

Franklin Borough Planning Board
Meeting Minutes for
May 17, 2010

The meeting was called to order at 7:34 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. Christiano, Mr. Lermond,
Mr. Oleksy, Mr. Suckey, Mayor Crowley,
Mr. Cholminski

ABSENT: Mr. Zschack, Mr. Maugeri, Mr. Zydon

ALSO PRESENT: Mr. David Brady, Esq.
Mr. Thomas G. Knutelsky, P.E.
Mr. Ken Nelson, P.P.
(Arrived Approximately 7:52)
Mr. James Kilduff, Director

APPROVAL OF MINUTES:

Mr. Oleksy made a motion to approve the **Franklin Borough Planning Board Meeting Minutes for April 19, 2010**. Seconded by Mr. Lermond.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Crowley,

NAYS: None ABSTENTIONS: None

(Motion Approved)

PAYMENT OF BILLS:

Mr. Christiano made a motion to approve the **Franklin Borough Planning Board Escrow Report for May 17, 2010**. Seconded by Mr. Oleksy.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Suckey, Cholminski

NAYS: None ABSTENTIONS: Crowley

(Motion Approved)

CORRESPONDENCE:

Mr. Kilduff explained the correspondence from Eileen Swan, the Executive Director of the Highlands Council, dated May 6, 2010.

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DISCUSSION:

Outdoor Storage

Mr. Cholminski said we are looking at [report dated] 4/12/10 Revised 5/10/10 from The Nelson Consulting Group. Mr. Kilduff said the Zoning Officer denied a zoning permit application for outdoor storage in the industrial zone. Mr. Kilduff said the ordinance doesn't clearly state the zones where outdoor storage is permitted. Mr. Kilduff referred to page 8 in Mr. Nelson's report. Mr. Kilduff said outdoor storage would be added to our schedule of permitted uses and it would only be an accessory use. Mr. Kilduff said outdoor storage wouldn't be a principal use and it would be permitted in the Highway Commercial, Industrial, Golf Course, Quarry and new NC Zone. Mr. Kilduff went over conditions related to outdoor storage that were modified.

Mr. Christiano asked about the paragraph no outdoor storage shall occur in environmentally sensitive areas. Mr. Christiano asked are we trying to make a connection between environmentally sensitive areas and our ability to navigate the property. There was a discussion on environmentally sensitive areas and outdoor storage. Mr. Knutelsky said he would recommend some additional wording. Mr. Knutelsky said you can't dump in wetlands; it is against the law to dump in wetlands or to store anything in the wetlands. There was a discussion on the DEP, environmentally sensitive areas, the ordinance and 161:25 ESA section. Mr. Cholminski said you need to just capitalize in the proposed ordinance Environmentally Sensitive Areas by capitalizing it that refers it back to the definition. Mr. Kilduff said in the language it says in no case shall stored material exceed the height of 10 feet. There was a discussion on the height of outdoor storage and storage on a farm.

Mr. Brady said you could say that no outdoor storage shall occur in environmentally sensitive areas without a DEP permit then you are allowing it if the DEP allows it. There was a discussion on environmentally sensitive areas. Mr. Knutelsky suggested using environmentally sensitive "lands and not areas". Mr. Brady said can't we identify what the lands are; we know wetlands and riparian buffers. Mr. Kilduff said he heard a suggestion from the public, regulated lands. Mr. Brady said Environmentally Regulated Lands, how is that. Mr. Knutelsky said that works for him. Mr. Cholminski asked if there was any other discussion on outdoor storage.

OTHER BUSINESS:

Public Hearing Franklin Borough Housing Plan and Fair Share Plan Amendment

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Mr. Nelson referred to the document titled Borough of Franklin 2010 Amended Housing Plan and Fair Share Plan dated May 5, 2010. Mr. Nelson said there is a scheduled public hearing on this document at the end of this hearing; we hope the Board will adopt this document and forward it to the Council. Mr. Nelson said the Housing Plan is the only part of the Municipal Master Plan that the Governing Body in addition to the Planning Board has jurisdiction over, if a municipality is going to petition COAH for substantive certification.

