

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Planning Board Minutes
May 14, 2015
Work Session**

Meeting Called to Order at: 7:30 PM

Open Public Meetings Statement: Read into the record by the Board Secretary.

Roll Call: Messrs. Berardo, Pierson, Reade, Corrison (absent), Newman, McVey, Councilman Rorty (absent), Chairman Hanlon, Mayor Randall (absent; arrived at 7:40PM)

Also in Attendance: Gary J. Cucchiara, Esq., Board Attorney; Ms. JoAnn Carroll, Board Secretary

Mr. Justin Ross, Beautiful Bodies Boot Camp, 217 First Street; Block 1016, Lot 5: sign application; applicant seeks approval to place two free standing signs on property/Sign Committee update.

Mr. Reade: stated he had spoken with Mr. Ross; Mr. Ross is working with a designer for signage over the entryway; new sign rendering will be submitted in a week or two; will not have any information to submit in time for next week's meeting.

Discussion:

Banner Ordinance

Chairman Hanlon: stated approximately 2 years ago a banner ordinance was introduced; there are 4 approved locations for banners to be placed in town; nonprofits permitted to put signs up at these 4 locations; the Council wants to make the banner placement more regimented; would like the Board to review the ordinance which was previously distributed to them and make comments at the next meeting.

Hollows at Ho-Ho-Kus, Chamberlain Developers, W. Saddle River Road/Van Dyke Drive, Block 802, Lots 1, 2, 3, 4 and 10: major subdivision application; the applicant proposes to construct and market single family dwelling units on each of the properties; major soil movement application.

Chairman Hanlon: at this time, there will be a public hearing for the Hollows matter; subdivision application; no variances sought; meeting procedures reviewed.

Please note: Mayor Randall has arrived at this point of the meeting; 7:40PM.

Mr. Berardo has listened to the discs of January 15, 2015, January 22, 2015, February 5, 2015 and February 19, 2015 and has signed absent member certifications stating this and has submitted the certifications to the Board Secretary.

Mayor Randall has listened to the disc of February 19, 2015 and has signed an absent member certification stating this and has submitted the certification to the Board Secretary.

Mr. Peter Newman has listened to the discs of February 5, 2015 and February 19, 2015 and has signed absent member certifications stating this and has submitted the certifications to the Board Secretary.

Chairman Hanlon: stated the Board received two letters from the applicant's attorney; one was regarding soil movement and the other regarding the subdivision; the Board Secretary read both default approval letters into the record.

Mr. Robert Inglima: represents nine families that live within the area of the site; stated he was familiar with the correspondence that has been submitted to the Board by Mr. Whitaker, as well as the letter which was emailed this morning; stated it is his understanding that the applicant is determined, based on the letters, that they would not proceed tonight; read Mr. Whitaker's letter which was received via email this day into the record; stated he appreciated the opportunity to address the Board; stated this is a matter that may result in further proceedings before a Court so he did not want to have the record affected in any way in the absence of the applicant with statements going to the validity or lack of validity of the procedural remedy that has been invoked by the applicant; will refrain from commenting on that; will address correspondence that was submitted with respect to his clients' position in those matters; respects the Board's position and request that any correspondence or pleadings that are received by the Board be made available to his clients; on behalf of his clients, expressed his appreciation to the Board; his clients are continuing to be concerned about and involved in the land use process in regards to the subject property.

Chairman Hanlon: stated that based on the letters which were received the Board cannot go forward with the hearing; the Board has three options at this time; the Board can approve the application without the final consultation of

the engineer; the Board can deny the application with or without prejudice; the Board can dismiss the application with or without prejudice; will be voting on one of these options this evening; this makes the application no longer a matter before the Board; questions cannot be answered by the Board.

Mr. Cucchiara: stated this specific matter is in the hands of the Administrative Officer of the Borough which is the Borough Clerk; in conjunction with the governing body; the matter will not be presented to this Board any longer; at this time, it would be appropriate for questions from the Board regarding the options described; not appropriate for the public to speak at this time because the applicant has indicated the matter is no longer before the Board; the record should reflect with a form of disposition; remember, at least at this stage, we know the applicant has made a request of the Borough Clerk, in connection with that the governing body, for a certificate of default; the Board does not have jurisdiction over this; since the applicant has indicated that it is not going to proceed before the Board, it would be appropriate at this time to enter a disposition on the record.

