

Township of Hillsborough – PLANNING BOARD

APPROVED Public Meeting Minutes

September 1, 2022

Chairman Carl Suraci called the Planning Board Regular Public Meeting of September 1, 2022 to order at 7:30pm. The meeting was held in the Courtroom of The Peter J. Biondi Building. All stood for the flag salute.

NOTICE OF MEETING

Chairman Suraci announce the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 (“Sunshine Law”). Notice of the 2022 Annual Meeting Schedule has been provided to the officially designated newspapers, the Township Clerk, posted on the Township’s website and available at the Hillsborough Township Municipal Complex.

Application documents have been made available on the Township’s web site <https://hillsboroughnj.civicclerk.com/>. Complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

ROLL CALL

Mayor Shawn Lipani -	present	Nathan Santaromita -	Absent
Robert Wagner, Jr -	Present	Ron Skobo -	Absent
Committeeman Frank DelCore -	Present	Kenneth Hesthag, Secretary -	Present
Robert Peason -	Present	John Ciccarelli (Alt #1) -	Present
Carl Suraci, Chairman -	Present	Patricia Smith (Alt #2) -	Absent
Neil Julian, Vice Chairman -	Present		

Also in attendance: David K. Maski, PP, AICP, *Township Planning Director*; Eric Bernstein, Esq., *Board Attorney (Eric M. Bernstein & Associates)*; Todd Hay, PE, CME, *Board Engineer (Pennonni Associates)*; Michael Lombardozzi, CSR, CCR, *Board Court Reporter.*; Caz Bielen, *Township Videographer (Premier Video)*

CONSIDERATION OF MEETING MINUTES

- **July 7, 2022** regular meeting minutes were reviewed.

A motion to approve as written was made by Mr. Ciccarelli seconded by Mayor Lipani. No comments.

Roll Call:	Mayor Lipani	Yes	Chairman Suraci -	Yes	Secretary Hesthag -	Yes
	Mr. Wagner -	Yes	Vice Chairman Julian -	Yes	Mr. Ciccarelli (Alt#1) -	Yes
	Committeeman DelCore -	Yes	Mr. Santaromita -	Yes	Ms. Smith (Alt#2) -	Yes
	Mr. Peason -	Yes	Mr. Skobo -	Yes		

Motion carries

- **July 28, 2022** regular meeting minutes were reviewed.

A motion to approve as written was made by Mr. Ciccarelli, seconded by Mayor Lipani. No comments.

Roll Call:	Mayor Lipani	Yes	Chairman Suraci -	Yes	Secretary Hesthag -	N/E
	Mr. Wagner -	Yes	Vice Chairman Julian -	Yes	Mr. Ciccarelli (Alt#1) -	Yes
	Committeeman DelCore -	Yes	Mr. Santaromita -	Yes	Ms. Smith (Alt#2) -	Yes
	Mr. Peason -	Yes	Mr. Skobo -	Yes		

Motion carries

CONSIDERATION OF RESOLUTIONS

- **KD Hillsborough 441, Inc. – File 22-PB-02-SV**

A motion to approve was made by Mr. Wagner seconded by Mr. Hesthag. No comments.

Roll Call: Mayor Lipani Yes Chairman Suraci - Yes
Mr. Wagner - Yes Vice Chairman Julian - Yes
Committeeman DelCore - Yes Secretary Hesthag - Yes
Mr. Peason - Yes

Motion carries

PLANNING BOARD BUSINESS

- Appointment of Additional Board Engineer from Pennoni Associates – Todd M. Hay, PE, CME
Motion: Approve the Resolution appointing Mr. Hay was made by Committeeman DelCore seconded by Mayor Lipani. No comments.

Roll Call: Mayor Lipani Yes Mr. Peason - Yes Secretary Hesthag - Yes
Mr. Wagner - Yes Chairman Suraci - Yes Mr. Ciccarelli (Alt#1) - Yes
Committeeman DelCore - Yes Vice Chairman Julian - Yes

Motion carries

BUSINESS FROM THE FLOOR *(public comment for matters not on the agenda)*

Chairman Suraci opens the floor to comments from the public for matter matters not on the agenda. He reminds there is a five-minute time limit for commenting, no questions pertaining to applications which have not come before the board or potential applications.

Craig Berlin – 1 Allshouse Street

- Mr. Berlin is representing a group of objectors to the 303 Amwell application and would like to know what they can do to be recognized as objectors.

Mr. Bernstein instructs to submit something in writing to the Planning Department, specifically Mr. Maski's office, indicating they are seeking objector status on the 303 Amwell and include a list of the individuals. Upon receipt it will be distributed to applicant's council, placed on Civic Clerk and any other objectors will also be notified. During the public hearing they will need to also identify themselves as objectors.

