

# TOWNSHIP OF LOWER

2600 Bayshore Road  
Villas, New Jersey 08251



Incorporated 1798

(609) 886-2005

THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO CHANGE OR MODIFICATION BY THE PUBLIC BODY AT ITS NEXT MEETING. THIS BOARD WILL NOT BE RESPONSIBLE FOR ANY MIS-STATEMENTS, ERRORS OR OMISSIONS OF THESE MINUTES, AND CAUTIONS ANYONE REVIEWING THESE MINUTES TO RELY UPON THEM ONLY AT THEIR OWN RISK.

## LOWER TOWNSHIP PLANNING BOARD

A regularly scheduled meeting of the Lower Township Planning Board was held on February 18, 2010 at the Lower Township Municipal Building. The meeting was called to order at 7:02 P.M. by Chairman Jay Dilworth. The Recording Secretary stated that adequate notice of said meeting was given in compliance with the Open Public Meetings Act of 1975.

MEMBERS PRESENT: Chairman Jay Dilworth  
Charles Hewitt, Jr.  
Johnnie Walker (Mayor's Designee)  
Robert C. Imler  
Edward Butler  
Brian Sullivan  
Chris McDuell

MEMBERS EXCUSED: Michael Beck  
Kevin Lare  
Daniel J. Senico  
Robert Crompton

MEMBERS ABSENT: Gary Playford

STAFF PRESENT: Avery S. Teitler, Board Solicitor  
Thomas Thornton, Board Engineer  
William J. Galestok, Board Secretary  
Lisa A. Schubert, Recording Secretary

CORRESPONDENCE:

Letter:

TO: Mr. Sray, PE  
Township Engineer

FROM: Alexander J. Litwornia, PE PP  
President

DATE: January 26, 2010

RE: United States Route 9 and Sheriff Taylor Boulevard Intersection  
Bayshore Mall, Lower Township, NJ  
LAI 04138

Handouts:

List of Board Solicitor voucher dated February 16, 2010.

List of Acting Board Engineer voucher dated February 17, 2010.

List of Board Engineer vouchers dated February 17, 2010.

2009 Planning Board Variance Report.

Chairman Dilworth read the agenda for the benefit of the public.

3. Extension of filing time for major subdivision, submitted by Nancy McPherson for the location known as Block 752.01, Lot 10.01, Seashore Road.

Mr. Brain Murphy, PE, PP and Mrs. Nancy McPherson, applicant, were sworn in by Chairman Dilworth.

Mr. Murphy explained to the Board that preliminary and final major subdivision approval was granted April 17, 2008. He explained that because of economic reason, it is not feasible to file the subdivision at this time. He explained that they are asking for a one year extension from April 17, 2010.

Mr. Galestok explained that the applicant is entitled to a two-year extension from 2010 and then three one year extensions thereafter. He explained that this may also fall under DEP's permit extension act.

There was a discussion about the permit extension act. It was determined that this subdivision approval would be extended until December 2012.

Mr. Hewitt made a motion to approve the extension. The motion was seconded by Mr. Imler. Motion carried.

2. Minor subdivision & hardship variance applications for the creation of two (2) newly described lots. Hardship variances needed for lot area, frontage & width, submitted by LDTD Developers, LLC, for the location known as Block 36, Lots 1-4, 134 West Jacksonville Avenue.

Mr. Louis C. Dwyer, Jr., Esq., represented the applicants.

Mr. William Sweeney, Licensed Land Surveyor and Ms. Theresa Senico, Licensed Realtor, were sworn in by Chairman Dilworth.

Mr. Dwyer asked Mr. Sweeney approximately how many surveys he has done in the area? Mr. Sweeney explained that he has done a couple thousand surveys. Mr. Sweeney explained he did an analysis of the area. Marked into evidence was tax map page 1.01. He explained that there are 98 (64%) non-conforming properties and 54 (36%) conforming lots in the area.

Mr. Dwyer had marked into evidence the list of property owners within 200 feet of the subject property. Mr. Sweeney explained there were 37 properties on the list. Twenty-eight of the 37 were non-conforming lots. Nine were conforming lots with five of the nine fully conforming in lot area, frontage, width and depth. Mr. Dwyer reviewed the property sizes with the Board.

Ms. Senico explained to the Board that she has been a realtor for 12 years. She explained that she lived in this general area for 25 years. She explained that there are a lot of multi-family buildings. Pictures were submitted into evidence of surrounding properties and Ms. Senico testified as to the property size and how many dwelling units were on the property.

Mr. Sweeney explained the subject property is one of the larger lots in the area. He explained that if the subdivision were granted, there would be no detriment to the zone or zone plan. He explained that if approved it would be in line or larger in lot size with the surrounding properties.

Mr. Dwyer submitted into evidence Judge Armstrong's ruling on the Fred Schalek matter. He explained that Mr. Schalek submitted a subdivision before the Board that was denied. An appeal was filed and the Judge ruled in favor of Mr. Schalek. He explained that the Court found

the Schalek matter met the criteria for a C.2 variance.