Mr. Nelson said for the record everyone knows that COAH, Affordable Housing situation for the State of New Jersey, has been in chaos for some time now. Mr. Nelson said back in December of 2008 there was a deadline that all Highlands Communities were supposed to meet in terms of adopting a revised housing plan based on the revised third round rules. Mr. Nelson said this municipality is a Highlands Municipality and took advantage of an extension that was granted to all Highlands Municipalities that has given us to June of 2010 to get a revised housing plan into COAH. Mr. Nelson said the importance of that is to remain under COAH jurisdiction for as long as COAH exists in order to protect the municipality from litigation and a possible builders remedy law suit. Mr. Nelson said we kept hoping by now with the new administration that there would be a definite movement to replace COAH, revise COAH, do whatever was going to be done. Mr. Nelson said apparently there is a bill in the State Legislature to do away with COAH and transfer that responsibility to the State Planning Commission. Mr. Nelson said as of this date there is no clear direction as to where the State is going to be heading in terms of the Affordable Housing issue. Mr. Nelson said there is still this deadline of June 8, 2010 confronting us that we either met or we are no longer under COAH's protection. Mr. Nelson said he prepared what is titled Amended Housing Plan and Fair Share Plan; it is divided into five sections. Mr. Nelson explained what each section was. Mr. Nelson said in summary what he is recommending that the Board do is readopt the 2005 Housing Plan as amended by this document that was previously distributed to you.

Mr. Nelson said after the Board adopts this, it is to go to the Council and the Council will then accept it and petition COAH. Mr. Nelson said we are not using the word petition we are using re-petition because the Borough back in 2006 had petitioned the Council on Affordable Housing for substantive certification but that process was never completed because of litigation and changes in COAH's rules. Mr. Nelson said we are re-petitioning COAH for substantive certification and this will go down to COAH and they will decide what the next steps are. Mr. Nelson said the main

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purpose of this document is to keep the Borough protected, keep us under COAH's jurisdiction; it does not change the strategy to any great extent that was spelled out in the 2005 Housing Plan.

Mr. Nelson said there is one minor change that he wanted to bring to the Board's attention. Mr. Nelson said he would defer to the Board's Attorney as to whether the change can be incorporated. Mr. Nelson said we had sent the 2005 Housing Plan to the Highlands Council and asked them to comment on it from their prospective. Mr. Nelson said by time they got their comments back to us he had already prepared the draft that was distributed to you [the Board]. Mr. Nelson said they had made one comment that as a result he incorporated an amendment in the plan if the Board wants to accept it. Mr. Nelson said it simply lists the Highlands Regional Master Plan and all of its objectives and states a lot of planning jargon regarding building on appropriate locations, monitoring the existing housing stock and things of that nature. Mr. Nelson said it doesn't really affect the substance of either 2005 Housing Plan or this document before you tonight.

Mr. Cholminski asked if anyone had questions for the Planner. Mr. Christiano asked if the 2005 Plan was that good why didn't it protect us in that litigation. Mr. Kilduff said the plan was down in Trenton for approval and they filed an objection to the plan. Mr. Kilduff said as soon as an objection is filed everything stops as far as a plan approval is concerned. There was a discussion on filing an objection, the substantive certification and the housing plan.

Mr. Lermond made a motion to open to the public **Franklin Borough Housing Plan and Fair Share Plan Amendment**. Seconded by Mr. Suckey. All were in favor.

No one from the public stepped forward.

Mr. Oleksy made a motion to close to the public **Franklin Borough Housing Plan and Fair Share Plan Amendment**. Seconded by Mr. Lermond. All were in favor.