- Mr. Berlin next asks where he can view minutes from the recent Environmental Commission meeting and the letter the Commission submitted to the Planning Board.

Mr. Maski explains once the Commission submits their formal meeting minutes they will be available on Civic Clerk and in the office.

- Mr. Berlin expresses the concern over the short time before the application is on the Planning Board agenda and lack of notification to residents.

Chairman Suraci assures Mr. Berlin the Planning Board will review any issues on the environmental report.

Jo O'Connell – 20 White Meadow Road

- Ms. O'Connell read her personal statement about impact of Hurricane Ida (2021) on Hillsborough and surrounding area, the increased number of “100 year floods” since 1999 and concern about the TEC Zone.
- Ms. O'Connell asks the Board to review the township's flood prone areas based on 2021, not data from 1999 and update the master plan to include state emergency storm water regulations. Ms. O'Connell urges the Township to be smart about development and growth and be proactive in vision rather than reactive to disastrous consequences.

Chairman Suraci states he hears Ms. O'Connell's concerns and encourages her to go to the NJ Legislature to get things changed.

Maria Janucik – 720 E. French Ave, Manville (resident) / 2155 Camplain Road (property owner)

- Ms. Janucik states she submitted an OPRA request for the “will serve letter” from the Hillsborough Municipal Utilities Authority regarding sewer service to the Sherman Tract/Concord Residences. Ms. Janucik reads the letter she received. Ms. Janucik also OPRA requested the documents from Manville regarding the connection of the sewer service. She read the letter she received and states the response she received when she brought the issue to a Manville township meeting. She asks the Planning Board to explain what is happening with sewer service to properties on Camplain Road.

Chairman Suraci explains the MUA is a separate entity than the township. The Board then confirms, as Ms. Janucik read, sewers will be connected at Garfield Ave.

- Ms. Janucik has additional questions which the Board attempts to answer.

Chairman Suraci informs Ms. Janucik her five minutes have expired.

- Ms. Janucik express disbelief she was given a full five minutes and asks to see a timer.

Chairman Suraci holds up his time for the public to see and asks Ms. Janucik to please sit down.

David Brook – 7 Winding Way

Chairman Suraci states for the record Mr. Brook's time is start at 7:55 pm

- Mr. Brook asks if the public is permitted to speak before Executive Session. He questions the legality of an Executive Session in the circumstance.

Chairman Suraci and Mr. Bernstein explain why an Executive Session is allowable.

- Mr. Brook next expresses is unhappiness regarding the many proposals being made to the Planning Board relating to warehouses and the decisions being made. He encourages the board members to remember proposals can be denied. Mr. Brook attempts to ask the board members where they stand on warehouse issues.

Chairman Suraci reminds Mr. Brook the board members cannot comment on matters in that manner.

Mr. Bernstein explains board members cannot comment on applications that are in process. He further explains, for the record and members of the public, the board members sit for the Planning Board in what is a quasi-judicial capacity. They are required to taken in the evidence, testimony of various professionals and public that comes before them and render decision based on recommendations in the law. Discussing how they feel about an application with a member of the public would be a violation of their oath, will conflict them out and could result in a judicial action.

Meryl Bisberg – 4 Hickory Hill Rd.

- Ms. Bisberg asks if the Township Committee explained to the Planning Board why they tabled Ordinance 2022-10.

Mayor Lipani explains since is a RA, Residential Agricultural, zoning the Township Committee wanted to have further conversation with Mr. Maski and the Planning Board about the potential overall theme. The discussion is tentatively schedule for the next business meeting.

- Ms. Bisberg asks if this means the zoning for the lots remains until the discussion is completed.

Mayor Lipani answers not necessarily as to the fact there are different timeframes involved with each application.

Mr. Maski explains the application Ms. Bisberg is referencing had already been deemed complete.

- Ms. Bisberg then questions the Executive Session.

Mr. Bernstein explains how it pertains to attorney-client matters.

Committeeman DelCore further explains to the public that the Board is not able to take action or vote during the Executive Session. Action and voting needs to happen during public session. The public will have its opportunity to comment on the application.

- Ms. Bisberg further challenges the need for public action.

Mr. Bernstein maintains his advice to his client, the Board, for an Executive Session.

Rich Gahrman – 53 Winding Way

- Asks for clarification for the process of the applications, specifically when is a variance required.

Mr. Maski explains how an application is first reviewed when it comes to the Zoning Office. During which time a list of all variances and waivers that will be required is made. The applicant

then comes before the Planning Board to provide testimony justifying all the variances and waivers requested.

