

Florence, New Jersey
June 30, 2010

The Florence Township Council and Florence Township Planning Board held a joint meeting on the above date in the Municipal Complex, 711 Broad Street, Florence, New Jersey.

The meeting was called to order by Council President O'Hara at 8:00PM. President O'Hara led the Salute to the Flag.

The following statement was read by the Township Clerk: "Notice of this meeting has been given in accordance with the Open Public Meetings Act. Notice was published in the Burlington County Times on June 27, 2010; given to the Register News for information. Notice was posted on the Municipal Bulletin Board."

Upon roll call the following were found to be present:

Florence Township Council

Frank Baldorossi
Jerry Sandusky
David Woolston
Dennis O'Hara

Florence Township Planning Board

Timothy Lutz
Frederick Wainwright, Alternate No. 1
Charles Bauer, Alternate No. 2
Mildred Hamilton-Wood

Also present:

Mayor William Berry; Richard A. Brook, Township Administrator; Thomas Sahol, Assistant Municipal Administrator; Dante Guzzi, Township Engineer & Planning Board Engineer; William John Kearns, Jr., Township Solicitor; Joy M. Weiler, Township Clerk; David Frank, Planning Board Solicitor; Joseph Petrongolo, Planning Board Planner

Planning Board Chairperson Hamilton-Wood noted for the record that Nancy Erlston, Planning Board Secretary, was on vacation and was excused from the meeting.

Council President O'Hara noted for the record that Council Member Ryan, who is also the Council Representative to the Planning Board, had a conflict and could not attend the meeting.

Council President O'Hara expressed his appreciation to the Planning Board Members and Professionals for attending the joint meeting.

PUBLIC COMMENTS

The meeting was open to the public for comments. Nothing at this time.

All residents having an opportunity to be heard, MOTION by Sandusky; seconded by Baldorossi to close the public portion of the meeting. All ayes - motion carried.

DISCUSSION OF LAND USE LAWS

Time of Decision Rule Amended to Time of Application Rule

Solicitor Kearns reported that the State of New Jersey has adopted a new law changing the time of decision rule. The time of decision rule meant that if a developer filed an application and the municipality believes that they are misinterpreting or finding a loophole in one of the provisions in the ordinance, the municipality can change the ordinance. He noted that there are no ordinances that will pick up every single loophole. The rule has been changed to time of application, which means once a developer files an application, the municipality cannot change the ordinance. Solicitor Kearns stated that the statute takes effect one year after the governor signs it, which will be May 1, 2011. That gives the municipality the balance of this year to do a review of the ordinance, which he believes a planner should do. He suggested that Mr. Petrongolo submit a proposal to the township to do the review and tighten up the language of the ordinance, with input from the Planning Board Members, Zoning Board Members and their solicitors and engineers. Having the review completed by the end of this year, gives the beginning of next year to get the ordinance adopted and in place before May 1, 2011. Discussion followed regarding wording that needs to be cleaned up. Planning Board Member Bauer does not want the ordinance to be so restrictive that it will drive good developers away. Solicitor Kearns stated that the township sets the policies, the professionals can help write them.

Council President O'Hara asked Mr. Petrongolo if he was familiar with dark sky lighting? Mr. Petrongolo is familiar and believes it should be included in the ordinance.

Redevelopment

Solicitor Kearns stated that there will need to be discussions in regards to redevelopment because there are some important issues regarding the Roebing Steel Mill site. There is a possibility that there is an end user for the site and there may need to be some very rapid responses from the township for approvals. It may have to be discussed at special meetings. The township has committed to the developer and the end user that they will expedite consideration to the greatest extent possible. It will be a partnership between Township Council and the Planning Board.

Sidewalks

Council President O'Hara stated that he appreciated that everyone that was present at this meeting attended in the spirit of cooperation and working together.

Planning Board Chairperson Hamilton-Wood suggested quarterly reports from the Planning Board to Township Council so issues would be brought to the governing body's attention. She believed that the purpose of having a Council Representative on Planning Board was to take any concerns raised by the Planning Board back to Township Council. Solicitor Kearns agreed that is a means of communication. The reason for having the Mayor and a Council Representative on Planning Board is because ultimately the governing body is the entity that sets land use policy. There should be dialogue going back and forth between Township Council and Planning Board. Council President O'Hara stated that Council Member Ryan did discuss with the governing body that the Planning Board would like to discuss the sidewalk ordinance, but Solicitor Kearns cited municipal land use ordinances and cases that sided with what Council was looking to do regarding the sidewalks. It was determined at that time to vote on the ordinance. Planning Board Chairperson Hamilton-Wood voiced feeling disrespected by the lack of professional courtesy shown to the Planning Board. Planning Board Solicitor Frank noted that the Planning Board directed him to send the letter to Solicitor Kearns, which he did, and the Planning Board relied on that response.

