

Franklin Borough Planning Board
Workshop
Meeting Minutes for
June 17, 2009

The meeting was called to order at 7:36 PM by the Chairman, Mr. John Cholminski, who then led the assembly in the flag salute.

Mr. Cholminski read the Statement of Compliance pursuant to the "Open Public Meetings Act, Chapter 231, PL 1975."

ROLL CALL OF MEMBERS PRESENT: Mr. Oleksy, Mr. Suckey,
Mr. Maugeri, Mr. Cholminski

ABSENT: Mr. Christiano, Mr. Lermond
Mr. Zschack, Mayor Crowley

ALSO PRESENT: Mr. Ken Nelson, P.P.
Mr. James Kilduff, Director

DISCUSSION:

Mr. Cholminski said we are here this evening to discuss the re-examination for the Master Plan, Zoning Review, Circulation Plan Element/Transportation Vision Plan, Section 5 of the Master Plan and Vision Statement. Mr. Cholminski said we started this discussion on Monday evening (June 15, 2009), and we will resume the zoning discussion. Mr. Cholminski reviewed what the Board discussed on Monday.

Debra Nicholson, attorney representing Jim and Ann Elekes, stepped forward. Ms. Nicholson said she has been trying to remove the Katzenstein deed restriction that prevented any uses on the former Katzenstein land from being used for commercial proposes. Ms. Nicholson said (a) lot of properties that front 23 trace back to that particular deed restriction. Ms. Nicholson said she did the research, worked with the title company, been through litigation and we are down to two people that we have to notice by publication. Ms. Nicholson said she believes that the judge will enter the default that removes that deed restriction.

Ms. Nicholson said in the course of doing this lot, people that have properties that are along Rte 23 have come to contact her when they get this legal paperwork, and they asked if you do accomplish this, will you do this for me too. Ms. Nicholson said she has a list of people that have their property along Rte 23, (that want) to be in the

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highway commercial zone and to have our properties be eligible for the commercial uses. Ms. Nicholson said she is here to make the recommendation that the new Master Plan re-zone all of those properties. Ms. Nicholson suggested to grandfather in all residential uses that are now; put into your highway commercial zone so that they comply with their original zone requirements or the residential zone that remains in our ordinance, so they don't need use variances to put on a deck or to do some of those things. Mr. Cholminski asked how does that work with transfer of ownership. Ms. Nicholson said it works very well.

Mr. Cholminski asked Ms. Nicholson if she would share with us (the Board) the other owners and what blocks and lots have contacted you along the strip. Ms. Nicholson said she doesn't have her litigation file with her of all the parties she has noticed but she would be happy to send it over to Mr. Kilduff. Ms. Nicholson said her clients have a unique situation; they have a home that crosses the lot lines between the highway commercial lot which is the gas station and their residential, and they have the vacant lot behind that. Ms. Nicholson said they are looking to put this together as one piece and have the highway commercial designation. Ms. Nicholson showed the Board a copy of the survey and explained the property. There was a discussion on this property.

Mr. Maugeri is concerned about the school children coming down Washington Ave. Ms. Nicholson said her clients could come before the Board to get a use variance for this portion of their property and you wouldn't have all of the provisions in your ordinance that would impose some of those other burdens. Ms. Nicholson said with good planning you can anticipate properties on Rte 23 coming to you for either a site plan for commercial use or a zone change and then a site plan. Ms. Nicholson said it is only a matter of time.

Mr. Cholminski asked if there were any other comments on this piece of property. Mr. Nelson said this site like others comes down to the basic issue of how much of an intrusion into an existing residential area is appropriate; can that be done and at the same time protect the residential area. Mr. Nelson said in theory he thinks the attorney is correct. Mr. Nelson said the question to this site and the others that we are dealing with are what is there now; is that use there now a use that will be there far into the future or is it a use that the Borough wants to encourage to be redeveloped. If you want to encourage the site to be redeveloped will the expansion of the area that is zoned commercial facilitate that, and with respect to each site there may be a different answer.

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Mr. Cholminski said what comes to his mind is ratables and practicality. Mr. Cholminski said it doesn't make sense anymore to have residential on 23, pulling out of there, in and out of traffic. Mr. Nelson said dealing with those two lots that are behind the commercial zone, they are not on 23 so you could make the argument that they should be left residential. Mr. Nelson said if they do, do you prevent the redevelopment of that existing commercial property and his guess is that you probably will or it will go to the Board of Adjustment. Mr. Nelson said there are ways to manipulate the ordinance to provide the protections you want to provide, not just with respect to buffers and things like that but also with respect to use. Mr. Nelson said you could say for all properties in the HC zone that border public schools; these are the only commercial uses that are permitted and others are prohibited.