Mr. Nelson said by adopting this document, the amended Housing Plan and Fair Share Plan, you are also readopting the 2005 document. Mr. Nelson said both together will be part of the Borough's Master Plan and concurrently you are forwarding it to the Council for their action in connection with the re-petitioning for substantive certification. Mr. Nelson said the only thing he wants to raise is that one addition. Mr. Nelson asked if they [the Board] had it in front of them. Mr. Brady said

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he doesn't have an objection to that if the Board wants to modify it or amend it before they can do that. Mr. Nelson said he can read it into the record and the Board can review it. Mr. Cholminski said read it into the record. Mr. Nelson read into the record what had been inserted into the document. Mr. Cholminski asked if there were any questions with the amendment as suggested.

Mr. Suckey made a motion to open to the public **Franklin Borough Housing Plan and Fair Share Plan Amendment**. Seconded by Mr. Lermond. All were in favor.

No one from the public stepped forward.

Mr. Lermond made a motion to close to the public **Franklin Borough Housing Plan and Fair Share Plan Amendment**. Seconded by Mr. Suckey. All were in favor.

Mr. Lermond made a motion to adopt the **2010 Amended Housing Plan and Fair Share Plan** to be part of the Master Plan and to concurrently forward it to the Council for submission to COAH for repetition. Mr. Brady said including the amendment that Mr. Nelson just read. Mr. Lermond said the 2010 [plan] including the amendment, that May 13 one. Seconded by Mr. Christiano.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Suckey, Crowley, Cholminski

NAYS: None ABSTENTIONS: None

(Motion Approved)

APPLICATIONS FOR COMPLETENESS:

PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06.

Mr. Tom Letizia, attorney with Pepper Hamilton, representing Wal-Mart Real Estate Business Trust stepped forward. Mr. Letizia explained the application and the history of the application.

Mr. Knutelsky referred to his report dated May 10, 2010 section B, the following items are incomplete. Mr. Knutelsky said checklist item #15, front, side and rear yard setbacks, the applicant requested a waiver. Mr. Knutelsky said he recommends the waiver be granted. Mr. Knutelsky said checklist item #17, the first sheet shall contain certain information. Mr. Knutelsky said he believes the information provided on the plat is sufficient for filing purpose. Mr. Knutelsky said he recommends a waiver be granted. Mr. Knutelsky said checklist item #20, location of existing watercourses and

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natural features including wetlands and soil types. Mr. Knutelsky said in the report you have before you I'm indicating that wetlands and soil types be waived. Mr. Knutelsky said he has discussed this with the applicant's professionals and found they really don't have any watercourses on the site. Mr. Knutelsky said at this point he recommends a waiver for this. Mr. Knutelsky referred to checklist item #22, location of existing and proposed buildings. Mr. Knutelsky said since this a minor subdivision, lot line adjustment in the rear of the property where there are no buildings he recommends a waiver be granted. Mr. Knutelsky referred to checklist item #23, location survey, prepared by a New Jersey licensed surveyor. Mr. Knutelsky said the plat is prepared by a surveyor; it doesn't show all those building features on site. Mr. Knutelsky said he recommends a waiver be granted for checklist item #23. Mr. Knutelsky referred to checklist item #42, front, side and rear yard setbacks. Mr. Knutelsky said he recommends a waiver be granted. Mr. Knutelsky referred to checklist item # 48, if the survey is more than one year old. Mr. Knutelsky said he recommends a waiver be granted because it is signed by two different surveyors.

Mr. Knutelsky said those 7 items, checklist items #15, 17, 20, 22, 23, 42 and 48 he recommends that waivers be granted for all of those and this matter be found complete.

Mr. Christiano made a motion to deem complete application **PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06.** Seconded by Mr. Suckey.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Suckey, Crowley, Cholminski

NAYS: None ABSTENTIONS: None

(Motion Approved)

APPLICATIONS TO BE HEARD:

PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06.

Mr. Knutelsky said as a result of completeness and due to the simplicity, he recommends, if the Board wishes, that this continue directly into the public hearing. Mr. Cholminski said having heard this application and having approved this exact application two times previously, this will be the third. Mr. Cholminski gave the public a summary of this application.

