

**JOINT LAND USE BOARD
REGULAR MEETING MINUTES
August 15, 2013**

Chairman Schwager called the meeting to order at 7:01 pm.

Adequate notice of this meeting had been provided in accordance with the Open Public Meetings Act.

Chairman Schwager led all present in the Pledge of Allegiance.

Roll was as follows:

John Casella – Present, Frank Costantini – Present, John Descano –Present, Blair Hannigan – Present, John Juliano – Present, Paul Lott – Present, Mayor Maccarone – Present, Chief Marino – Present, Joe Maugeri – Present, Alan Schwager – Present, Bob Rushton – Present.

Also present: Mike Aimino – Solicitor, Tim Kernan – Planner and Jim McKelvie – Engineer.

First on the Agenda are the Minutes from the regular meeting of July 11, 2013. J. Casella made a motion to approve which was seconded by J. Maugeri. All were in favor.

Next on the Agenda under Old Business is the Wolfson Group, Inc., a Continuation from the July 11, 2013 hearing for Preliminary and Final Site Plan and Bulk Variance for Woolwich Commons, LLC regarding Block 57, Lots 5, 8, 9 & 10 ~ U.S. Route 322.

Mr. Kaplan continued with some opening comments and stated that 3 additional documents were added to the binder that was handed out at the last hearing. He has a new list of exhibits and 3 additional exhibits that need to be added. Other than that, they are prepared to continue.

Chairman Schwager stated that before they begin, there are a few housekeeping matters that need to be cleaned up from the last meeting.

Mr. Aimino continued stating that Mr. Barron and Mr. Nehmad had both submitted briefs to the Board and they were reviewed. The first issue was an issue regarding subpoenas and that issue has been rendered moot as the applicant has withdrawn that application so the Board is not going to take any action with respect to that. With respect to the issue of requiring expert reports prior to their testimony with regards to the objectors; he would like to give the Board some advice with respect to that. Obviously it would be preferably to have those reports in advance so the Board can be able to understand what the objector's experts were providing in terms of their opinions. Under the circumstances he believes the Board has the right to set rules and regulations as to how they want the hearing to proceed, the Chairman has the right to set those regulations as well. In reviewing the briefs in this situation, his recommendation to the Board would be to allow the testimony of the objector's experts to take place without the

presentation of an expert report 10 days in advance. He thinks it is also fair that in the event the applicants would require additional time as a result of any expert testimony from the objectors that the Board should grant that additional time either for cross examination or for rebuttal experts.

Chairman Schwager agreed with Mr. Aimino.

J. Maugeri made a motion to proceed according to the opinion of the solicitor regarding reports of the objector's experts and allow those experts to testify at this hearing under the conditions set forth by the solicitor. F. Costantini seconded the motion. Roll was as follows:

P. Lott- yes, J. Juliano – yes, J. Casella – yes, Chief Marino – yes, J. Descano – yes, Mayor Maccarone – yes, J. Maugeri – yes, F. Costantini – yes, Chairman Schwager – yes.

Mr. Kaplan continued by recalling Mr. Gentile for additional presentation. Mr. Gentile is still sworn in from the previous meeting.

Mr. Gentile presented 5 section drawings, 4 of which were prepared about a year ago and one of them roughly a month ago. It is his understanding that these drawings were shown to the residents that live behind the site soon after they were prepared. He was not at those meetings.

Mr. Kaplan stated that he would like to mark these "5" drawings as exhibit A39a through A39e respectively.

Mr. Gentile proceeded to explain each drawing with the view from the back of the properties and which properties they are showing. They will be planting very young trees on the berm, roughly 1 to 2 years old; 12' to 15' high, eventually these trees will most likely double in size. For the record, these drawings are drawn to scale.

Extensive conversation took place over the drawings from the backs of the residential properties to the rear of the project which will be the view from these properties. The trees and the placement of the trees were also discussed.

Mr. Kaplan asked Mr. Gentile about the previous cross-examination by Mr. Jeff Brennan at the July 11, 2013 meeting and the question on the depth of the largest detention basin with the proposed 2:1 side slopes. Mr. Gentile could not answer the question at the time without the grading plan. Since that date he has had the opportunity to look at the grading plan and the answer to Mr. Brennan's question is 10 feet. The maximum depth of water that it is designed to hold is roughly 8.9' of water and that number was computed for the 100 year storm. It is also designed for the basin to completely drain within 72 hours.