Doug Kistle, 123 Davis Road, Franklin, stepped forward. Mr. Kistle said he remembers this site very well and he remembers the plans; there were a lot of benefits but there were things like the children. Mr. Kistle said the children are supposed to be on the other side of the road coming down on the sidewalks taking them to Rte 23. Mr. Kistle said maybe put a walkway up and over 23; that could be something to look at.

Mr. Nelson said if we include this recommendation in the Master Plan re-examination report, as he understands the law if this goes to the Council for a zone change there is no requirement on the part of the Council to notify adjacent property owners. Mr. Nelson said it would be preferable if all the property owners be notified to any changes we are proposing, particularly the ones where a commercial zone is moving into a residential area. Mr. Cholminski said as a Planning Board one of our obligations to the community is to try and figure out a way to provide incentives to increase those ratables where it makes sense. Mr. Cholminski said we have to have a long term vision about that western strip on 23; somewhere along in this discussion we have to come to some recommendations as to the pros and cons of that strip in general.

Mr. Nelson said any access to 23 is controlled by DOT; he isn't sure what their criteria will be. Mr. Cholminski said that is why he raised the depth question; they are not going to allow in and out on every single lot, so now you have to figure out common egress.

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Ms. Nicholson said this property has been on the road map for DOT, right now it has in and out, right and left turns. Ms. Nicholson said if Washington is realigned you have a controlled situation; they are hoping for redevelopment here. Mr. Cholminski said that sounds different from what we heard from DOT when they asked us to close it. Mr. Kilduff said we are talking about a number of specific properties that are undersized for the highway commercial zone. Mr. Kilduff said the Board has a tough decision to look at these properties seeing what is there now, is it acceptable and then the comment to that is what is the minimum size you would need to make redevelopment feasible. Mr. Kilduff said he talks to developers everyday and what he sees is that it gets more and more expensive to redevelop properties. Mr. Kilduff said it has to be cost effective in that the developers need to get certain square footage to make the cost of development or redevelopment worthwhile. Mr. Cholminski asked if anyone had any other comments on this piece of property. Mr. Cholminski said we certainly don't have a consensus; we'll have to come back to this.

Mr. Thomas Prol, attorney for Zinc Town Properties, stepped forward. Mr. Prol said, looking at the existing Master Plan in general, it is a good concept. Mr. Prol said he recognizes that the town is looking to develop Main Street. Mr. Prol said he wants to note that over the past few years the issue of the minimum lot size that was written into the zoning ordinance has been a significant barrier here.

Mr. Cholminski said his concern is that somehow that top property gets developed which is easy to develop, that presents little barriers and then the town is left with the mess in the bottom. Mr. Cholminski said we have had 20 years of builders come in here and promise us all kinds of things. Mr. Cholminski said (if you walk the property) it is dangerous, there are open pits and open cellars. Mr. Cholminski said the only thing we have tried to do with our zoning and our discussions in the past is to ensure while a builder is there investing money they have the incentive to clean up the bottom. Mr. Cholminski said if we don't tie the two together and have the bottom cleaned up it will never be done because the cost to clean up the bottom is significant.

Mr. Prol said he can tell you what is happening right now isn't working. Mr. Prol said he does recognize the town's valid concerns about the safety issue on the lower portion of the property. Mr. Prol said the way the zoning is written now it actually requires that there be full development throughout the property. Mr. Prol said that is a significant hurdle to his client. He recognizes there are safety concerns, and those

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can be addressed without the minimum lot size and without development requirements throughout the property. Mr. Prol said if something can go on in the upper portion of the property which he thinks would inject life into Main Street, which probably is the primary concern here. Mr. Prol said he thinks something can be worked out that is binding on his client that will deal with the safety issues on the lower portion. Mr. Cholminski said we would love to see Main Street developed but we don't necessarily want to see the top of Main Street developed at the cost of leaving the pit and hole down there and that danger. Mr. Cholminski said the clean up would then be there forever because the State isn't going to invest to clean it up. Mr. Cholminski said if you can come up with a way to solve this dilemma, he is willing to listen. Mr. Cholminski said we want to see something happen there.

Mr. Prol said the other issue is DEP recrafting the sewer service map. Mr. Prol said they are going to take their own advocacy with DEP as many developers around the county are, and he is asking the Planning Board and the town Council if they wouldn't mind helping us out in that effort. Mr. Prol said this is an issue that is of common interest to all of us. There was a discussion on the sewer service area.