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Planning Board Member Lutz stated his opinion regarding the communication problem between the Planning Board and the Council. The Planning Board Members all live in the township and volunteer on the Planning Board because they care about the community. He does not believe that the Planning Board's concerns were expressed in the manner they should have been. Planning Board Member Lutz stated that he specifically asked if Council's attorney and the Planning Board attorney could not meet beforehand, that Council please table the ordinance until they had the opportunity to meet. There was nothing pressing coming up before the Planning Board and questioned why there was an urgency to push this ordinance through.

Planning Board Member Lutz stated his belief that the Planning Board should have the power to grant sidewalk waivers. He believes that the applications that the Planning Board reviewed over the year and a half that he has been on the board there were areas where sidewalks did not make sense due to conditions such as wetlands. He could not justify holding a project up while the developer got DEP approval. There were also multiple areas in between that do not connect, which would leave sidewalks to nowhere.

Planning Board Member Lutz stated that he did not think that Council has faith in the Planning Board to make a decision that they have made in past years.

Planning Board Chairperson Hamilton-Wood explained that the Planning Board looks at every plan and discusses it to decide what is the right thing to do. She does not believe that any of the members of the Planning Board takes their job lightly or cavalier; she stated that everyone gives their best effort and is very dedicated. Planning Board Chairperson Hamilton-Wood noted her opinion that there is a lack of communication with Township Council as to how the Planning Board arrives at their decisions.

Mayor Berry stated that the Planning Board made the best decision on the Scamporino application. The sidewalk was waived on Route 130 but there was an agreement that amount of sidewalk would be installed on Cedar Lane towards the high school, which would benefit the high school students walking along Cedar Lane. The intentions behind the waiver were excellent, because the board was looking out for the safety of the students. Mayor Berry noted that there are times when waivers are necessary.

Solicitor Kearns stated that Council wanted a policy in place to get sidewalk on Route 130, recognizing that there are areas that need DEP permits. The concern was if waivers are given on each application the township will never get to the point of sidewalks on Route 130. Council directed Solicitor Kearns to find something that absolutely forces sidewalks to be installed on Route 130.

Mayor Berry discussed an "in lieu of waiver" contribution to a sidewalk fund, which could be coupled with grants to provide for sidewalks at a later date.

Mayor Berry explained that his concern with the NFI application was the DEP approval and someone starting out walking on a sidewalk and being forced out onto Route 130 when sidewalk runs out. He does believe that there should be sidewalk from NFI all the way to Wawa but does not believe that it should be piecemealed, where a pedestrian starts out on sidewalk and then is forced out onto the shoulder of Route 130 to complete their walk. If a contribution of 120% of the cost of sidewalk was made, along with other developments, it would allow the sidewalks to be installed all at one time. Solicitor Kearns stated that can be done. He stated that ultimately, Council and Planning

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Board have to work together to make sure that sidewalks are installed on Route 130. He explained that Council has a right to set a policy requiring sidewalks.

Planning Board Solicitor Frank explained that the Planning Board is not opposed to the policy of having sidewalk on Route 130, which is one point the Planning Board would like to make clear this evening.

The Planning Board Solicitor also reviewed a discussion he had with Solicitor Kearns, Planner Petrongolo and Engineer Guzzi regarding amending the ordinance. They discussed that there be a requirement for sidewalk on all the roads in the municipality with the possibility of a waiver being granted by the Planning Board in conjunction with the site plan review. That would eliminate some of the problems in the current ordinance. When a waiver is granted, there would be a contribution in lieu of sidewalks, in the amount of 120% of the cost of the sidewalk. Engineer Guzzi suggested that sidewalk be required for major subdivisions everywhere in the township, but on Route 130 sidewalk also be required on minor subdivisions. That pushes sidewalk on Route 130. Solicitor Kearns noted that waivers should not be routine; they should be granted because there are practical difficulties in installing sidewalk.

Planner Petrongolo explained that the advantage to the contribution is if there are areas where sidewalks are not appropriate, it will build up the contribution fund to where sidewalks could be installed in entire blocks on Route 130, eliminating sidewalks to nowhere. Planning Board Solicitor Frank stated that requiring a contribution actually provides a mechanism for Council to have the last word; because if waivers are granted and once the funds are there, Council can decide that sidewalks will be installed.

Council President O'Hara spoke with Vince Scozzari, who is willing to extend sidewalk on Route 130 in front of Roma Bank to the woods (where they would need DEP approval) and is willing to consider sidewalks in front of the shopping center, even though the site is approved and is in operation.