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Mr. Lermond made a motion to open to the public application **PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06**. Seconded by Mr. Oleksy. All were in favor.

No one from the public stepped forward.

Mr. Lermond made a motion to close to the public application **PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06**. Seconded by Mr. Suckey. All were in favor.

Mr. Knutelsky referred to his report dated May 10, 2010. Mr. Knutelsky said he wanted corrected for the record, in his first paragraph for this application he indicated that deeds and descriptions will be required; that is incorrect. Mr. Knutelsky said the filings will be by plat; we will not be getting deeds and descriptions. Mr. Knutelsky said in section C he indicates that artificial streams and watercourses are to be shown and as per the waiver those will not be shown on the plat and are not needed at this point.

Mr. Brady said the resolution is drafted given we already heard this a couple times before. Mr. Brady said he put together a resolution that we could adopt tonight. Mr. Brady said one of the conditions # 8, says that the plans will be revised to comply with the map filing law and it will show natural and artificial watercourses, streams, etc. Mr. Brady said they don't exist; it could be deleted by hand tonight and adopted with that deletion. Mr. Cholminski asked the applicant's attorney his opinion. Mr. Letizia said his preference would be to have that paragraph deleted; it characterizes that we are suppose to do something in case someone raises the question later on. Mr. Cholminski asked the Board Attorney how we would proceed. Mr. Brady said first approve the application and then move on to the resolution and adopt the resolution as drafted with the deletion of paragraph #8.

Mr. Lermond made a motion to approved application **PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06**. Seconded by Mr. Christiano.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Suckey, Crowley, Cholminski

NAYS: None ABSTENTIONS: None

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(Motion Approved)

APPROVAL OF RESOLUTIONS:

PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06.

Mr. Cholminski said we have a resolution, to meet the previous discussion, except we have to delete section 8. Mr. Brady said on page 4 it would be paragraph 8, and if the Board is inclined to do that the motion should say that we adopt the resolution as prepared but paragraph 8 should be crossed out. Mr. Letizia said there are two paragraph 8; it appears twice, on page 3 as a statement of fact. Mr. Brady said that's true there is also a paragraph 8 on page 3. Mayor Crowley asked if there was a reason to hasten this rather than to just rewrite it and do this next month; does Wal-Mart need this right away. Mr. Letizia said that is fine, we have the maps with us; we would like to leave it so they can be signed. Mr. Cholminski said he agrees; he would like to clean this up. Mr. Brady said we can send a clean copy tomorrow by email. Mayor Crowley said he would like to see a clean copy instead of deletions and cross outs.

Mr. Cholminski said we need a motion to approve the resolution. Mr. Brady said with the deletion of paragraph 8 on page 3 and paragraph 8 on page 4.

Mr. Suckey made a motion to approve the resolution for **PB-04-10-1 Wal-Mart Real Estate Business Trust, Minor Subdivision, Block 70 Lots 1.01 and 1.06.** Seconded by Mr. Lermond.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Suckey, Crowley, Cholminski

NAYS: None ABSTENTIONS: None

(Motion Approved)

ADJOURNED CASES:

OTHER BUSINESS:

DISCUSSION:

NC Zone

Mr. Nelson referred to his report 4/12/10 revised 5/10/10, 2010 Ordinance Amendments. Mr. Nelson referred to page 3. Mr. Nelson went over the changes that were in red. There was a discussion on connectivity.

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Mr. Cholminski asked about apartments [in the NC Zone]. Mayor Crowley said he thinks if you have apartments or housing on the second floor it has to be split away from commercial on the second floor. Mayor Crowley said if you are going to have it on the second floor you need separate entrances. Mr. Cholminski said he has no problem with that. Mr. Cholminski asked what was the other position people [the Board members] were taking. Mr. Nelson said some Board members did not feel there should be a mix. The Board had a discussion on apartments on the second floor and allowing the mix of commercial and residential. Mr. Cholminski said you would allow it but it was per building so if someone put three independent units up they could have residential in one, office in the other but you can not have residential and office in the same structure on the same floor.