Mr. Cholminski asked what the status was with DEP. Mr. Prol said the status is they reached a settlement and principal regarding the past clean up costs. Mr. Prol said it sat down at the attorney generals office and we have gone back and forth a few times on the final document. Mr. Prol said it hasn't been returned back to him in about three months. Mr. Prol said the issue of the sewer service area came up, (the document) basically provide for a two hundred to a two hundred and fifty thousand dollar clean up lien claim will be put on the property. Mr. Prol said that will have to be paid off on the first of these conditions that the property be sold to a third party or the expiration of ten years. Mr. Prol said that lien claim is actually on the property already it is the existing number of what was there. Mr. Prol said his client went through three or four years of litigation over that number only to arrive back at the same number that the DEP claimed in the first place. There was a discussion on the clean up of the property and funds available for the clean up.

Mr. Prol asked if the Board would consider allowing his client to develop something at that portion of the property on Sterling Street. Mr. Prol said it really stands apart on itself, despite the minimum lot size; this property should be divided into two different pieces of property. Mr. Cholminski asked if that piece on Sterling Street was considered a separate lot. Mr. Prol said it is not a separate lot. Mr. Cholminski said

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you would have to get a subdivision; how much property is there. Mr. Prol said an acre and a half he thinks.

Mr. Nelson said you have that senior housing project there and the question is how much longer can that upper portion remain as is. Mr. Nelson asked is there anyway the upper portion could be developed without a subdivision. Mr. Nelson said if we reduce the minimum size that would be the subject of a development application but keep it attached to the lower portion. Mr. Prol said their idea is that there be some development up along Main Street; this property is ideally set up as two lots. There was a discussion on this lot, if it was subdivided and open space.

Mr. Tony Patire, owner of the zinc mine property, stepped forward. Mr. Patire said he understands your concern; he understood the first day he stepped foot on that property. Mr. Patire said he is trying to find steps to keep this thing moving forward so everyone gets what they are looking for. Mr. Patire said because of the bulk requirement we tried going for a variance and that was rejected; he felt by reducing it to a 16 acre minimum because the top portion is approximately four acres, there would no longer be a variance situation. Mr. Patire said it would be a Planning Board application for a subdivision and site plan for the upper section. Mr. Patire said with the DEP issue, to do anything on the property you are going to need sewer. Mr. Patire said he is sure there is some way to tie in the clean up of the lower section.

Mr. Patire said you need an approval to go to the next step and now the DEP issue is major. Mr. Cholminski said we have a (redevelopment) subcommittee that is working with you. Mr. Cholminski asked Mr. Suckey if it was fair to let the subcommittee bring a recommendation back to the Board. Mr. Suckey said to set the record straight that committee was designed, not to do planning, but whether or not there should be a redevelopment commission established in town. With that there was supposed to be a town ordinance for that committee to give them direction and to come up with some guidelines that would fit the Master Plan, not just the zinc mine but all of the town. Mr. Suckey said it is not just the zinc mine there are six other areas in town, then establish those areas and the Council would have to make a commission. There was a discussion on this committee and a redevelopment commission.

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Bob Allen, Jenkins Road, Franklin, stepped forward. Mr. Allen is concerned about the top property of the zinc company. Mr. Allen talked about putting houses on Sterling Street and that a piece of property on Sterling Street belongs to the Borough.

Doug Kistle, 123 Davis Road, Franklin, stepped forward. Mr. Kistle wanted to know who was paying for all this. Mr. Kilduff said the Borough Council set money aside last year for a Master Plan Re-examination. Mr. Cholminski said by law we have to re-examine the Master Plan. Mr. Kistle said he was a big part of making sure we maintain the sewer service area throughout the town, who is saying the zinc mine isn't in the sewer service area. There was a discussion on DEP and sewer service.

Bob Allen, Jenkins Road, Franklin, stepped forward. Mr. Allen said the biggest problem in this town isn't sewer so much as water. Mr. Allen said in a few years you will have big problems with water.

Betty Allen, Jenkins Road, Franklin, stepped forward. Mrs. Allen said if you have a piece of property that is 100 percent without any improvements on it and you build half of it out then you only have 50 percent to worry about. Mrs. Allen said if Mr. Patire goes ahead it is more logical that he is going to finish the bottom rather than leave it. Mrs. Allen said any improvement is better than nothing. Mrs. Allen showed the Board a before and after picture of a mall in Ireland.

