

April 18, 2012 MINUTES

A regular meeting of the Township of Roxbury Planning Board was held on April 18, 2012, at 7:30 p.m. in the Municipal Building at 1715 Rt. 46, Ledgewood, N.J. After a Salute to the Flag the Chairman read the Open Public Meetings Act.

ROLL CALL:

PRESENT: Mr. Shadiack, Mr. Verge, Mr. Zoschak, Mr. DeFillippo, Mr. Carey, Mr. Meyer, Mr. Meyers, Mr. Silcox and Mr. Bautz.

ABSENT: Mrs. Lutz and Mr. Rilee.

STAFF: Mr. Ferriero, Mr. Germinario, Mr. Stern and Mrs. Wiss

MINUTES: April 4, 2012

Motioned by Councilman Zoschak and seconded by Mr. Meyer to approve

Ayes: Councilman Zoschak, Mr. Carey, Mr. Meyer, Mr. Meyers, Mr. Silcox and Mr. Bautz

Abstain: Mr. Shadiack, Mr. Verge, Mr. DeFillippo

Noes: None

MOTION APPROVED.

RESOLUTIONS: none

COMPLETENESS:

APPLICATIONS:

PBA-09-013 A & E VENTURES Block 3601, Lot 3 and Block 5004, Lot 10 235-241 Route 10 Amended Preliminary Site Plan Application – Burger King and Retail.

This matter was carried to May 2, 2012 at the applicant's request with no further notice.

PBA-12-08 CMU, LLC. (Clayton/McNear) Block 10018, Lot 1 & others, Ledgewood-Landing Rd. Preliminary Site Restoration Plan.

This matter was continued from the April 4, 2012 meeting. Ronald Heymann, Esq. on behalf of Clayton Companies, LLC., Mr. Milnes, Mr. Wall, and their engineer Thomas Graham were present. Mr. Bautz recused himself and Mr. DeFillippo took over as Chairman.

Mr. Germinario gave the Board a history of the site. A conceptual site plan was approved in September of 1982 that was really an approach for preparing the site for future development. This application is both a continuation of the 30+ year process and preparation for the final phase. It is a unique application, a site/restoration plan. The next step would be a development plan that would meet the requirements of the zone. The Board will try and identify changes that are needed in the Developers Agreement that

governs the site. When a Resolution is done, definitive recommendations will be made to the Governing Body as to what goes into an amended Developer's Agreement. There is a need to define the responsibilities between Clayton, the operator of the quarry, and the Trust that has the interest of the future development of the property as an industrial property. He had talked to counsel for Clayton and Mr. Gregory, counsel for one of the owners of the site. Mr. Wacks representing the Trust was not present tonight and he needs to weigh in. After the hearing tonight a discussion with all the parties involved will help to sort out the responsibilities of the Trustees and Clayton.

Mr. Heymann agreed with the overview. Clayton entered into a lease dated June 26, 2009 expiring on December 31, 2013 with Mr. McNear that calls for the premises to be left in the same condition as it was when Clayton started quarrying. They will do more than that. Clayton did exceed the depths limits with regard to quarrying and they worked out a new Developers Agreement. There are no more quarrying, blasting or crushing operations on the site; they are just retailing stone. The restoration process has commenced. They are remediating pursuant to the conditions of their bond and the French and Parello plan. The lease is between Clayton and McNear Excavating, Inc. The Developers Agreement was between McNear Excavating, Inc., McNear Irrevocable Trust and the Township.

Mr. Milnes and Mr. Wall of Clayton Companies were sworn in. Engineer Thomas F. Graham from Dyskstra Walker Engineering was sworn and qualified. He was retained by Clayton and prepared the Preliminary Site Plan. The property is 145 acres with frontage along Ledgewood Landing Road, Kings Highway and frontage at the terminus of Lenel Road. The property has been quarried for 30 years. The active quarrying will terminate with lease. Half of the property has been excavated. The site access off is of Ledgewood Landing Road. Equipment has been removed from the property since the site plans were prepared. They had been in front of the Board for over excavation and restoration has been done and also restoration of some of the sloped areas. The perimeter of the site will have a 3 to 1 slope as depicted on the plans.

The meeting was open to public regarding Mr. Graham's testimony. James Gregory, Esq. representing William McNear and McNear Excavating, clarified that the Lease is between McNear Excavating and the Trust and Clayton is merely a subcontractor to McNear Excavating.

Mr. Stern's report of April 4, 2012 was addressed. There will be testimony on items needing clarification or that they do not agree with. They agree to renew the soil moving permit. They will be vacating by the end of 2013. The access drive will remain as is, the scale will be removed, the side sloped areas are to be hydroseeded and the floor of the basins are to be vegetated. The treatment of side slopes has begun and will be graded off to a 3 to 1 slope and hydroseeded. Representatives of French & Parello and the Township are on site daily and reports from French & Parello have been submitted to the Township Engineering Dept. as was a condition of the Township. The excavation is being filled according to their specifications and the plan. The work done last year is stable and adequate. Mr. Wall said the larger stones are broken up by a hydraulic rock breaker and they are reduced and some of the large stones will be used to fill in the side slopes. He had pictures of hydraulic breaker and other photos, marked Exhibit A-1, a

total of 10 photos taken by Mr. Wall this week with the exception of aerials taken in December of 2011 showing the full extent of the disturbance.

