

MINUTES OF THE AUGUST 25, 2015 PLANNING BOARD MEETING  
BOROUGH HALL, BOROUGH OF HILLSDALE

MEMBERS PRESENT: M. Giancarlo, L. Calabria, F. Franco, M. Kates  
G. Biener, Z. Horvath, J. Miano, E. Lichtstein

MEMBERS ABSENT: Councilman F. Pizzella, T. Maalouf, J. Traudt

EMPLOYEES PRESENT: Nylema Nabbie, Esq., Board Attorney  
Eric Keller, P.E., Conflict Board Engineer  
Caitlin Chadwick, Deputy Secretary

Chairman Giancarlo called the meeting to order with a reading of the Open Public Meetings Statement at approximately 7:30pm.

OPEN TO PUBLIC (for matters not on the Agenda):

Kevin O'Brien of 61 Park View Drive voiced concerns regarding application PZ-08-12, "Preserve at Hillsdale" also known as the Walsky property. Board Attorney Nabbie explained to Mr. O'Brien that it will be more appropriate to discuss these issues at the applicant's next scheduled public hearing. Mr. Lamb, on behalf of the applicant's attorney Mr. Weiner, agreed with Ms. Nabbie. As no one else wished to speak, the meeting was closed to the public.

MINUTES:

The *August 13<sup>th</sup>, 2015* meeting minutes were approved by the Board.

BILLS:

Invoices from the Board Engineer's office were approved by the Board for payment.

COMPLETENESS REVIEW:

*PZ-11-15; John C. Paterno; Block 1205, Lot 8; 279 Broadway*

*Major Site Plan with use variance application for the construction of multi-unit family housing* was deemed incomplete due to lack of drainage computations matching site plans. Upon receipt of new computations and revised plans, the applicant can be scheduled for a public hearing.

PUBLIC HEARINGS:

*Caliber Builders; Block 506, Lot 1; Golden Orchards*

*Final Site Plan application for construction of age-restricted, single-family dwellings*

Counsel for the Applicant – Siobhan Bailey, Esq.

Counsel for the Northgate Condominium Association

On July 27, 2015, Ms. Bailey submitted a letter to Ms. Nabbie informing her that Caliber Builders is withdrawing the application on file and plans to submit a new application. On July 28, 2015, Caliber Builders submitted a new application.

Mr. Lamb stated that the applicant is not permitted to withdraw their application without the Board's consent. He made a motion that if the Board allows the applicant to withdraw the application, it should be conditioned on the applicant reimbursing Northgate Condominium Associate for their reasonable legal and engineering fees, citing the *Sansone* case. Ms. Bailey stated that there is no statute or ordinance in Hillsdale that prohibits the applicant from withdrawing an application. Ms. Bailey informed the Board of the details of the *Sansone* case, explaining that it is a much different case than Caliber Builders' situation. In the *Sansone* case, the applicant attempted to withdraw the application after the Board had denied it, arguing that a formal vote had not been taken. In that case, when the applicant sought to withdraw the original application after it had been denied, and file anew, the Board conditioned it on reimbursement of fees because the situation was considered Res Judicata. Ms. Bailey stated that Caliber Builders have expended tremendous sums of money, their permits are about to expire, and she finds the suggested condition offensive.

Mr. Lamb stated that in August 2013, he raised the issue of Mr. Statile's conflict of interest in Washington Township due to his participation with the Washington Township Zoning Board of Adjustment, and it was determined that there was not a conflict. Chairman Giancarlo asked Mr. Lamb if he thought there was a conflict at that time, then why did he proceed. Mr. Lamb responded that he proceeded because he knew he could request redaction of the record. Proceeding with the old application and redacting Mr. Statile's participation and testimony during same was then discussed. Ms. Bailey stated that Mr. Statile was intimately involved with this application since the Preliminary stages and to redact his testimony and reports would be an involved process which would prejudice Caliber Builders; she objected to same.

Washington Township's Attorney Kenneth Poller then spoke. Mr. Poller stated that all of Mr. Statile's participation and reports are easily identifiable and can be redacted; it would be a "small redaction." Mr. Poller elaborated that Caliber Builder stands to make much money if this application is approved, while Northgate Condominium Association will not. He further stated that Washington Township is "bleeding money" and that Northgate is the party being most injured in this situation. Concern was raised regarding the possibility that during the redaction of Mr. Statile's involvement, something could be missed and remain on the record. Mr. Lamb stated that in that event, it would be on Northgate and the Opposition. Ms. Bailey and Ms. Nabbie agreed that when there is a public body involved, a conflict is not waive able. Mr. Lamb stated that no, he can't waive a conflict, but he can agree to a procedure. Ms. Bailey again stated that the applicant has the right to withdraw an application and proceed with filing a new application.