Mr. Gentile went on to explain that a 3:1 slope would be deeper in order for it to hold the same amount of water. He stated that for a 3:1 slope he would have to widen out the basin in area and would likely need a third basin to handle the same volume of water that a 2:1 basin would hold and if he does all that he will disturb more land around the perimeter of the basins and take down a significant amount of trees which are adjacent to the residential areas so he believes the 2:1 is a better design.

Mr. Kaplan stated that he had no further questions for Mr. Gentile.

Mr. Jeff Baron who represents Mr. Frank Pagano had a few questions for Mr. Gentile.

First Mr. Baron asked about the drawings being to scale and the height of the trees. A brief discussion took place over the height and spacing of the trees.

Mr. Kaplan objected to the line of questioning stating that all the drawings were presented for was to show the Board what they showed the neighbors.

Chairman Schwager asked Mr. Kernan if the Township Ordinance references different species, different types and does it recommend planting heights. Mr. Kernan stated yes it does. Chairman Schwager asked if the plans conform to the Township Ordinance to which Mr. Kernan replied "he believes so, yes".

Chairman Schwager stated that the applicant is going to have to comply with our ordinance simply because they have not asked for a waiver.

Mr. Baron asked if they can make it a continuous screen. They may have to ask for a waiver. He knows there is a 6' fence but could they make it more affective if it is to be a screen.

Chairman Schwager did not take the species for granted, it is a rendering. If the site line is correct, you're not going to see the building no matter what tree they are.

Extensive conversation and cross-examination continued with a discussion on the basin regarding 100 year storms and safety.

Ms. Susan Gebeline of 66 Kirschling Drive was sworn in by Mr. Aimino. Ms. Gebeline was concerned about the slope of the buffer. She also is concerned about water build up on her property and would like to know what is being done about erosion. Mr. Gentile stated that the water will come down the slope, close to the property line and will be channeled away from the neighboring property. The slope will have a grass seed mixture and an erosion control blanket which stabilizes the soil from being washed away.

Mr. Frank Jeanette of 119 Patricia Drive was sworn in by Mr. Aimino. Mr. Jeanette continued making many comments about the ground water, the pond and his privacy and was told to ask a question because this is not the public portion of this hearing. Mr. Jeanette finally asked if the water would be disbursed from the basin. Mr. Gentile stated that all the water in the basin will discharge and be disbursed

Mr. Victor Heresniak of 108 Patricia Drive was sworn in by Mr. Aimino. Mr. Heresniak asked if there has been any discussion that a lot of this land is considered wetlands and has the DEP been involved with this. Mr. Gentile stated "yes" the wetlands survey has been done, and DEP has verified the wetland lines along the rear property line. Mr. Heresniak then asked about the berm and fence along the property line and if it has been removed. Mr. Gentile stated that the fence is still there but ends behind the William's property.

Mr. Lott also asked about the fence and where it stops. Mr. Gentile proceeded to show where the fence is on the drawings.

Mr. Kaplan interrupted and stated that they will agree to put the fence behind the Williams and Jeanette properties.

Mr. Fred Cavallaro of 194 Backcreek Road was sworn in by Mr. Aimino. Mr. Cavallaro asked if he could have a copy of the drawings. Chairman Schwager provided him with a copy.

Mr. Steve Nehmad, co-council along with Mr. Kaplan continued calling the next witness, their Planner, Mr. Creigh Rahenkamp.

Before beginning Chairman Schwager called for a 5 minute recess at 8:18 pm.

The meeting reconvened at 8:30 pm.

Mr. Nehmad continued again called Mr. Creigh Rahenkamp as a witness. Mr. Rahenkamp was sworn in by Mr. Aimino.

Mr. Rahenkamp continued stating his qualifications to the Board. Chairman Schwager accepted Mr. Rahenkamp's qualifications as an expert.

Mr. Nehmad questioned Mr. Rahenkamp regarding the Woolwich Commons project before the Board. Mr. Rahenkamp continued explaining his involvement with this project, the permitted uses and the zoning. He also discussed the Variances that are being requested, lighted bollards, fenestration, fencing on the rear of the building and not to provide underground utilities and the reasons why these Variances are needed along with the positive and negative criteria.