Chairman Hanlon: reviewed the options available to the Board in regards to the application.

Mr. Pierson: asked for a definition of option 3; dismissal with or without prejudice.

Mr. Cucchiara: stated the applicant has filed an application; it has not formally withdrawn the application; the applicant has placed the Board on notice that it is not going to proceed; under these circumstances, if the Board elects the 3rd option, it would be an appropriate disposition of the case only because the applicant has not proceeded with the application on the merits; there are other options which the Board Chairman mentioned; since it was filed and now is not going forward, as indicated by Counsel, that could be a proper way to address the issues before the Board.

Mayor Randall: asked if there was a more prudent path for the Board to pursue.

Mr. Cucchiara: stated that under the circumstances the motion to dismiss would be the most prudent way of going forward; did not hear the testimony from the engineering consultant; the applicant did not submit any further evidence; the objectors did not supply any further information; as the case stands now, believes option 3 would be an appropriate way to address these issues.

Mr. Pierson: asked, if the matter is no longer before the Board, why would the Board approve or deny the application.

Mr. Cucchiara: stated it is within the Board's power to do so; by saying the matter is no longer before the Board, according to the applicant, they are not going to proceed; they haven't said that they have withdrawn the application; the applicant is not going to present any further evidence or information to the Board; the applicant will not appear before the Board with regards to this application; the applicant is pursuing a default certificate with the governing body and the Clerk; under the circumstances believes the dismissal motion is a prudent approach.

Mr. Pierson: asked what recourse Mr. Inglima's clients have if the application is dismissed.

Mr. Cucchiara: stated he could not address what Mr. Inglima's clients could do; there would be no further matter before the Board; nothing for the Board to take action on; there would not be an approval; not going to comment on how that applies to the objector's interests.

Mr. Newman: asked for clarification between denying the application and dismissing the application and how it would affect the application in the future.

Mr. Cucchiara: stated it is similar; a denial is similar to a dismissal; since the matter was not completed and addressed on the merits, believes under these circumstances, and is limiting it to that, a dismissal would be appropriate if that is the way the Board would like to go; obviously it is within the authority of the Board to take any of the three actions; based on the record that the Board has at this time, and the letters that have been submitted to the Board, believes the dismissal is an appropriate approach.

Motion to dismiss application without prejudice: Newman, Pierson,
Ayes: Berardo, Pierson, Reade, Newman, Chairman Hanlon, Mayor Randall

Chairman Hanlon: stated the Board will now be going into Closed Session; there was a member of the public wanting to approach the Board; explained the questions asked would have to be very limited.

Mr. Paul Lewis, 14 Brandywine Road: asked questions of the Board.

Mr. Jim Albes, 31 Valley Forge Way: asked questions of the Board.

Ms. Sharon Gomez, 37 Van Dyke Drive: asked questions of the Board.

Ms. Amy Langevin, 251 Sheridan Avenue: asked questions of the Board.

Ms. Phoebe Fleming, 84 Fairlawn Street: asked questions of the Board.

Mr. Steve Reilly, 26 Sleepy Hollow Drive: asked questions of the Board.

Mr. Stanley Kober, 919 Washington Avenue: asked questions of the Board.

Public portion closed.

Closed Session:

Litigation: Chamberlain Developers, Inc. a New Jersey Corporation v. Borough of Ho-Ho-Kus, et al.

Motion to go into Closed Session: Berardo, Pierson

Ayes: Berardo, Pierson, Reade, Newman, McVey, Chairman Hanlon, Mayor Randall

Meeting went into Closed Session at 8:20PM.

Meeting reconvened at 8:50PM.

Motion to adjourn: Newman, Mayor Randall

All in Favor

Meeting adjourned at 8:55PM.

Respectfully submitted by:

JoAnn Carroll
Planning Board Secretary
June 1, 2015