Mr. Dwyer explained that what is proposed here is one conforming lot and one non-conforming lot for single family dwellings. He explained that even the non-conforming lot would be larger than most in the area.

Mr. Dwyer explained that there was a subdivision granted on Pennsylvania Avenue by this Board that was undersized with a number of small lots. He marked into evidence the approving Resolution.

Mr. Dwyer explained that each lot would have a single family dwelling. He submitted into evidence an elevation drawing of a proposed single family dwelling. He explained that each single family dwelling would be scattered so that both can get a view of the bay.

The Board asked if vacant land was available? Mr. Dwyer explained no adjacent vacant land was available.

Mr. Thornton read Engineer comments dated January 13, 2010.

Mr. Dwyer submitted a survey of existing conditions into evidence. He explained that the subdivision would eliminate the existing variances.

Mr. Galestok read Cape May County Planning Board comments dated December 16, 2009 in which they waived this application.

Mr. Galestok read Bureau of Fire Safety comments dated December 10, 2009 in which they found this application acceptable.

The Board asked Mr. Dwyer if at one time this was two lots that were combined into one lot? Mr. Dwyer explained it was. He explained that he was going to C.2 variances and not hardship variances.

This portion of the hearing was opened to the public.

Mr. Joe Winters was sworn in by Chairman Dilworth.

Mr. Winters explained that he was not notified of this application. He explained that the property was purchased as one property. He explained that the property does not need to be subdivided and a house could be placed on the property now. He explained that he knows what's in the neighborhood and it is slowly starting to straighten out. He explained that he was against this subdivision.

This portion of the hearing was closed to the public.

Mr. Dwyer explained that in the Schalek matter, the Judge found that creating two

undersized lots based on C.2 criteria was not a self created hardship. He explained that this is a similar situation in which it would be an improvement to the area. He explained that one proposed lot meets the zoning requirements and one is undersized, but larger than most lots in the general area.

Mr. Teitler explained that he had 11 letters that were mailed to the Planning Department regarding this application. He explained that all the letter's are inadmissible.

The Board asked if the variances and subdivision should be a separate motion and vote? Mr. Teitler explained that he feels that the Board can handle the motion and vote as one. He explained that the motion should be made based on C.2 and not a hardship variance.

Mr. McDuell made a motion to conditionally approve this application. The motion was seconded by Mr. Sullivan.

VOTE:	Mr. Hewitt	NO	Mr. Walker	NO
	Mr. Imler	YES	Mr. Butler	NO
	Mr. Sullivan	YES	Mr. McDuell	YES
	Chairman Dilworth	YES		

Motion carried.

A memorializing resolution will be prepared by the Board Solicitor for the Board to review and approve at the next scheduled meeting.

1. Discussion of Annual Variance Report.

Mr. Galestok reviewed the report with the Board. He explained that one subdivision was denied for an undersized lot. He explained that he did not see anything out of the ordinary.

Mr. Hewitt made a motion to approve Board Engineer vouchers. The motion was seconded by Mr. Imler. Motion carried.

Mr. Hewitt made a motion to approve Board Solicitor voucher. The motion was seconded by Mr. Imler. Motion carried.

4. General discussion of compensation trends for Board Solicitors in surrounding municipalities and future compensation for Lower Township Board Solicitors.

Mr. Galestok explained that the current salary for Board Solicitors is \$3,600.00 a year. He explained that he had someone interested in the Zoning Board position until he found out how

much the pay was and turned the position down. He explained that just recently the resolution fee was increased from \$50.00 per resolution to \$150.00.

Mr. Galestok reviewed with the Board the salaries of adjoining Board Solicitors. He explained that this is a bad budget year for the Township. He explained that the Board may want to figure out a salary, then work up to that salary. He explained that the salary is paid by the Township and the resolution fee is paid by the applicant.

The Board explained that it is obvious that the Township is way out of line with what other municipalities are paying their Board Solicitors.

There was a discussion that within a five-year period, they would like to see the salary between \$7,500.00 to \$10,000.00/\$15,000.00.

There was a discussion about distributing information to the Board members to review and think about then discuss again next month.

There was a discussion about possibly increasing the resolution fee. Mr. Galestok explained that fee was already increased. He explained that the Solicitor's salary is paid from application fees received.

It was determined that information would be sent to the Board regarding the adjoining municipality salary and resolution fee and this would be discussed at next months meeting.

Mr. Hewitt made a motion to approve the resolution from the January 21, 2010 meeting. The motion was seconded by Mr. Sullivan. Motion carried.

There was a discussion that at last months meeting, there was a discussion about if there was an 'Act of God', allowing the property owner to rebuild without a variance. It was explained that it is a burden on homeowners' if they had to go for a variance along with all the other expenses they must go through. It was explained that this is something else the Board may want to think about and discuss at a future meeting.

Mr. Hewitt made a motion to adjourn at 8:21 P.M. The motion was seconded by Mr. Butler. Motion carried.

Respectfully submitted,

Lisa A. Schubert,  
Recording Secretary

A verbatim recording of said meeting is on file in Township Hall.

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