

**Borough of Watchung
Planning Board Special Meeting
November 13th, 2007
Minutes**

Chairman Speeney called the meeting to order at 7:45 p.m. and stated that notice of this meeting had been posted at Borough Hall, filed with the Borough Clerk and given in the way of notice to the Courier News, Echoes Sentinel, the Reporter and Star Ledger in conformance with the N.J.S.A. 10:4-6 et seq.

Present at the call of the role were: Speeney, Havas, Addario, Pennett. Also present were Borough Engineer Tom Herits and Attorney Ben Wetzel, sitting in for Board Attorney Frank Linnus. Chairman Speeney indicated that there was not a quorum to make decisions. The Chair stated that this meeting would proceed on the basis that it be a work session if there was no objection from Board members or members of the public. There were no objections.

Chairman Speeney said that the discussion would be to review the fence, tree and amendments to the proposed recycling ordinances.

Recycling Ordinance- Ms. Pennett referred to page 4 below 19-16.2. Ms. Pennett asked if the reference about recycling plans being incorporated into applications coming before the Planning Board and Board of Adjustment included additions to housing. Chairman Speeney said no, that you needed to have single-family units of at least 50 for the recycling issue to come before the boards. Chairman Speeney mentioned some developments upcoming with 25-28 units, or 30 units for COAH obligations. Mr. Addario said that they are not developments like condominium units. Ms. Pennett brought up disposal of construction material. Mr. Addario said that portion referred to industrial development. Attorney Ben Wetzel commented that something be added along the lines of the words "planned single family development". Mr. Wetzel said that single-family development by itself might not have a homeowners association. In the body of the ordinance, it is requiring a common area for trash disposal that is lit, and it would be entirely possible to have a single-family development of 50 homes, where everyone owns their home, but where there is no association. He said the question arises who would manage a common area, and maintain the lights and pay the bills. Mr. Wetzel said that therefore, he thought there should be a distinction made that you are talking about single-family developments that are planned communities with homeowners associations to manage these things. Otherwise, Mr. Wetzel said, individual homeowners should be responsible for their own disposal. Mr. Addario said that he would not put the limit of 50 in the ordinance, but instead say anytime there is a group. Ms. Pennett asked about private roads, and if recycling trucks go up private roads. Mr. Addario said that it depends how wide the road is. The Chair summed up that the group suggests that the words "planned single family developments" be inserted instead of "single family developments" and that the number 50 be taken out altogether. The Chair added that the phrase "with a homeowners association" be added. The Chair asked the Clerk to add the

recommendations to next week's planning board agenda. The Chair asked the attorney to draft a letter that could be approved at the November 20th, 2007 Regular Planning Board meeting.

Tree Ordinance- Mr. Wetzel said that over the summer there was an appellate division case (North Shore Builder's Association vs. Township of Jackson) reviewing an ordinance almost identical to this ordinance and invalidates it. He said from a legal perspective it is not a published decision, but that it is very informative in the event someone were to challenge this ordinance. Mr. Wetzel said that his biggest problem with this ordinance was the Tree Bank Fund. Mr. Wetzel recommended that this fund be eliminated from this ordinance. Mr. Wetzel said that at least the ordinance should confine or restrict the placement of trees on township land to areas in the township where erosion is an existing problem or a potential problem. Mr. Wetzel said that in this appellate case there was a very similar provision to the tree bank fund in section 126-8 subsection f- basically the criteria by which the township Engineer can say there is a problem. That language is vague and can be construed as such by a Court. Mr. Wetzel said that the language says that "if they think there is going to be an increase in erosion or water runoff." Mr. Wetzel said that he recommends that specific guidelines be inserted. Mr. Wetzel said that even actual numbers or percentages be put in. He said that otherwise, the engineer who interprets this language has too much leeway. Mr. Wetzel final comment was that the very beginning he saw a vagueness problem in section 126-3 under "permits required." Mr. Wetzel said that this section pertains to people "injuring or damaging a tree." Mr. Wetzel said that it is not defined what it means to injure or damage a tree. He said it does not say whether this would be pruning, carving a name in a tree is covered in this, there is not enough specificity in the language. Mr. Wetzel said that if the purpose of the statute were to prevent surface drainage problems and erosion, he would be hard pressed to see how pruning some branches off a tree in a front yard would create an erosion problem necessitating planting another tree somewhere else. Mr. Wetzel said that in order for the ordinance itself to be valid, the actual text in the ordinance must enforce the purpose of the ordinance. Mr. Addario said that he would like to see steep fines for cutting down trees without permits. Mr. Wetzel said that he would like to see the words "injured or damaged clarified". Mr. Wetzel offered out the idea of saying that "the town could have the discretion of where to place the trees, but that they would have to be placed in specific locations." Chairman Speeney asked Mr. Herits what percentage of erosion or runoff was acceptable. Mr. Herits said that theoretically, there should be none. Mr. Herits suggested that the words "increased soil erosion" should be changed to take out the word increased. Mr. Wetzel was asked to try and come up with a letter explaining the views of the board. Mr. Addario suggested that Mr. Wetzel include the information about this appellate case in the recommendation letter to the Mayor and Council. Fees were also discussed. The group agreed that the \$25.00 fee should be waived for the permit and application for tree removal under section 126-5 of the ordinance. Mr. Herits said that where it states in the ordinance Tree Replacement Equivalency Schedule, the text should read 18" in diameter, not 8" and replacement should be 126-10. There was a discussion about the fact that there was no formula for the replacement of trees in the ordinance. The Chair said that if there was a recommendation made by the Environmental Commission of a formula for the replacement of trees, he felt it should be included in the ordinance. He thought the tree replacement formula should

