

**Borough of Watchung
Planning Board Meeting
August 18th, 2009
Minutes**

Salute to the Flag.

Chairman Speeney called the meeting to order at 7:35 and stated that notice of this meeting had been posted in the 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 roll were: Speeney[X] Boyd[X] Havas[X] Haveson[X] Addario[A] Pennett[A] Schaefer[A] Beck-Clemens[X] Panzarella[X] Ellis[A] Pote[X]

Mayor Ellis arrived at 7:38

Chairman Speeney said that Mrs. Beck-Clemens would be voting in place of Mr. Addario, and Paul Panzarella would vote in lieu of Mrs. Pennett.

Also present was Board Attorney Ben Wetzel sitting in for Board Attorney Frank Linnus. Board Engineer Tom Herits arrived at 7:58pm

Chairman Speeney asked for a motion to waive the reading of and approve the minutes of the meeting of July 21, 2009. That motion was made by Mr. Havas, seconded by Mr. Haveson and approved by voice vote. The Chair asked for a voice vote. The vote was unanimous in the affirmative. The minutes of July 21st, 2009 were approved.

**Havas read: PB09-01 Carecycle, Inc.
Watchung Sqare Mall
1515 Route 22 West
Block 5703 Lots 2.02,2.03,2.04**

Minor Site Plan

Mr. John Sullivan of Vastola, Fackalman, Sullivan and Spengler was present representing the applicant. Mr. Sullivan explained that at the last meeting it was agreed that Mr. Klein of Carecycle and Mr. Tom Herits, Borough Engineer would meet at the site to pick out several locations for the clothing bins. The two gentlemen met on August 18th to tour the site. Mr. Sullivan said that Mr. Klein was still sworn in as a witness, and presented exhibit A-3 dated August 18th, 2009 which was a site plan of Watchung Square Mall with 9 locations marked in order of preference. Mr. Sullivan explained that what went into making the decisions, was visibility, easy access, and whether or not it would create a traffic hazard or pedestrian hazard. Mr. Herits approved all locations except #8 and #9. Mr. Klein said that his client didn't care for #8 or #9 either, and they were just put in because one of the board members at the last meeting had mentioned them. Site #1 was the most preferable and Site #9 was the least preferable. A lengthy discussion ensued between the board members with board members voicing locations that they liked or didn't like and why. Alan Haveson asked if the bins could be moved during the holiday season if parking became a problem. Mr. Klein said yes. Mr. Klein asked for two sites, and some alternate sites that the bins could be moved to if necessary. Chairman Speeney wanted to see two sites and two backup sites. Mr. Boyd thought it would be confusing to the public for sites to be moving around, and would be in favor of only two sites with no backup. A new # 1 site was changed to the second turn in to Home Depot. It would alleviate the problem of a traffic hazard. Site # 2 was modified by moving it down further behind the barricade.

The sites that were finally decided and agreed upon were site new #1 by target, modified #2 which was by P.C. Richards and #5 and #6 which were between Bed Bath & Beyond and Target, and lastly #7 which was out in the middle of the parking lot in front of Stop and Shop. (These sites are general and are shown exactly on exhibit A-3). It was decided that Carecycle could place 3 bins together on any two of these agreed upon sites. Mr. Sullivan said that the principles of

zoning were enhanced by recycling and recovery of materials from municipal solid waste. He said it was a permitted use in the zone. Mr. Sullivan said that as a result of these things they would request that this application be granted.

The Chair asked the board if there was any more discussion. Mr. Boyd asked who would decide where the percentage of revenue to be donated would go. Mr. Klein responded that someone within the town would decide. The Volunteer Fire Company, the Rescue Squad, PBA, or whomever the town decided upon. The Chair suggested the Mayor and Council would make that decision. Councilman Pote suggested that at least one set of bins would benefit Borough emergency services. The Chair said that he was of the opinion that this discussion did not belong in front of this board. He suggested that it be a condition in any contract that would be written. He stated that the board would not name the organization. Mrs. Beck Clemens asked what percentage of monies would be donated to the organization. Mr. Klein said that they don't know how much money it will be since it is based upon the weight of the clothes in the bins. Instead Mr. Klein said, they guarantee a dollar amount in the beginning to the organization of choice of \$500.00 per bin for the first year. This will guarantee the organization \$3,000.00 for the first year. The second year, Carecycle would reevaluate that amount and they will come back and let the town know the new amount. He said that as an example in Brick Township, they have donated almost \$10,000.00 and they haven't reached the one-year mark yet. The Mayor asked whom the agreement was with. Mr. Klein said that the agreement is generally made with the organization that is chosen. The Chair said that in terms of resolutions and conditions, we must get wording into a condition of approval that includes the donation possibility and Carecycle enter into a condition with someone. He said that would be the extent of what the board would say about it. The Chair said that the board is not supposed to be considering issues like this when it comes to land use. Mr. Klein said they would like to get these bins on the property as soon as possible. Mr. Klein said that often times the decision of where the donation goes takes time for the municipality to decide internally, and that in cases like