- Mr. Gahrman asks if within an ordinance there is a definition of the difference between a truck depot vs an overly large warehouse with an exorbitant amount of trucks.

Mr. Maski says there is not and further explains if something is not specifically defined in an ordinance, it is the commonly accepted definition which is used.

Mr. Bernstein adds not everything is definable, land use law doesn't define it, law doesn't define it. Some argue the terms are interchangeable and other situations they are not. It may turn with each application.

Tony Galuppo – 44 Franklin Drive

- He received notice the area behind his house, 1170 Millstone River Road, is under consideration for rezoning from 05 to RA. He also received a certified letter from an applicant with a near date as the rezoning notification.
- Mr. Galuppo expresses how unsettling the situation made him feel. And further explains his comments are not politically motivated and asks the Board to take into consideration how these applications could impact the existing residents in a negative way.

No further public comment

APPLICATIONS – PUBLIC HEARING

- **Homestead 279 LLC – File22-PB-05-S/MSPV (TOD: 09-21-22) – Block 200.02, Lot 12 (formerly Block 200.B, Lot 28) – 279 Homestead Road.**
Applicant seeking minor subdivision approval; preliminary and final major site plan approval; 'c' bulk variances; and waivers, to subdivide 17.11 acres into two lots: Proposed Lot A to front on Homestead Road and contain 5.41 acres to retain the existing commercial use and improvement; and Proposed Lot B to contain 11.7 acres and the subject of the major site plan application, to construct a 137, 413 sf. warehouse with internal office space, associated parking, lighting, storm water, and improvements on Property in the LI, Light Industrial Zoning District. Revised plans / reports submitted 08-08-22. (EC Review: 07-25-22)

Participating: Michael O'Grodnick, Esq., Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher, P.A.; Joshua Tiner, PE of Redcom Design & Construction LLC (Civil Engineer); Roberto Martinez, PA, Redcom Design & construction LLC (Architect); John McDonough, PE of John McDonough Associates, LLC; and Greg Redington Managing Member of Homestead 279, LLC and Redcom Design & Construction LLC, Applicant Representative.

Opposing counsel: Joseph C. Tauriello, Esq. of The Law Offices of Joseph C. Tauriello, Esq., P.C.

Chairman Suraci explains since the Board will be going into Executive Session in an hour (at 9:15 pm) there may only be enough time to hear one testimony and this matter will be continuing down the line.

Board Member Ciccarelli recuses himself from hearing the application.
Chairman Suraci accepts the recusal and Mr. Ciccarelli leaves the meeting.

Alexander Fisher, counsel for the applicant, introduces himself and the application to the Board. He acknowledges there is an objector to the notification and gives opportunity to put it on the record.

Joseph Tauriello, representing resident objector Sandro Iannella, introduces himself. He offers his letter sent to the Board dated August 31, 2022 stating his client's objection to notice into the record. He asks for the opportunity to comment on Mr. O'Grodnick's letter dated August 31, 2022 and for the Board to consider the objection and comments and urge the Board to carry this application due to a defective notice.

Mr. Tauriello explains his client's objection is not with the proposal but rather with the intensity of the proposal as the size and scope significantly and negatively impacts the Iannella properties. Mr. Tauriello summarizes how the notification is prima facie and did not properly inform the public.

Chairman Suraci polls the public to find out how many are there to hear the Homestead 279 LLC application hearing. Chairman Suraci notes the majority in attendance raised their hands and states the large crowd is a representation of the public so he does not see the advantage of carrying the application.

Mr. Bernstein corrects this is not a poll of the audience issue but rather a notice issue and if it complied with the requirements of the municipal land use law. If the notice is defective, the size of the crowd in attendance does not make the notice less defective. The notice may be defective because it fails to indicate all items that are purportedly being sought. Mr. Bernstein continues to clarify, for the purpose of the record, Mr. Tauriello's complaints by summarizing them from his letter. Mr. Bernstein then summarizes the details of Mr. O'Grodnick's response letter which claims the objector is mistaken. Next, Mr. Bernstein explains the applicant and the objector's rights and risks pertaining to the objection.

Mr. Fisher responds to the legal arguments from Mr. Tauriello and gives testimony why all variances do not need to be listed in notification but rather show the nature of the matters to be considered and ensure the members of the public who may be affected by the proposed development are fairly apprised thereof. Mr. Fisher then testifies to the extensiveness and detail of his client's notification. He submits the notice is good.