Mr. Barron continued with a cross-examination of Mr. Rahenkamp's testimony.

Continuing on, Mrs. Cynthia Jeanette of 119 Patricia Drive was sworn in by Mr. Aimino.

Mrs. Jeanette asked the difference in cost to put the power lines underground as opposed to above ground. Mr. Rahenkamp did not know, he stated in this area of the State distribution lines are not place underground and that is all they are talking about. Mrs. Jeanette stated than why not put them underground, bottom line it is the cost. Mr. Rahenkamp stated that you would need to ask the power company why distribution lines in this half of the State are not underground. Mrs. Jeanette stated that she had to pay to have her lines underground now they are putting poles in her back yard for no reason other than money. Mr. Rahenkamp disagreed with her characterization, underground wiring will be occurring on this site as it services the uses. What they are talking about allowing a distribution route that would be a PSE&G line, services to the uses on the site would still be underground. Mrs. Jeanette asked why they can't just put it all underground as the Township mandates. Mr. Rahenkamp stated that he doesn't know a land owner or applicant dealing with the power company has the option to put distribution lines underground. Mrs. Jeanette stated it's all about money. Mr. Rahenkamp stated it is all about planning for power in this area in a rational way. Mrs. Jeanette stated she still does not understand why they can't put the whole project underground.

Chairman Schwager asked if the Board members had any questions.

J. Casella stated he had a question for Mr. Baron. This man that he is representing, can Mr. Baron show him where he lives on these maps. Mr. Baron stated it isn't shown on these maps. Mr. Casella asked if it is a block over, Mr. Baron stated "no" and he knows very well where he lives. Mr. Casella stated no he does not; he does not know this man at all. Mr. Baron stated that he lives about 3 to 4 miles away and travels this route very frequently. He is very familiar with the traffic problems, he knows where the Turnpike exit and access is and he thinks this is a terrible idea for this area, but he doesn't live abutting the shops.

F. Costantini asked Mr. Rahenkamp if the Variance for wires is not granted can the electric company still service this site. Mr. Rahenkamp stated they would have to find a way. A brief discussion took place over the placement of the poles and the distribution lines.

J. Juliano asked if this Variance is for the flexibility so when they meet with the power company, it is an option and they can potentially say "no" this is not going to work that way. Mr. Rahenkamp stated the decision is ultimately up to PSE&G.

J. Maugeri asked what the power lines on these poles service. Mr. Rahenkamp stated that obviously the power would come from those poles to the uses, but all of the lines that would actually serve the uses on the site would be underground. The transformers were discussed. Mr. Rahenkamp stated that this is up to PSE&G as well.

Mr. Baron had another question for Mr. Rahenkamp asking if he is aware that lightning strikes poles more frequently than underground facilities. Mr. Rahenkamp stated that this made sense. He then asked if he knows there is a cost for moving poles and underground would not require that. Mr. Rahenkamp stated that moving underground service is more expensive than moving poles.

F. Costantini asked if centers built in the last 10 to 15 years are their distribution lines typically in ground or above ground. Mr. Rahenkamp stated that South of Trenton there are virtually no underground distribution lines in PSE&G's authority.

Ms. Susan Gebeline asked about last month's testimony and that transformers would be on the ground and she is not hearing that today. Will they be on the ground or on the poles, because they are noisy? Mr. Rahenkamp stated that the expert on that was the Engineer and not the Planner. Ms. Gebeline stated that it needs to go on the record that transformers go on the ground. Mr. Gentile stated that he recalls saying that there could possibly be small transformers on the poles and larger transformers on the ground. Ms. Gebeline stated that is not what he said.

Mr. Nehmad stated that he would like to move all the exhibits in to evidence and they would rest subject to their right to close at the appropriate time and ask questions of any witnesses.

Chairman Schwager called for a 5 minute break at 9:44 pm.

The meeting reconvened at 10:07.

Jim McKelvie continued with his Engineer's review letter June 17, 2013 which is in tab 16 of the applicant's binder. Mr. McKelvie began by stating it is a 13 page report and the comments have

been addressed by the applicant and the letter indicates that they have been addressed. Mr. McKelvie went through the comments in the letter.