that, Carecycle can't wait, and designates an organization. Mr. Klein said that he would like to do this quickly. The Mayor said that it would not be a problem to make this decision in a timely manner. The Chair asked if there was any further comment. The Chair opened up discussion from the public. Hearing no discussion from the public, asked for a motion to close the public portion.

Councilman Pote made the motion, seconded by Mr. Havas. The Chair asked for a voice vote to close the public portion. The voice vote was unanimous to close the public portion of this application. The Chair stated to the board that they need to craft the resolution. Chairman Speeney said there were two ways to do this. The board could do an approval this night, or asked the board attorney to do draft a resolution, which the board could approve next month. The Chair said his preference would be to instruct the attorney to draft a document for approval at next month's meeting. The Chair said that if the board waits until next month, the application stays open, resolution is read into the record and the board votes.

Mr. Klein said that back to school is fast approaching and that is a very big time for this company's business. Mr. Klein said that if they wait another 30 or 45 days, they would miss a lot of clothing donations. The Chair cautioned the board that they can vote tonight and memorialize next month, and then the applicant could proceed at their own risk. Mr. Klein said that the day the bins are placed, Carecycle gives the organization 50% of the donation up front. Mrs. Beck-Clemens said she would be happy to have the resolution drafted by the board attorney being a little more specific with exactly the site plan itself. The Chair said that exhibit A-3 has been modified and placed into the record. Mr. Sullivan asked that the board proceed to a vote at this meeting. He thought that there were certain advantages to that with everything fresh in everyone's mind. He said that perhaps they go over some of the conditions so that we cover everyone's concerns. He suggested that Mr. Klein get together with Mr. Herits, and delineate the exact location of each of these sites. He said that they could count down some of the parking spaces and get to the two or three that would be taken up. He believed that was an acceptable condition. He agreed to the condition that they would

have to enter into an agreement with the towns Mayor & Council or with one of it's agencies in order to fulfill that condition. The Chair said that we have a condition checklist and basically it is the full-blown resolution with condition saying that the applicant must comply with any and all conditions. It says that the applicant should obtain any and all approvals required by any other government agency. It also states that all conditions contained in this resolution and in the record of proceedings in this matter including agreements made by the applicant essential to the board's decision to grant approvals. Development of this property shall be in accordance with the plans submitted and approved which he said in this case is exhibit A-3. The Borough reserves the right to request additional site improvements, should actual field conditions vary from what was on the plans. The Chair said if an unintended consequence happens, the Borough does reserve the right to request additional site improvements. The Chair explained that those were the additional conditions that would wind up in a resolution that the board would memorialize. The Chair asked the board to take a vote. He said that the vote would be to place 3 bins at any two of the sites, with the other approved sites available for use in their place if so required by Fidelity. Mr. Haveson asked if Carecycle carries insurance on these bins. Mr. Klein said they carry \$2,000,000.00. Mr. Haveson asked if the Borough of Watchung or Fidelity could be named as held-harmless. Mr. Klein said yes. Mr. Sullivan asked Mr. Klein if Carecycle had the ability to name the municipality or the property owner under the insurance certificate as an additional insured under the liability policy. Mr. Klein said yes, they always do that. Mr. Sullivan suggested that the language be that 'the applicant will hold-harmless and indemnify the municipality against any and all liability that may arise from the placement of these bins, and in addition to that, they will name the municipality as an additional insured on the liability policy.' Councilman Pote said that he believed also that if at any time, the Borough would pick up the phone and say that the bins be removed off site be put in as a condition. Mr. Klein said that in that case, he believed it was Fidelity that the Borough would call, and then Fidelity would call Carecycle since that was in Carecycle's