Council President O'Hara reviewed various developments on Route 130 that have sidewalk, such as Rite Aid. The old Brandow property has a blacktop area in front that could be considered a sidewalk. From there the township could get a good stretch of sidewalk on Route 130 South. He asked if they run into an area with obstructions that forces a pedestrian onto the shoulder of the road if that area could be striped? Engineer Guzzi does not believe NJDOT would allow that.

Council Member Sandusky is in favor, if there is a reason why an applicant cannot install sidewalk, that they be required to install sidewalk in another area. Planning Board Chairperson Hamilton-Wood agreed and stated that is what the Planning Board is proposing. Planner Petrongolo stated that is an advantage to a cash contribution, which gives Council the ultimate decision as to where to install sidewalk.

Planning Board Solicitor Frank stated that it is easier for a public entity to get DEP approval then it is for a private developer. Therefore with creating a fund, the municipality may have the ability to do pedestrian development over wetlands that a private developer may not be able to do.

Solicitor Kearns noted that when estimating the cost for sidewalk it should be done as the municipality is doing the work because they must take into account prevailing wages, which a developer does not have to do.

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Mayor Berry spoke with Engineer Guzzi regarding basing the sidewalk contribution on concrete sidewalk, but the municipality would have the option of using asphalt and creating a sidewalk/bikeway. They would get more for the footage when using asphalt.

Council President O'Hara expressed his concern regarding people that take the light rail and have to walk to their place of employment. Mayor Berry and Administrator Brook have talked with Whitesell regarding installing sidewalk along the railroad tracks and they were agreeable to having that conversation. He noted that the contributions in lieu of sidewalk could be used for sidewalk along the railroad tracks. The township would need an easement from Whitesell.

Planning Board Member Wainwright noted that if sidewalk is installed on Route 130 from Cedar Lane south it should be installed on the south side of the highway because the majority of the people that use the light rail use the south side of the highway. Also, there are less wetlands on that side.

Assistant Administrator Sahol stated that if they do a contribution in lieu of sidewalks, the Planning Board has the ability during the time of application to set the easement and description of where the sidewalk will be placed. Council does not have that ability without taking or purchasing the easement. The Planning Board could design the sidewalk layout around wetlands onto the property. The Planning Board Solicitor stated that could be included in the ordinance and would insure an adequate easement for sidewalk.

Planning Board Member Bauer stated his opinion that the problem of pedestrians walking on Route 130 began with the NJ Transit Light Rail. He noted that one problem is how to get the pedestrians safely over the whirly bird from Ready Pac to the train station and return. He believes a walkway along the railroad tracks is the best way to go.

Administrator Brook stated that the Planning Board minutes reflected the Planning Board's true viewpoint and acknowledged that it was not the wisest decision to adopt the ordinance, when it was adopted. He understands the concerns of the Planning Board Members.

Synopsis of Discussion

The Planning Board Solicitor gave a synopsis of this evening's discussion:

- Continue to require sidewalks on all roadways throughout the township.
- Authority to require or waive sidewalks will be returned to the Planning Board as part of their site plan review.
- If a waiver is granted, sidewalks must be constructed immediately somewhere else or be subject to a contribution in lieu of sidewalks based on 120% of the prevailing wage based on cost of construction of concrete sidewalk using the Township Engineer's estimate.
- Secure easements at the time of approval to be sure there is an opportunity in the future to install sidewalk on that frontage, if and when the township decides, as a component of the waiver.

Discussion followed regarding the Township Engineer preparing a report, as part of his standard subdivision site plan review, addressing whether sidewalks should be installed or waived. Solicitor Frank stated that he did not believe that the Township Engineer should be put in that position; he believes the applicant should be put in the position of asking for and arguing for the waiver they want. The Township Engineer would review the applicant's request.

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Planning Board Chairperson Hamilton-Wood discussed the Planning Board's decision on the Scamporino application to waive sidewalks on Route 130 but have sidewalk installed on Cedar Lane towards the high school to benefit the students walking on Cedar Lane. She asked if Council felt that was not an appropriate decision? Council President O'Hara stated that he prefers sidewalk on Route 130 but has no problem with the Planning Board's decision to extend sidewalk on Cedar Lane to the high school. Planning Board Chairperson stated that the intention of the Planning Board was to address a more immediate need, which was the high school.

In the Planning Board Solicitor's opinion and vision, he stated that the sidewalk ordinance is something that will be built to rely on a future pedestrian circulation to be developed by the Planning Board with the planner and engineer. The ordinance will then enable the Planning Board to show developers that there is a plan in place for future sidewalk. If the developer is granted a waiver, they can decide whether to install sidewalk at an alternate location or make a contribution in lieu of sidewalk.

