

**RIVERTON BOROUGH PLANNING BOARD
MINUTES
February 15, 2005**

The Public Session of the Planning Board was called to order at 7:15 PM by Chairman Frank Siefert.

Public Notice of this meeting pursuant to the Open Public Meetings Act has been given in the following manner:

1. Posting notice on the official bulletin board in the Borough Office on January 21, 2005.
2. Required Service of notice and publication in the Burlington County Times on January 23, 2005.

PRESENT: Frank Siefert, Birnie O'Reilly, Donna Tyson, Mayor Martin, Councilwoman Alls-Moffat, Tony Dydek, Robert Smyth, and Joseph Katella.

Also Present: Solicitor Tom Coleman and Secretary Ken Palmer

ABSENT: Christopher Halt.

MINUTES:

A motion was made by Councilwoman Alls-Moffat and seconded by Tony Dydek to adopt the minutes of January 18, 2005, as distributed. The vote was unanimous.

CORRESPONDENCE/ANNOUNCEMENTS

1. **Announcement from Burlington County Department of Resource Conservation of Fourth Annual Stormwater Management Conference on May 5, 2005.**
2. **1/20/05, memo from Robert K. Smyth, Finance Committee Chairman, to department heads concerning the 2005 budget review process.**
3. **2/5/05, copy of letter from Burlington County Soil Conservation District regarding a resolution passed concerning review, certification, and inspection requirements for single-family dwelling construction under Chapter 251, Soil Erosion and Sediment Control Act.**
4. **January 2005, announcement and application form from Association of New Jersey Environmental Commissions (ANJEC) concerning 2005 Smart Growth Planning Grants for Municipalities**
5. **January, 2005, copy of "Mayor's Fax Advisory" from New Jersey State League of Municipalities, stating their opposition to pending state action on A-1683/A-3254 which would mandate Master Plan Build-Out Analysis during plan re-examination but does not define the requirements nor provide funding for this mandate.**
6. **2/3/05, "Mayors Fax Advisory" from New Jersey State League of Municipalities, regarding State Planning Commission's Cross Acceptance Process for updating the State Plan.**
7. **2/2/2005, copy for board of Tom Coleman's letter to Bruce Gunn, Borough Solicitor, concerning I. Michael Heine, Esq. letter of 2/1/2005 and fax copy of said 2/1/05 letter. Copies prepared and distributed to the board at meeting.**
8. **2/8/2005, fax copy of 2/8 and 1/13 letters to Tom Coleman from Jerry Cureton concerning additional continuance until March of the Moccia application so their engineer can complete his work. Copies prepared and distributed to the board at meeting.**
9. **2/9/2005, copy of revised COAH Development Fee Ordinance along with Tamara's detailed e-mail concerning the revisions. Copies of both made and distributed/mailed on 2/9/05 to the board and Tom Coleman.**
10. **Professional contracts from solicitor, engineer and planner.**
11. **Five vouchers/invoices as presented under New Business.**

PUBLIC HEARING:

APPLICATION FOR SITE PLAN APPROVAL OF A PARKING AREA PAVED AND EXPANDED AT 300 BROAD STREET, BLOCK 801, LOT 13, BY MOCCIA PROPERTIES, LLC, 530 MAIN STREET, RIVERTON, NJ:

Continuance – The applicant's attorney through the board's solicitor requested a one month continuance so their