Mr. Cholminski asked if anyone else from the public (had any comments) on the subject we discussed tonight, because we will close to the public on this topic, move to the Circulation Plan and then we will open it back up on the Circulation Plan. Mr. Nelson said he distributed a six page Circulation Plan summary that will be part of section five of the Master Plan re-examination report.

The Board took a break at 9:12.

The Board reconvened at 9:18.

Mr. Nelson said DOT did the Rte 23 Corridor Study and we decided if we could amend it to our satisfaction then it could become part of the Borough Master Plan and to his understanding DOT agreed to amend it to our satisfaction. Mr. Nelson said it is a 60 page document so we thought the best approach would be for him to do a summary to replace the existing Circulation Plan Element from the 2003 Master Plan with a new summary. That was what was distributed in the packages.

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Mr. Nelson said on page four of his summary he highlighted some key features in the DOT study which has the official title of the Transportation Vision Plan. Mr. Nelson said the last item on page six talks in general terms how land use issues are related to the Rte 23 Corridor Study. Mr. Nelson said this was a section that was in the Rte 23 Corridor Study that we asked to be taken out because it got too specific about how certain properties along Rte 23 should be developed. Mr. Nelson said in terms of some of the general principals that part of the Corridor Study contained, we felt it was reasonable to make references to those general principals but not to get into specifics.

Mr. Nelson said this summary document will be inserted into the 2003 Master Plan document, be part of the Master Plan re-examination report and the Corridor Study will also be part of the Master Plan as a separate document. Mr. Maugeri asked didn't we form a subcommittee to look at this, did they look at this with you. Mr. Nelson said yes. Mr. Nelson explained what the committee reviewed. Mr. Kilduff said he took all the comments of the committee and forwarded them to DOT. Mr. Kilduff said we asked them to make those changes and deletions, it was mostly deletions. Mr. Kilduff said he spoke to David Cox and they were going to make all of those changes and they asked to put in a generic paragraph on the relationship between land use and transportation vision. Mr. Kilduff said they asked if he and Mr. Nelson would look it over and he hasn't seen that yet. Mr. Kilduff explained to the Board what some of the changes were.

Mr. Nelson said we are going to have to deal with COAH either through the Highlands or with COAH directly. Mr. Nelson said he thought at the July meeting he should give you (the Board) an update on where we are with it because before we know it will be December.

Mr. Cholminski said his fear is that Mr. Kilduff, the Mayor and Mr. Zschack walk in one night with Mr. Nelson and say we decided to join the Highlands; Council is voting on Tuesday and that is it, how do we know the pros and cons of joining. Mr. Maugeri asked Mr. Nelson will you give us the pros and cons on which way to go on that. Mr. Nelson said one of the things they are waiting for is the Highlands to give us a build out for the town and once (we have) that figure then we know what our COAH obligation is if we stay with the Highlands. Mr. Nelson said we could look at that obligation versus the obligation if we deal directly with COAH. Mr. Cholminski

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said that is just Highlands related to COAH; his question is bigger, how is Highlands related to planning, water, sewer, development and commercial downtown redevelopment. Mr. Kilduff said we have a Highlands Plan Conformance Grant, and what that grant does is it divides the work into modules and it provides funds to do these different modules. Mr. Kilduff said if you get to modules four, five and six you basically have conformed with the Highlands. Mr. Kilduff said the Council very wisely said we are going to take the grant but we are only authorizing work on the first three modules. Mr. Kilduff explained module three.

Mr. Cholminski asked how does our input get into this process. Mr. Chominski said how do we get involved and know the pros and cons. Mr. Nelson said we could begin to have this conversation in July and maybe by September have more information. Mr. Nelson said at some point maybe even have a joint meeting with Mayor and Council. Mr. Cholminski said maybe even a joint subcommittee to evaluate this. There was a discussion on having a subcommittee and this process. Mr. Kilduff said he thinks that somewhere along the line there will be a sit down with the Highlands to find out what exactly it is if the town conforms, (we are) going to be allowed to do. The Board discussed the Highlands.

OPEN PUBLIC SESSION:

Mr. Oleksy made a motion to Open to the Public. Seconded by Mr. Suckey. All were in favor.

No one from the public stepped forward.

Mr. Suckey made a motion to Close to the Public. Seconded by Mr. Oleksy. All were in favor.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 9:34 PM on a motion by Mr. Maugeri. Seconded by Mr. Oleksy. All were in favor.

Respectfully Submitted,

Robin Hough

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Secretary