Mr. Tauriello replies with precedent stating a board's decision regarding the issue is a question of law and as such any appellate review would be de novo and proper notice is a condition prerequisite for a zoning board's exercise of its authority. He then explains the notification did not include two significant zoning requests that directly impact his client's property. He also makes a statement regarding an inaccuracy in Mr. O'Grodnick's letter regarding an ordinance explanation and how this impacts his client's property.

Mr. Bernstein reminds the Board the issue is do they find the notice to be defective.

Mayor Lipani asks Mr. Bernstein for clarification, generally speaking, how/if the objector is precluded if they decide the notification is sufficient.

Mr. Bernstein explains the ramifications for the objector and the risks for the applicant.

Mayor Lipani asks the applicant's counsel if they would still like to proceed.

Mr. Fisher says they would like to proceed.

Chairman Suraci brings up the matter of reasonable appraisal. Mr. Fisher and Mr. Tauriello argue points.

Before proceeding to a motion, Mr. Bernstein reminds, for the record, Mr. Tauriello has objector status for his client and is well aware of the rules of what he can or cannot produce and opportunities he has to cross-examine witnesses of Mr. Fisher and/or present his own testimony and the determination on if the notice is defective does not preclude him from any of those rights and privileges.

Motion: Chairman Suraci motions for the Board to proceed with the application and determine the notice is not defective, seconded by Vice Chairman Julian. No comments.

Roll Call:	Mayor Lipani	Yes	Mr. Peason	Yes	Secretary Hesthag	Yes
	Mr. Wagner	Yes	Chairman Suraci	Yes		
	Committeeman DelCore	Yes	Vice Chairman Julian	Yes		

Motion carries

Mr. Bernstein states for the purpose of the public record, the determination that the notice is not defective has no impact on the ultimate application itself but merely indicates the Board believes that sufficient information was provided in order for the application to move forward. If the application fails to meet the necessary standards or the Board believes it is not meeting the requirements it can turn it down irrespective of determining that the notice is not defective.

Joshua Tiner, Civil Engineer, is sworn in as Mr. Fisher's first witness.

Mr. Tiner provides his qualifications for the Board. The Board accepts Mr. Tiner.

Mr. Tiner displays and summarizes Aerial Exhibit A-1 and Site Plan rendering 08/10/22 Exhibit A-2. He points out the proposed subdivision line and outlines proposed lots A and B.

Chairman Suraci asks for clarification of the line; which is the front-side line, rear-side line and which are the side lines on proposed lot B.

Mr. Tiner explains there would be no front or rear line since the lot does not have frontage on the right-of-way. All would be consider sides.

Chairman Suraci defers to Mr. Maski on the matter.

Mr. Maski states he believes the lot can have a front-side line and rear-side line. Mr. Maski points out there is a proposed subdivision for a lot with no street frontage which needs variances. He suggests before reviewing site plan requirements the proposed subdivision topic be discussed and a vote be taken regarding whether or not the lot can be created.

Mr. Hay asks if the applicant could discuss why it wasn't a consideration for the establishment of a flag lot.

Mr. Fisher states it is important to lay out what the bulk requirements would be for each to help determine if having a lot not abutting street makes sense.

Mr. Hay states he got his answer.

Mr. Tiner continues summarizing the site plan rendering.

Mr. Maski interrupts to ask if they are asking for approval of the subdivision. And asks if Mr. Tiner can explain why they are not doing a flag lot.

Mr. Tiner explains a flag lot was not proposed based on the needs of the existing property owner.

Mr. Maski asks him to elaborate.

Mr. Tiner states the property owner did not want to do it.

Mr. Hay explains to the Board the issue of accessibility to the lot in the future if it were a flag lot vs an easement.

Mr. Fisher asks for a moment to speak to his client. Before doing so, for the benefit of the Board, Mr. Maski reads from his report a summary and explanation of Land Use Law 40:55B:35 and the need for a hardship as it pertains to this lot.

Mr. Fisher states a hardship is not required and again asks for time with his client.

Chairman Suraci grants 15 minutes.

Upon return to the meeting Committeeman DelCore asks the members of the public to refrain from passing around signs and petitions during the hearing.

Mr. Bernstein concurs stating signatures for petitions can be collected outside of the board. He reminds members of the public they should also not be holding up/placing signs/cue cards for board members to see since this is a quasi-judicial situation. This applies to all applications.

Mr. Fisher asks, since time is running short, to return with more testimony regarding the subdivision and the variance on September 8th. He asks the application for 303 Amwell be carried from the September 8th meeting to the next available option with notice given at the September 8th meeting.

Mr. Maski clarifies what Mr. Fisher is proposing and offers the next available date, December 1, 2022.

Mr. Fisher states they are willing to take the date.

Chairman Suraci suggests asking the objector as well.