engineer could complete the revisions to the plan as laid out at the December 2004 hearing. Tom Coleman stated that it was up to the board to grant or not grant the continuance. If not granted they would need to re-file, mail and notice since they have the preliminary approval. However, if the board feels the applicant is acting in good faith to comply, the board can grant the continuance. Birnie asked if a continuance was not granted, does the whole application go back to the beginning. Tom replied no, that they have their preliminary approval and denial of the continuance means they have to re-file for final approval. Everything granted to date remains. Birnie stated she wanted to talk about the application in light of related matters and Tom stated that any discussion regarding those issues needs to be discussed in closed session. Tom feels that discussion should occur at the end of the meeting rather than asking everyone to leave the room and then have to come back after the board returns to public session. The chair stated that there was discussion on continuing the hearing and asked for a motion on same. Councilwoman Alls-Moffat motioned and Tony Dydek seconded that the continuance be granted. Under discussion, Tom Coleman stated he wanted it reflected in the record that he had discussed the conflict situation with the mayor and that he understood, and the mayor confirmed this, that the mayor would recuse himself from further participation in the hearing. Frank stated he understands that the decision to recuse is up to the member with, of course, the advice of counsel. Tom discussed with Donna that since her spouse has threatened litigation on the matter that she also should recuse herself. Mrs. Tyson stated that she would also recuse herself. Bob Smyth commented on the document he had received a copy of at the meeting regarding possible litigation by stating that anytime he is mentioned in litigation by anyone in the town he wants a certified copy delivered to his home at least 48 hours ahead of time so he has sufficient time to review it, think about it, and consider his decision before he has to make a decision at a meeting. Other members of the board concurred that such advance notification was proper. Bob stated that he was prepared to comment and that he was still convinced he has no conflict and that he does not intend to recuse himself from the matter. Birnie again started to address the issue and Tom again stated any discussion concerning possible litigation needed to be in closed session. Muriel stated that things need to be properly documented and it was stated that that is what the tape is for. There being no further discussion, the question was called and the motion passed by voice vote of five ayes and one nay of the six members participating in the matter to the effect that:

Be it resolved by the Planning Board of the Borough of Riverton, County of Burlington, and State of New Jersey that consideration on the application of Moccia Properties, LLC for site plan approval is continued, applicant having requested a one month extension of time for consideration of the matter until the next regular meeting of the Board in March 15, 2005 at 7:00PM.

This notice will be posted on the bulletin board and is the only official notice required of the continuation. Tom stated he would advise the applicant's attorney of the continuance.

OLD BUSINESS

Goals and Objectives for 2005 and Review of the Master Plan – The board reviewed and commented on the list provide by the chair as well as a list distributed by Birnie. It was discussed that there should be target dates and milestones and assignments given to committees to work on items to be presented to the board. Tom Coleman stated that review of the master plan must be the number one objective and needs to be started as soon as possible. Review of the master plan plus normal business that will come before the board will probably consume all the board's time. Frank stated that he has requested that Tamara come to next month's meeting to discuss the master plan review process and reviewed the issues he had asked Tamara be prepared to address. This will give the board a clearer idea of the scope of this task. Donna feels the members have the best feeling as to the needs of the town. It was discussed that Tamara is not going to recommend what the board does but is the facilitator of the process and guides the board to a successful conclusion making sure the end result meets legal requirements. Donna recommended that the members review the master plan before the meeting so as to have specific points they might want to discuss with Tamara. Birnie feels it would be helpful to have input from the zoning board and how issues it has acted on impact the master plan. It was commented that input from the zoning board should be part of the review process. Frank requested that the members provide additional comments and review for the next meeting to be discussed during and following the meeting with Tamara.

Draft Municipal Stormwater Management Plan – Discussions the chair and Donna had with Terry Vogt of Remington Vernick Engineers who drafted the plan were reviewed. The draft is a local plan reviewed by the county on behalf of the DEP. The draft is based on a DEP model tweaked for the Borough's unique requirements. Terry was not aware of any municipalities not going through the process except those towns exempted from doing it. As to the relation of a regional plan versus a local plan, the regional plan should be done first with the local plans following the regional plan. However the regional plan is nowhere near completion and the local plans are being done first. Local plans may need to be amended to comply with any regional plan that is eventually adopted. The focus of the plan is on remaining buildable land in the town and for Riverton is essentially an exercise demanded by the state and may not have a major impact. However costs are an issue. The board needs to review and pass on the draft which is then reviewed by the county. The plan has a 2006 effective date. It will be made part of a town's master plan. The board needs to act on the matter so Council can complete its work by the April 1st deadline. While board members have reservations about the final impact of the draft, it concurs that the Borough must act and concluded that it should recommend the plan as a draft plan. There will be a chance to comment on further hearings on the plan at the county level. Bob Smyth feels the board should recommend adoption of the draft plan by Council; but, the board and town officials need to stay involved and on top of developments concerning the plan. He also stated that it needs to be a 2006 budget issue. The chair entertained a motion on the matter. Councilwoman Alls-Moffat motioned and the mayor seconded that the board pass the draft plan and pass it to Council for further action. The motion passed unanimously.