Mr. Lermond made a motion to open to the public **discussion on the ordinances**. Seconded by Mayor Crowley. All were in favor.

No one from the public stepped forward.

Mr. Lermond made a motion to close to the public **discussion on the ordinance**. Seconded by Mr. Oleksy. All were in favor.

Automotive Repair Services

Mr. Nelson referred to schedule A page 161 attachment 2:2. Mr. Nelson said at the bottom of the list it groups automobile sales, automobile service station and automotive repair services all together on one line. Mr. Nelson said we couldn't just add as a permitted use in the Industrial Zone that line item because then you would be allowing all of those items in the Industrial Zone which we didn't think was appropriate. Mr. Nelson said on page 4 of the ordinance memo to start off we indicated that schedule A is being revised by separating automobile service, automobile service station and automotive repair service so that each use is located on a separate line and they are no longer grouped together on one line. Mr. Nelson said we are allowing automotive repair services as a permitted principal use in the Industrial Zone and as a condition use in the HC Zone. Mr. Nelson read the definition of auto repair service. There was a discussion on automobile repairs, service stations, conditional and permitted uses. Mr. Nelson referred to page 5 of his report. Mr. Nelson read the section in red K, L, M and N. The Board discussed car rentals, truck rentals, leasing and definitions.

Drive through Uses

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Mr. Nelson said based on the discussion at the last Board meeting his understanding is we came to the conclusion that we wanted to retain drive through uses as a conditional use in the HC Zone and it would be allowed as a conditional use in the NC Zone. Mr. Nelson said this was contrary to his recommendation that drive through uses be allowed as a permitted accessory use. Mr. Nelson referred to his report dated 04-12-10 revised 05-10-10, page 6, Drive through Uses. There was a discussion on drive through uses.

Mayor Crowley questioned you have the time 6AM to 11 PM; you already have several drive throughs that are 24 hours, Dunkin Donuts and McDonalds; at this point if some else wanted to come in like that would they need a variance. Mr. Kilduff said we can just take it out. Mayor Crowley said take it out since you are already operating drive throughs already 24 hours. There was a discussion on the time of operation for drive throughs and drive throughs that would be next to a residential zone.

Mr. Kilduff said you are going to reduce the size of the building to 1000 square feet; he asked if there were any other changes. Mr. Nelson said we are taking out any reference to the time but leaving in the decimal.

Schools

Mr. Nelson said schools are allowed in every zone in the municipality as a conditional use. Mr. Nelson said he isn't sure if that is a good idea to continue. Mr. Nelson said his suggestion was to no longer allow schools as a conditional use in the R-2, R-3, R-4, B-1, B-2, HC and Industrial Zones except put a grandfather condition in there that protects the Immaculate Conception School and the Hardyston School. Mr. Cholminski asked if we had to grandfather it in, are they protected by pre-existing conditions. Mr. Nelson said they are by the language he put in here and subject to Mr. Brady's concurrence. Mr. Nelson read item A on page 8 of his report. There was a discussion on private schools and public schools and pre-existing conditions. Mr. Nelson said clarify that it will be a conditional use in the R-1 zone and then it is being eliminated as a conditional use in these other zones that are listed. Mr. Kilduff said then you will make that sentence [say] a permitted conditional use in the R-1 and OSGU Zone. Mr. Nelson said right.

Mr. Nelson said we are changing the zoning map and there is a list of all the properties that comes out of the Master Plan Reexamination Report; they are listed on pages 9 and 10. Mr. Nelson said maybe at the next meeting have copies of the

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map. Mr. Kilduff said as part of this whole package of ordinances, we are going to adopt a new zoning map.

OPEN PUBLIC SESSION:

Mr. Cholminski said being that there is no one from the public we will dispense from opening to the public.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 9:53PM on a motion by Mr. Lermond. Seconded by Mayor Crowley. All were in favor.

Respectfully Submitted,

Robin Hough
Secretary