Mr. McKelvie continued going through the comment in the Storm water Management report dated July 8, 2013. All items were addressed and/or the applicant will comply.

Tim Kernan continued with his review letter dated June 17, 2013. Mr. Kernan stated that all his comments were addressed by the applicant.

Mr. Kaplan stated that Mr. McKelvie also reviewed their traffic report and do they want to talk about that. Chairman Schwager asked if they want that for the record. Mr. Kaplan stated that it is in the record already along with the review. Mr. McKelvie stated that all the comments have been addressed and they gave testimony where requested in the letter. Mr. McKelvie also stated that the roads surrounding the development are all under jurisdiction of other agencies, DOT for Route 322 and the County for all other roads in the study area and therefore, the Township really has no jurisdiction over those approvals.

F. Costantini asked Mr. McKelvie if “shopping center” was the right model to use for this study. Mr. McKelvie stated that they had no objections to the trip generation calculations that were included in the report.

Mr. Barron had a request that the Board subpoena an individual employed by Walmart and is familiar with the operation of the store. It is his belief that on a site plan application the Board cannot make a determination whether this will function properly within the improvements that are proposed, without hearing hours of operation, delivery times, how many trucks come to the site, when they come to the site, how they control it, where their employees park, how many employees they have, are they shift, etc. There are a lot of questions. He thinks the Board should have that testimony. We will submit something in writing as they did on the prior issue to indicate why it would be appropriate for the Board to require or subpoena this. Mr. Baron stated that he is not available on September 5th, 12th, 16th, 19th or October 1st. He is not going to send his partner because if they don't produce witnesses he wants to do the summation.

Mr. Nehmad objected to Mr. Barron's requested stating that it is entirely unprecedented. He stated that Mr. Barron wants to tell him how to produce their case. It is an applicant's responsibility to produce sufficient evidence that the applicant believes warrants the relief they are seeking from the Board. He believes they have submitted sufficient evidence to enable this Board to make an informed decision. The statute says if they meet the requirements for Site Plan Approval, then the Board shall grant approval, the law is very clear, shall grant approval.

Mr. Nehmad stated that he has presented many Walmarts in many other applications throughout the State of New Jersey. It is true in some instances they have presented witnesses from Walmart but they have been cases where we have sought variance relief that is operations related. The only variance they are seeking here that is remotely related to the tenant, Walmart, is for building mounted signage.

Mr. Baron stated for the record that he takes huge umbrage at Mr. Nehmad's comments as to why he is here. They have been in 3 Counties with plaintiffs that are union members and in every case the Courts have said they have a right to challenge approvals.

Conversation continued between Mr. Nehmad and Mr. Baron over the rights of the applicant vs. the plaintiff.

Chairman Schwager stated that they are not going to make a quick decision on this tonight. He asks that each side submit briefs. There is a hearing on September 5th, not for this application, but they will review the briefs and make a decision on this at that hearing. Technically this meeting is being continued to September 5th and the only thing being decided will be whether this Board will subpoena Walmart employees or Walmart representatives or not. At the September 5th hearing it will also be announced when the next meeting will be.

P. Lott asked who makes this decision. Mr. Aimino stated that this is an issue they need to look at because the MLUL seems to suggest that the Chairman makes the decision.

P. Lott stated that he feels like this Board, whose job it is to represent the Township and the residents and not an individual or an agenda of a group, is being removed from those decisions and he thinks this Board needs to be more involved and that is no disrespect to the Chairman.

Chairman Schwager stated that he understands and does not take any disrespect that is why he wants briefs 10 days in advance, everyone will get copies of these briefs and it will be discussed as a group and then he will make the decision.

Mr. Baron again discussed the meeting dates that are not good for him.

Chairman Schwager stated for the benefit of the public, the only decision that will be made on September 5th is if we are going to issue a subpoena or not, and the new meeting date will be announced.

Mr. Nehmad stated so the record is clear, they do not have to re-notice or re-publish.

With nothing further to discuss J. Casella made a motion to adjourn which was seconded by P. Lott. All were in favor.

The JLUB meeting adjourned at 11:01 pm.

Respectfully submitted,

Christina M. Marquis
Joint Land Use Secretary

***Minutes not verbatim
Audio recording on file***