Chairman Giancarlo asked Ms. Nabbie if the Board should be concerned about a taint. Ms. Nabbie stated that these cases are fact specific and if something gets missed in redacting the record, hearings could be considered void. Ms. Nabbie stated that in the *Sansone* case, and the specific circumstances of it, after the Board denied the application, the applicant sought to withdraw it, which was what led to the reimbursement of fees in that case. Ms. Nabbie stated that the applicant may withdraw and re-file, and the Board must evaluate how this conflict arose when considering the conditions of whether or not to allow the withdrawal of the application, and the Board must also consider the prejudices to both parties.

The meeting was then opened up to Board discussion. Dr. Lichtstein stated that the Board understands the difficulty of costs associated with this application, as in the past the application was litigated up to the New Jersey Supreme Court and was a laborious expense on the Borough. Dr. Lichtstein opined that redaction of the record will be complicated and involved because comments and decisions made by others during the public hearings were in context with Mr. Statile's testimony and review reports. To redact his involvement from the record, the record would be missing the context and would affect the record of others' participation in the application as well. Mostly all of the Board members agreed with Dr. Lichtstein. Vice Chairwoman Calabria also stated that she believes the *Sansone* case to be irrelevant, as these matters are fact sensitive. She also opined that redaction would not protect the Borough or the Board. Dr. Lichtstein made a motion to allow the applicant to withdraw the application and file a new application without any conditions. Vice Chairwoman Calabria seconded this motion. The Board was polled and all members voted in favor of this motion; the motion passed. The old application was formally withdrawn and the Board proceeded with hearing the new application.

Conflict Board Engineer, Mr. Keller, spoke about his completeness review of the application, stating that although the purpose of the memo is for completeness purposes only, he also tried to start to identify changes that were made between preliminary and final, but that the focus of the memo is completeness review. He stated that the Caliber Builders application is complete and was consistent with information from the approved preliminary site plan. Mr. Keller also explained that by completeness, he means that everything that the Borough's ordinance requires for this type of application has been provided by the applicant.

Mr. Lamb stated that he had an issue with the Phase I drawing not being approved yet by Bergen County Planning Board, but that he will move past it. However he requested that Ms. Bailey state for the record that she will copy him on everything submitted by her and her professionals for this application. Ms. Bailey stated that although not required, she has provided Mr. Lamb with courtesy copies of virtually everything and has identified exactly what was on file with the Board. Furthermore, Ms. Bailey recently hand delivered all documents to his office. Ms. Bailey also stated that she provided exhibits to Ms. Nabbie, as requested, so that Ms. Nabbie could transmit those documents to the Conflict Board Engineer.

Mr. Lamb then took issue with the Conflict Engineer's completeness review, stating that it only focuses on the Hillsdale only Phase I site plan. He continued that Caliber Builders is requesting two different approvals and that Mr. Keller didn't address the second part of it, which was the combined Washington Township and Hillsdale Final Site Plan. Mr. Lamb stated that he will not object to the completeness issue. Ms. Nabbie stated that Mr. Keller understands his task. Mr. Keller stated that the exhibits provided by Ms. Bailey to Ms. Nabbie, which he received from Ms. Nabbie include the resolution of preliminary approval with conditions listed and that this was all provided to him to help him understand the past seven years of history regarding this application. Mr. Keller stated that he must consider everything in those documents and then look at the resolution and compare preliminary to final plans and evaluate whether or not any substantial changes were made outside of agency recommendations. Mr. Keller explained that comparing the changes between the combined 12/31/14 plan to the Phase I Hillsdale only plan, is a much simpler task than comparing both to the approved preliminary plans. Mr. Keller informed the Board that he is about 80% complete with this task and that his memo to the Board is simply a summary of the application, not an evaluation.

Documents were then marked into evidence as follows:

**Exhibit O-1:** Mr. Lamb's August 24, 2015 email to Ms. Bailey

**Exhibit O-2:** Caliber Builders' new application

Mr. Lamb objected to Caliber Builders' published notice because it didn't state that Caliber Builders was also seeking preliminary approval, rather that they seek amendments to the conditions of preliminary approval. Ms. Bailey stated that the application is for final approval, not preliminary approval, and that the amount of changes to the plans is not what constitutes whether or not they are substantial changes.

Ms. Bailey's first witness was Mr. Alex Zepponi, P.E. of ENTEC, 886 Belmont Ave., North Haledon, New Jersey. Mr. Zepponi formed ENTEC in 1985 and is a licensed professional civil engineer in New Jersey, New York and Pennsylvania. On August 10, 2007, Caliber Builders' plan received Preliminary Approval, and when a project is in both municipalities, the applicant is obligated to show the entire project on the plans. 31 units in Hillsdale and 6 units located partially in Washington Township, partially in Hillsdale, were and are proposed. At the preliminary stage, it was indicated that the project would need to proceed in phases; Phase I – the 31 Hillsdale only units as well as the proposed roadway and Phase II – the additional 6 units located partially in Hillsdale, partially in Washington Township. These units would not be included in Phase I. Proceeding in these phases was approved by the Board when the applicant was granted Preliminary Approval.