agreement with Fidelity. Mrs. Beck-Clemens said that if she was going to vote on a site plan, she wanted to see the conditions delineated in front of her and if she were going to vote at this meeting, she would have to abstain. The Chair explained that the conditions that were articulated at this meeting would show up on the resolution. The Mayor explained that if Mrs. Beck-Clemens was uncomfortable with this vote, she would have to vote no, otherwise she would have had to recuse herself from the discussion initially. Mr. Herits suggested to the Chair that they get a complete list of emergency numbers in case they have to contact someone in case they need to come and pick up anything around the bins or emergency situations. Mr. Sullivan said that was part of the state statute that they supply that. Mr. Sullivan said that the phone numbers are posted on the bins themselves but they will also provide a written list to the clerk. Mr. Havas said that he assumes that it will be a condition that the final sites be agreeable to Mr. Herits. The Chair said that we have already identified that. Mr. Herits said that he was under the impression that they wanted a map marked that exactly identified the parking spaces that are ultimately used. The Chair said yes. Mr. Herits said that whatever spots were marked, the applicant would need Fidelity's approval on.

The Chair asked for a motion in the affirmative for approving the Carecycle application PB09-01 for the placement of clothing bins as set by the conditions that follow. The conditions that follow are those conditions that the board enumerated on the record. Mr. Havas made that motion, seconded by Mr. Haveson. The Chair opened discussion and said he would support the application and the discussion that were crafted. Mrs. Beck-Clemens stated that she would like to see the conditions before her and see a revised site plan. Hearing no further discussion, the Chair asked the clerk to call the roll. The roll call vote was as follows:

Speeney[yes] Boyd[yes] Havas[yes] Haveson[yes]
Beck-Clemens[no] Panzarella[yes] Ellis[yes] Pote[yes]
The motion carried and the application was approved.

The Chair said that the applicant could proceed, but they are at risk

in terms of proceeding if something happens before the board memorializes the resolution. Mr. Klein said that he accepted that. Mr. Sullivan asked if Mr. Herits would mark the final site plan. The Chair asked Mr. Herits if he would have that completed, and Mr. Herits agreed. Mr. Sullivan and Mr. Klein thanked the board for its time.

The Chair asked for a motion to approve the vouchers. Mayor Ellis made a motion to approve the vouchers, seconded by Councilman Pote. Hearing no discussion, the Chair asked the Clerk to call the roll. The roll call vote was as follows:

Speeney[yes] Boyd[yes] Havas[yes] Haveson[yes]
Beck-Clemens[yes] Panzarella[yes] Ellis[yes] Pote[yes]

The motion carried and the vouchers were approved. Mr. Haveson announced he would not be at next month's meeting. Mr. Boyd also announced he would not be at next month's meeting.

The Chair opened up discussion from the public. Hearing none, the public portion of the meeting was closed.

Executive Session

Mr. Wetzel said that pursuant to NJSA 40:55D-9b to discuss current litigation, regarding the Watchung Planning Board v. Ritchie et al the board would close the public portion of this meeting to go into executive session. The Chair made the motion to go into executive session and the Mayor seconded that motion. Chair called for a voice vote and the board voted unanimously in favor. At this point the board went into executive session.

The Chair resumed the meeting from executive session and talked about some correspondence from the Somerset County Business Partnership that he thought the Mayor and Council might want to consider relating to Weldon, and recent zoning changes.

The Chair made a comment regarding the charitable clothing bin

ordinance. Chairman Speeney said that this is a land use issue just as much as it is a permitting issue. Although the ordinance does defer to land use boards, Chairman Speeney said that he would have liked to put in his thoughts to the ordinance before it was drafted, in terms of it's impact on land use and site plans. The Chair said that he has seen sites in other towns with 15 or 20 bins lined up, and this is his worry. He suggested that possibly the Mayor and Council could review the ordinance to consider a limit to the number of clothing bins in the Borough.

The Chair asked encouraged the board's participation in the Mayor's Regatta.

Alan Haveson made a motion to adjourn, seconded by Mrs. Beck-Clemens. The Chair asked for a voice vote to adjourn. The board voted unanimously to adjourn, and the Chair adjourned the meeting at 9:29PM until the next meeting of September 15th, 2009.

Respectfully Submitted,

Carolyn Taylor
Planning Board Clerk