Council Member Woolston stated that when a waiver is granted, it is best to have the developer install sidewalk where it is needed in the community because they can do it cheaper and faster than the municipality. The Township Engineer expressed his concern regarding developments that receive approval but the development does not get built for some time. Solicitor Frank stated that it can be included in the ordinance that if another developer constructs the sidewalk first, the first developer will have to construct another area of sidewalk or choose a cash contribution.

Mayor Berry asked that Solicitor Kearns prepare a draft ordinance and review with the Planning Board Solicitor. He asked that they create an ordinance that is acceptable to the professionals, satisfies everyone's concerns but meets the needs of the community.

Planning Board Member Lutz expressed concern regarding the aesthetics of a hodgepodge of concrete and asphalt sidewalks. Mayor Berry explained that the contribution will be based on a concrete sidewalk, but if Engineer Guzzi were to report that there is enough money in the fund to do a length of asphalt walkway, the township has that option, as long as it is a continuous path. Planning Board Member Lutz is looking at it from a planning perspective of what vision they want for Route 130. Council President O'Hara agrees with Planning Board Member Lutz that they do not want a hodgepodge of asphalt and concrete sidewalk. Discussion followed regarding an asphalt walkway along the railroad tracks.

The contribution in lieu of sidewalks will be required on Route 130 for major and minor subdivisions; in town the contribution will only be required for a major subdivision.

Everyone present was in agreement that the ordinance be prepared as discussed this evening and reviewed.

Swimming Pools

Solicitor Kearns asked the Planning Board members what their vision of a swimming pool is when they have a developer that is required to construct a swimming pool; is it supposed to be a four (4) foot deep pool or a three (3) foot to eight (8) foot deep pool? Solicitor Kearns explained that he asked because the Legacy development is required to put in a swimming pool and they only want to put a four (4) foot deep pool in. He believes that is the size pool that would be in a residential backyard not a community. Solicitor Kearns is recommending that Administrator Brook advise the developer that they either put in a real swimming pool or go back before the Planning Board to get a clarification of what the Planning Board meant regarding the swimming pool. Engineer Guzzi stated

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that the Resolution specifies that all of those amenities have to be reviewed and approved by the Planning Board Planner, but they have not been submitted. The only plans showing the pool were the general layout, not the depth. Planner Petrongolo stated that a four (4) foot pool is not acceptable; a three (3) foot to six (6) foot pool is acceptable.

Master Plan Review

Council President O'Hara asked if there were plans for a Master Plan Review? Planner Petrongolo will prepare a proposal for the township. He noted that the new Time of Application Rule will become a major issue. He believes the bill is flawed. Discussion followed regarding the impact of the new law.

Administrator Brook asked how the Scozzari application that is going before the Planning Board will be handled in regards to sidewalk? Solicitor Kearns will have the ordinance ready for first reading at Council's July 14th meeting. Therefore, the Planning Board can follow that ordinance at their July meeting, which is July 19th. Council President O'Hara requested that the Planning Board ask Scozzari to continue sidewalk in front of Roma Bank but stop before the area with DEP issues. Solicitor Kearns will contact Scozzari's attorney and advise him that Council and the Planning Board met and have agreed to amend the sidewalk ordinance.

Miscellaneous

Planning Board Chairperson Hamilton-Wood stated she hoped that this meeting solved the communication problem. Council President O'Hara stated that, at the Council Meeting following the Planning Board meeting where the sidewalk ordinance was discussed, Council Member Ryan did discuss with Council that it was a highly intense discussion at the Planning Board level and did request that the ordinance be TABLED until the Township Solicitor and Planning Board Solicitor were able to meet. Council moved to enact the ordinance.

Planning Board Solicitor Frank stated that it is very important this evening that there is a message conveyed from the Planning Board to the Council that they are taking their job seriously. He believes that the Planning Board members fully understand that the elected officials adopt the ordinances and Council has the final word on policy decisions. He does not believe there is any effort from the Planning Board to circumvent that procedure.

Council President O'Hara stated that Council appreciates the dedication, the time and the years of service the Planning Board members have put in. He apologized for the confusion but believed it was resolved at this evening's meeting.

Mayor Berry expressed his appreciation and thanked everyone for being at the meeting.

9:45PM MOTION by Sandusky, seconded by Baldorossi to adjourn meeting. Roll call vote - all ayes. Motion carries.

ADJOURNMENT 9:45PM: Meeting adjourned.

Respectfully submitted,

JOY M. WEILER, RMC/MMC
Township Clerk

/mab