Environmental Commission – The topic was tabled due to Chris Halt's absence.

Redevelopment – Councilwoman Alls-Moffat and the mayor reported on developments. There is an effort to bring the issue back before Council. There is possible interest by Kaplan and/or Mr. Brandenburger in the Nu-Way property but there is nothing definite known at this time. Efforts are continuing to find out more information.

Fence Ordinance Revision – Donna reported that the committee had met and a draft is being reviewed. Hopefully it will be ready to present in the near future. On a related issue, Donna wondered if permits were required for the fence erected by NJ Transit between Cedar Street and the creek. It is not known if the fence is on Borough property or the line's right-of-way. Tom stated that if it was on the right-of-way they probably could erect it without permits. Tom stated he would look into the matter and any plans to erect a similar fence throughout the Borough. Mrs. Martin commented that she believed the fence was erected as amore permanent solution to the temporary fence erected by PAL/RIV AA during T-Ball season.

New Development in Cinnaminson Township – Donna Tyson reported Kaplan has submitted Phases Two and Three which have undergone informal professional review. Donna commented on the traffic study for the project which has finally been received. The study done before the light rail showed a projected increase in traffic at Broad and Main with a decrease in level of service. Donna and others feel this effect has probably already or will be worsened by the impact of light rail especially during rush hour operations. Donna gave the copy to Bob Smyth. Donna stated she feels she has also established an ongoing dialog with Rick Arango, Cinnaminson Township's engineer on the project.

NEW BUSINESS

Review of COAH Development Fee Ordinance Revisions – Frank asked if the matter needed to be acted upon tonight. Tom Coleman said that board action was required before Council could act further on the issue. Frank and Tom reviewed the details provided by Tamara of her work with Borough Solicitor Bruce Gunn on the matter as well as Council's changes from the version originally endorsed by the board last year. Donna wanted to know if the opinions presented were proper coming from a planner rather than a lawyer. Tom stated it was his opinion on review of the materials that the ordinance was done in close consultation and review with the Borough's solicitor and was thus appropriate for the board to consider. It was further discussed that the new revisions were at the request of COAH. Donna stated she would be more comfortable if the material had come with something from Bruce rather than just Tamara. The mayor reviewed that Tamara and Bruce had reviewed the matter in detail at the last Council meeting and that Council feels comfortable with the ordinance as revised. Council has approved the ordinance at first reading and Council needs the board's recommendation that Council consider the

ordinance before final adoption can occur. A chronology of the matter was discussed. Tom stated that it was the board's charge to review the legality of the ordinance as well as the practicality. Based on the detail from Tamara, COAH has problems with the "payment in lieu of at the discretion of the Borough" section added by Council and approved by Council at the time of first reading since payment in lieu of clauses can only be at the discretion of the developer. This section was added against the advice of Bruce Gunn and Tamara. Tamara is recommending that the board endorse the ordinance without the "payment in lieu of" section added by Council since COAH had given approval to the rest of the ordinance. Tom further stated that there is nothing strange or unusual in the ordinance as originally rewritten, that it meets COAH regulations, is similar to other town's ordinances and provides the most flexibility in the issue. Tom stated that he feels the ordinance is legal and believes it has already been endorsed by COAH as recommended by Tamara and that all is need is for Council to adopt it based on the board's recommendations. It is Tom's opinion that the board can in good conscience recommend to Council that they adopt it as recommended by Tamara. Birnie wanted to know if the board should be brought into the picture earlier so it can understand and not just react. It was mentioned that the issue arose in Council, was considered in detail in Council and was properly brought to the board. Donna hopes the ordinance as explained by Tamara is legal and would feel more comfortable if a legal opinion was attached. Under discussion whether it is important who, planner or lawyer, writes the ordinance, Tom stated that it was not unusual that ordinances may be drafted by a planner and then reviewed by a lawyer before it is presented for consideration. It was discussed that board action tonight was not the end of the matter. If the board recommends the ordinance to Council, there is a second reading in Council and full discussion and public input before it is voted on. All ordinances go through this process. There being no further discussion, Councilwoman Alls-Moffat made a motion seconded by the mayor that the board recommend the ordinance without the payment in lieu of section to Council. The motion was approved unanimously. The chair stated he would send a letter to Council.