be more than one for one. There was discussion about the “simplified version” which would be worked on with the Engineering Dept. or the Environmental Commission involving 5 trees or less.

Fences & Walls- The Planning Board Laws and Ordinance Committee had previously met regarding the proposed fences and walls committee and came up with some recommendation proposals. Mr. Havas said he would read through the ordinance, and before he began, read a letter from Board of Adjustment Chairman Mr. Dan Cronheim. Mr. Cronheim’s letter said that Board of Adjustment strongly wants to see this ordinance changed, as it puts an undue burden on residents. The Board of Adjustment approves this proposed ordinance and urges the adoption of this ordinance ASAP. Chairman Speeney said that Mr. Page felt that it was very obtrusive to provide monumental columns and suggested that the stone or masonry pillars be reduced in diagonal or diameter dimensions, for example 3 feet on the side or of a square column produces a diagonal of over 4 feet even though 3 feet for a round column struck him as being large. The group discussed some residents with estate fences in town. Chairman Speeney said that what is happening in town is that we are moving in a direction that takes away from the rural aspect. Mr. Addario said that he felt that unless the tract of land was very large, he was against estate fences. Deer fencing was discussed. Chairman Speeney and Mr. Addario said that they were fine with the verbiage regarding deer fencing. They were both strongly against the estate fences. Mrs. Pennett stated that she saw absolutely no reason for estate fences. The Chair said that spear points on estate fences were very dangerous, especially to deer jumping over the fences. Mr. Havas said that he was also against estate fences. The recommendation of the group was that the Planning Board would discourage estate fencing in the Borough. They said that in the definition of “fence”, it should state that all fences should be limited to no more than four feet. Mr. Havas read Section 138-21AI and said that with the recommendation of no more than four feet, that section B would not apply, and there was discussion to add a C, which would now remain B, from the definition of fence on page one, second sentence referring to “all fences being symmetrical in appearance with posts separated by identical distances with the fence conforming to a definite pattern and uniform design.” Mr. Havas said along boundaries of residential and non-residential districts and or properties, a fence or wall may be erected to a height of 6 ½’ above the ground except that the supporting post may extend to a height of 7 feet above the ground to screen non-residential activities from the view of abutting residences. In section 7 in the text “In order to ensure compliance with the provisions of this ordinance, before any wall or fence is erected zoning permit and building permit if required must be obtained from the building construction official and zoning official of the Borough. Requests for permits shall be accompanied by a survey or plan that shows height, location of the proposed fence or wall in relation to all other structures or buildings and in relation to all streets, lot property lines and yards, and show the type and design of fencing materials. Any plan done includes construction within an easement shall be approved by the Borough Engineer, and inserting the words “prior to the issuance of the required permit.”

Chairman Speeney said that what the Board should receive for next Tuesday meeting is basically a letter with the recommendations that we picked up this meeting and submit that letter to the Planning Board for approval to make that final recommendation to the

Mayor and Council. Mr. Addario suggested that for the estate fences, reasons why the group is opposed to them should be written in the letter, and asked Mr. Wetzel to get this letter to the Board before Tuesday.

Chairman Speeney adjourned the meeting at 9:28PM until the next regular meeting of November 20th, 2007.

Respectfully Submitted,

Carolyn Taylor
Planning Board Clerk