Ms. Bailey then had witness read excerpts from the Resolution of Preliminary Approval, specifically different conditions that were agreed to. Documents were also marked into evidence as follows:

**Exhibit A-1:** Resolution of Preliminary Approval dated January 29, 2008

**Exhibit A-2:** Drawing 5 of 11 of Preliminary Approved Plan of August 10, 2007 Site Plan.

**Exhibit A-3:** Approved Preliminary Plan dated August 10, 2007.

**Exhibit A-4:** Final Site Plan (shows both Phase I & Phase II) revised to December 31, 2014, filed on July 28, 2015.

**Exhibit A-5:** ENTEC Exhibit Board- Utility & Grading Drawings of the Final Site Plan (showing both Phase I & Phase II), original date of August 10, 2007, revised to December 31 2014.

**Exhibit A-6:** Description of Plan Revisions

**Exhibit A-7:** Board Engineer Statile's letter dated September 10, 2007

**Exhibit A-8:** ENTEC Exhibit Board- Landscape Plan, drawing number 4H of 11 of Final Site Plan, revised to October 21, 2013.

**Exhibit A-9:** Letter to Mr. Weinberger from NJDEP re: Freshwater Wetlands Transition Area Waiver Averaging Plan and Transition Area Waiver for Redevelopment

**Exhibit A-10:** Letter to Mr. Weinberger from NJDEP re: Public Comments regarding Permit Modification for Caliber Builders

Mr. Zepponi stated that Phase I plans were prepared as a response to the Board's request, and from an engineering standpoint, the Hillsdale only portion of this project can be constructed without Washington Township ever approving the Washington Township portion. Mr. Zepponi then reviewed Exhibit A-5, explaining to the Board that the dashed line represents the municipal boundary, and highlighting in yellow the proposed roadway to be constructed in Phase I.

Mr. Zepponi then outlined for the Board the changes made to the plans, grouping them into categories. The first category of changes, “net zero changes,” were made in response to agency recommendation. Mr. Zepponi provided an example of such a change for the Board, stating that NJDEP wanted the applicant to remove the riprap, but Soil Erosion wanted the applicant to add the riprap back in, resulting in there being a “net zero” change. Mr. Zepponi explained in detail every revision that constitutes a “net zero” change, which are identified on **Exhibit A-6** as the following: Revisions 2b, 16, 17, 22, 26b, and 28e. The second category of changes were plan enhancements related to what is already shown on the preliminary plan. The process of agency approval, post preliminary approval, often involves agencies requesting the applicant show more detail and more explanation of the items that already existed on the plan. Changes that fit into this category are the following revisions from **Exhibit A-6**: Revisions 1, 2a, 4, 5, 6, 11, 14, 15, 18, 19, 24, 26a, 26c, 27, and 28d. Mr. Zepponi gave an example of this type of change stating that one of the agencies wanted the applicant to enlarge and show detail on the scour hole so it could be more easily read, but then NJDEP wanted the applicant to remove that detail. Dr. Lichtstein asked about Revision 26a and Mr. Zepponi explained that there was an error in the original survey showing the existing pipe under Ell Road, and once he realized he was given incorrect information, he simply fixed it, but did not change the pipe or design. Finally, the third category of changes are revisions made to comply with the preliminary approval resolution and the conditions of said resolution. Revisions that constitute this type of change are: Revisions 7, 21, 8, 10, 12b, 12c, and 20. Detail of these revisions can be found on **Exhibit A-6**. Mr. Zepponi provided examples of this type of revision and read from the conditions of preliminary approval, explaining how specific revisions relate to specific conditions.

Ms. Kates stated that the Environmental Commission still needs to write a final report and perform a walk-through of the site, but is waiting for Mr. Keller’s engineering report. Mr. Lamb stated that he plans to ask Mr. Zepponi questions regarding the Landscaping Plan and compare it to the testimony he gave during the previous final site plan application. Board Attorney Nabbie stated that Mr. Lamb cannot do that, as the previous final site plan application was withdrawn and all testimony from same should not be used during this new application. Ms. Nabbie stated that she will speak with both Mr. Lamb and Ms. Bailey.

Due to the late hour, the application was carried to October 8, 2015 at 7:30pm. The applicant is scheduled for an additional public hearing on October 27, 2015 at 7:30pm. Ms. Nabbie asked Ms. Bailey if the applicant waives the time frame for the Board to act. Ms. Bailey stated that she does not see a need to waive at this time, but agreed to extend the time for the Board to act until October 27, 2015. Ms. Nabbie announced that there will be no further notice regarding this application.

The meeting was adjourned at 10:40pm.

Respectfully submitted,

Caitlin Chadwick  
Deputy Secretary