Vouchers and Invoices:

1. 1/20/2005, Idea Patio Creative Services, \$332.00 for preparing 15 copies of the Master Plan including printing in color and B&W, assembly and binders.
2. 12/6/2004, Tom Coleman, \$400.00 for general service and the November meeting (resubmitted, never paid – secretary stated it was never submitted – his error
3. 1/5/2005, Tom Coleman, \$400.00 for general service and the December meeting (corrected and resubmitted).
4. 2/7/2005, Tom Coleman, \$400.00 for general service and the January meeting.
5. 2/7/2005, Tom Coleman, \$280.00 for work on the Moccia hearing and resolution to be paid out of escrow.

Donna wished to know if the board/town had to make up escrow shortfalls. Tom answered no, that it is part of professional contracts that the professional understands such funds are due from the applicant. A motion was made by Birnie O'Reilly and seconded Councilwoman Alls-Moffat to pay the items as presented. Payment was approved unanimously. The secretary will have them signed and submitted for payment. The secretary will follow up separately with the chair on the two older invoices, have them signed and submitted.

Professional Contracts – The secretary reviewed the contracts with the board. There is no change from 2004 for Tom's or Tamara's. The engineer's reflected a \$5.00 increase/hour in his fee plus some similar increase in other fees. It was asked if travel time was included and the answer was not known. The professional can be asked.

Miscellaneous:

- Councilwoman Alls-Moffat reported that Ed Smyth long time member of the zoning board and currently in the final year of his term had graciously stepped aside as vice chair to let "new blood" take over.

PUBLIC COMMENT

The meeting was opened to public comment. The chair requested that comment be kept to five minutes and to planning board issues.

- Michael Heine, 206 Carriage House Lane, complimented the mayor for recusing himself from the Moccia matter. He thinks Bob Smyth's refusal to recuse is regrettable, is based on bad advice from the solicitor, the

objective standard is not being met, and it is a stain on the town. The litigation issue referenced is not the kind that should be discussed in closed session. He reiterated that he feels the board should vacate its prior granting of preliminary site plan approval to Moccia. He repeated his opinion that while Tamara may have done a good job on the master plan she has recently shown serious disloyalty to the town. When she consults on issues she must follow the spirit and letter of the plan and zoning ordinances. She paved the way for the use variance for the Sitzler property and he feels that goes against case law that use variances should only be granted in the most extraordinary circumstances. The work she did on the redrafted redevelopment plan flies in the face of the master plan and zoning ordinance. He thinks the current master plan is a good plan, but he feels it is time for fresh blood without the history of these compromises.

There was no further comment and the meeting was closed to public comment.

Executive Session – The chair entertained a motion under Section 8 of the Open Public Meetings Act, C231, P.L.1975, which permits the exclusion of the public from a meeting in certain circumstances, to discuss possible litigation matters. Councilwoman Alls-Moffat motioned that the board go into closed session under Section 8 of the Open Public Meetings Act, C231, P.L.1975 to discuss legal advice concerning possible litigation. The motion was seconded by Tony Dydek and a voice vote was unanimous. At this time Birnie O'Reilly motioned to return to public session. Tony Dydek seconded the motion and a voice vote was unanimous. Several additional items under Miscellaneous were discussed prior to adjournment.

Miscellaneous:

Following the return to public session:

- Donna Tyson feels holding public comments to five minutes per person is unfair. The chair stated that this could be discussed further at future meetings.
- Birnie feels things being discussed that aren't private should be passed out to the audience. The secretary replied that in good conscience he tried to not misuse the copier privileges at his employment to copy the world on things. Tom Coleman stated he receives copies as needed when he was asked the question and he also commented that in his experience providing extra copies of everything is a nice luxury that may not be practical. The chair stated this could be discussed at another meeting when it can be opened to public discussion.

Meeting adjourned at 9:55 PM.

Next meeting is on 3/15/2005 at 7:00 PM in the Borough Hall

Tape is on file.

**Kenny C. Palmer, Jr., Secretary
RIVERTON PLANNING BOARD**