Mr. Bernstein expresses his concerns with how the carrying of applications without notice in this case impacts the public and the timeframe for the Board to receive any additional

testimony and reports. Mr. Bernstein recommends, if the applicant plans to bring a Planner for testimony, the Board get a planning report.

Mr. Bernstein states he thinks the Board should not consider the request to carry the meeting one week without notice.

Mr. Hay explains the circumstances and complications if subdivision is reverted back to a flag lot.

Mr. Julian asked if the stormwater calculations would change if the lot lines are redrawn for a flag lot.

Mr. Hay said they would be addressed as part of the site plan application.

Mr. Bernstein offers a compromise suggesting the current application carry to November 3rd and the applicant's other application, 1170 Millstone LLC, which was scheduled on that date be moved to a later date.

Mr. Fisher, after conferring with his client, agrees to this compromise.

Mr. Maski clarifies 303 Amwell will still be heard on September 8th.

Motion: Mayor Lipani motions to continue the Homestead 279 LLC hearing to November 3, 2022 with time of decision extended to the end of the year without further notice, seconded by Mr. Hesthag
Motion carries

Committeeman DelCore states while the Board made an accommodation this time, shuffling dates of applications under the same owner is not and will not be the standard when an issue arises.

Mr. Bernstein recommends the Board ask the applicant to provide, two weeks in advance of the next hearing, a planning report from their planner in support of this subdivision application as well as all the variances being sought by the applicant separate and apart.

Mr. Fisher states this is normally done through testimony.

Mr. Bernstein explains how it is becoming increasingly difficult for the public and the Board to address variance applications when a Planner offers only verbal testimony while other professionals provide a report for review prior to their testimony.

Chairman Suraci states the planning report would be due October 20th.

Chairman Suraci clarifies the dates and applications belonging to this applicant;

Homestead 279 LLC is carried to November 3rd

303 Amwell Road hearing is still September 8th

1170 Millstone River Road will be advised, not to be heard before December 1st – Mr.

Bernstein states the individuals will receive the appropriate notice in advance.

EXECUTIVE SESSION

Mr. Bernstein requests an Executive Session pursuant to the provisions of the Open Public Meetings Act, Section 10:4-12 for purposes of attorney client privilege related to the Homestead Road LLC application and any other matters under the guise of the attorney client privilege.

Motion: Committeeman DelCore motions to go into Executive Session, seconded by Mayor Lipani.

Mr. Bernstein clarifies the Board will come out of Executive Session and may or may not take action related to the discussions in the executive session but will take no action relative to any application per se.

Roll Call: Mayor Lipani - Yes Mr. Peason - Yes Secretary Hesthag - Yes
 Mr. Wagner - Yes Chairman Suraci - Yes
 Committeeman DelCore - Yes Vice Chairman Julian - Yes

Motion carries

9:15 pm The Board exits for Executive Session.

10:13 pm The Board returns from Executive Session.

Motion: A motion to come out of Executive Session was made by Committeeman DelCore, seconded by Mayor Lipani.

Motion carries unanimously.

Mr. Bernstein states for the record that all members of the Planning Board present at the Executive Session are present to recommence with the Open Session. The Board Attorney, the Township Planning Director and Township Deputy Zoning Officer were present during the Executive Session. There was a discussion amongst the Board and himself relative to the legal matters involving the Homestead Road LLC application. The Board instructed him how they wish to respond to Mr. O'Grodnick's legal opinion request which he will do in a letter to Mr. O'Grodnick with copy to the Board in anticipation of the upcoming application on October 6th therefore no formal action needs to be taken on that issue at this time.

Mr. Bernstein recommends to the Board that any applicant who has an application or is coming before the Board with an application that requires planning testimony from a licensed Planner in the State of New Jersey provide a report at least two weeks in advance to any application relative to what they intend to address regarding their planning testimony. He asks the Board to approve this policy change which would be memorialized in a Resolution at a subsequent meeting.

Motion: A motion to approve made by Mayor Lipani, seconded by Mr. Peason.

Roll Call: Mayor Lipani - Yes Mr. Peason - Yes Secretary Hesthag - Yes
 Mr. Wagner - Yes Chairman Suraci - Yes Mr. Ciccarelli - Yes
 Committeeman DelCore - Yes Vice Chairman Julian - Yes

No comments.

Motion carries

Mr. Bernstein states there is no further action that needs to be taken by this Board.

ADJOURNMENT

A motion to adjourn was made by Mr. Wagner, seconded by Mr. Peason. Motion carries unanimously.

10:15 pm meeting is adjourned.

*Submitted by Robyn Bittle-Abramo
Recording Secretary*