue for the Mayor and Council.

Mayor Calamari brought up a concern about retailers who get approval to open under an “Approved Use”, as the Gas Station in town has done, but sells one of these newly banned items. Questioned what recourse the Township has in a situation like this.

Mr. Sears asked if the proposed banned items are currently being sold, can the Township send Code Officials into the store to stop sales.

Mr. Lamatina stated the Mayor and Council would have to address this.

Mayor Calamari asked Mr. Cumming to discuss this with the Mayor and Council and to ask Mr. Poller to respond to Mr. Sears’ question.

Mr. Sears requested a follow up on Mr. Poller’s response.

Mr. Lamatina suggested that the Planning Board may want to propose to Mayor and Council the prohibition of existing sales.

Mr. Sears inquired if Mr. Murphy would draft a letter to the Mayor and Council with the Planning Board’s recommendation.

Mr. Lamatina agreed that Mr. Murphy should draft this letter, and Mr. Lamatina would advise him if requested. The Letter from the Planning Board to the Mayor and Council will include the recommendation that sex shops be at least 1,000 feet from residential and school areas; and that existing sales be prohibited as well. Added that the Mayor and Council are required to come to the Planning Board for recommendations on Ordinances such as the one being proposed.

Mr. Murphy complimented Mayor Calamari and Councilman Cummings on the work they have done in drafting this Ordinance.

Mayor Calamari asked that the Ordinance be reviewed annually.

MOTION TO AUTHORIZE THE PLANNING BOARD CHAIRMAN TO AUTHOR A LETTER REPORTING ON THE PLANNING BOARD'S RECOMMENDATIONS FOR THE ORDINANCE.

MOTION		SECOND		AYES	NAYES	ABSTAIN	ABSENT
Mr. Golick		Mr. Golick	Mr. Golick				X
Mr. Pinnick		Mr. Pinnick	Mr. Pinnick				X
Mr. Sabino		Mr. Sabino	Mr. Sabino				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	X Chairman Murphy	X			

Mr. Lamatina introduced the "Land Use Liability Seminar" package. He advised the Planning Board to go through the MEL site and take the Land Use Seminar course. He suggested that the Planning Board should check with the Borough Administrator to find out if the on-line course is acceptable in lieu of a live presentation. If Planning Board member take this class the member is given insurance credit.

Mr. Sears stated he was familiar with the process and would advise the Planning Board about the process further.

Mr. Murphy said the Board will address this at the next Planning Board meeting.

Mayor Calamari advised the Planning Board that they would all be issued town email addresses because of OPRA requirements for official communications within the next few weeks.

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		Mr. Sabino				X
Mr. Sears	X	Mr. Sears		Mr. Sears	X			
Mr. Vinagre		Mr. Vinagre		Mr. Vinagre	X			
Mayor Calamari		Mayor Calamari	X	Mayor Calamari	X			
Councilman Cumming		Councilman Cumming		Councilman Cumming	X			
Chairman Murphy		Chairman Murphy		Chairman Murphy	X			

ADJOURNMENT