Mr. Ferriero has not talked to French and Parello and it was recommended that he should contact them. Reports and contact information were given to Mr. Ferriero.

The hole was filled to 1005 ft elevation; it is 25 ft deep now. They are still retailing but this removal is part of the restoration. The timeline for restoration is Dec. 31, 2013, but they hope to be done before that. The trailer is owned by McNear so the matter of its removal will have to be discussed with the Trust. There is a gate across Lenel Road to prevent truck access as was required. Wetlands were delineated and buffers applied but the property owner has not filed for the Letter of Interpretation. There are no wetlands involved in this activity. Conservation easements and timing for the submission of a site plan or subdivision application were Trust issues. There are benchmarks on the site and they can supply that to the Township or the Trust can supply that information. They are not removing any topsoil and all the topsoil on the site will be redistributed. They don't know if there is enough topsoil to cover the plateau with 6" of topsoil. They have enough material to grade the site. They provided a \$393,000 bond and they will use the onsite material to grade the site. As a contractor they are not going to be bringing topsoil onto that site. This open item will be discussed with the Trust. The intent of the 1980 agreement was that all topsoil was to remain on site but it has been exported out so it might not be available to be used. The site has been operated for 27 years but Clayton has only been there for 2 ½ years.

With regard to the two permanent detention basins, only one is required now since there were no changes in one area.

Benchmarks are a Trust issue to be discussed along with five lots owned by other individuals, including the Township; they have been trying to locate the owners. This needs to be resolved before a development application can be made. The lots are not eligible for condemnation.

The dedication of right-of-ways is a Trust issue. They have a current SESC Plan certification and have had conversations with Joe Dunn that a new certification was not required because they were still within the limits of the land disturbance regardless of whether they went deeper. They will specifically discuss the restoration aspect with the Soil Conservation District. Mr. Ferriero would like a certification of the grading plan or correspondence that it is not needed.

Third Avenue is a proposed road that runs from Kings Highway parallel to Ledgewood Landing Road that was to be partially constructed as part of the Developers Agreement but this is a Trust issue. There are no interior roads being constructed at this time. The remaining Developers Agreement items were Trust issues.

The technical and general outstanding items of Mr. Stern's letter were next addressed. Accepted protocols from French & Parello were used to fill the excavation. Neither the State mining regulation nor Morris County Soil District have specific requirements as to filling. MCSD is more concerned with the surface once excavation is completed. The

Township water tank lot has been excavated but that is the way they found it when they came to the site. There was no fence on the Township property except for one around the tank so the perimeter fence is a Trust issue. The scale will be removed. They had originally proposed a 2 to 1 slope and had changed to a 3 to 1 per our engineers' suggestions. Mr. Ferriero said that slope is generally okay but this is a large area and they need to establish swales or diversions to be proactive. A berm height will be lowered to the satisfaction of the Township Engineer and they will provide a detail on that. They will work with the MCSD for a recommendation on a good seed mix for this site based on their experience. They do not want to provide landscaping in the way of plantings. Mr. Stern felt the meadowmix was positive but because of the broad expanse, some forms of natural shrubs and trees could be introduced. Clayton was not offering that so it was a Trust issue. Stockpiled materials could be used at the site, processed rock and soil to fill the hole. The owner has requested the quarry floor or part of it be a gravel surface and that will impact the stormwater calculations if done. Gravel is an option and the material is on site but that was not recommended. Fill activity has been done with the Township Engineer's and French and Parello's specifications. The 3rd Avenue berm will be reduced and stabilized. The boulders lining the access drive are a Trust issue. Everything Clayton owns on the site will be removed.

They are only here for Preliminary site plan, not final but this is a unique application. They want to do this once; they have already submitted performance guarantees and want the bond released after inspection and upon the professionals' recommendation. This will be discussed at the staff meeting.

The site restoration bond is related to specific work items, that is their guide, they will complete that work properly and expect the bond back and do not intend to provide a two year maintenance bond.

There is no site plan so they do not know if the County needs to be contacted so they will get a letter of no interest from them. There is a certified plan from MCSC for the quarrying and they will reach out to them regarding the restoration plan. They are not building anything so didn't feel there was a need for an asbuilt, however, they will discuss with this with the Trust, a need to provide a topographical asbuilt. Mr. Ferriero's report will be distributed and reviewed at the next meeting.

Mr. Germinario felt the Trust has an interest in revised Developers Agreement so he doesn't expect them to take a stonewall position to this, but if they do, they will have to bring them in as a formal applicant. They want to move the project to the next step, the development of the site. They will know better after the anticipated meeting of all of the parties.

The applicant wants to come up with a working plan and they want their bond released. They will continue the restoration work and are working against the bond posted and it is very important to keep the process moving forward. They will meet with Mr. Wacks, Mr. Gregory and Mr. Wise to find out what the Trust will do. The Township and French & Parello are overseeing what they are doing on site.

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The meeting was open to the public. No one from the public commented. The meeting was closed to the public.

Mr. Gregory agreed they could continue restoration. A status letter will be provided by the next meeting as to the progress of the discussions between the parties.

The application will be carried to the May 16th meeting with no further notice.

OLD BUSINESS:

NEW BUSINESS:

CORRESPONDENCE:

Motion to adjourn the meeting was made at 9:51 p.m.

FOR THE PLANNING BOARD
TOWNSHIP OF ROXBURY

Eugenia Wiss, Secretary