

**Franklin Borough Planning Board**  
**Meeting Minutes for**  
**December 17, 2012**

The meeting was called to order at 7:30 PM by the Chairman, Mr. John Cholminski, who then led the assembly in the flag salute.

Mr. Cholminski read the Statement of Compliance pursuant to the "Open Public Meetings Act, Chapter 231, PL 1975."

ROLL CALL OF MEMBERS PRESENT: Mr. Christiano, Mayor Crowley,  
Mr. Lermond, Mr. Oleksy,  
Mr. Zydou, Mr. Foulds, Mr. Cholminski

ABSENT: Mr. Kulsar, Mr. Suckey

ALSO PRESENT: Mr. David Brady, Esq.  
Mr. James Kilduff, Director

**APPROVAL OF MINUTES:**

Mr. Christiano made a motion to approve the **Franklin Borough Planning Board Meeting Minutes for November 19, 2012**. Seconded by Mr. Lermond.

Upon Roll Call Vote:

AYES: Christiano, Crowley, Lermond, Foulds, Cholminski

NAYS: None                      ABSTENTIONS: None

Mr. Lermond made a motion to approve the **Franklin Borough Planning board Meeting Minutes for August 20, 2012**. Seconded by Mr. Foulds.

Upon Roll Call Vote:

AYES: Christiano, Crowley, Lermond, Zydou, Foulds, Cholminski

NAYS: None                      ABSTENTIONS: None

**APPROVAL OF RESOLUTIONS:**

**Resolution for PB-09-12-1 Transbanc International Amended Final Site Plan Block 2401, Lots 21 & 22.**

Megan Ward, attorney for Transbanc International stepped forward. Ms. Ward said she reviewed the resolution and wants to concentrate on conditions of the approval. She provided a brief overview of approvals leading to filing an Amended Final Site Plan approval which was granted last month. Ms. Ward wants to clear it all up and be on the same page. Mr. Cholminski said there was more to it and in an effort to go forward, they reasonably help the applicant; such as the parking issue. Mr. Cholminski explained it. Ms. Ward was in agreement with Mr. Cholminski.

Ms. Ward began her review on page 5 of 9:

- 1) Standard Condition, which the applicant will comply;
- 2) She asked Mr. Brady if it's a standard. Mr. Brady said the first nine are standard paragraphs in his resolution;

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- 3) Ms. Ward said her concern is in the middle, and read the sentence. She said they agree and will comply including if something is contemplated at the property triggering further review, they're obligated. She asked him if the Board is reserving the right to withdraw the right to instant approval, variances and if it's standard. Mr. Brady said it's standard in every resolution he does and further defined it. Ms. Ward said her concern is it being construed as automatic and recognizes the Board's prerogatives. Mr. Brady said he's looking to reserve powers to the Board. Ms. Ward asked should a possibility of revoking any aspect of the approval, the applicant/owner be provided a notice and hearing to respond. Mr. Brady said he has no objections and if the Board goes along with him, he will put in "reserves the right on notice to the applicant and after a hearing". She was in agreement;
- 4) 5) and 6) Ms. Ward has no issues with and asked if the 2<sup>nd</sup> sentence is standard to which Mr. Brady said yes;
- 7) 8) and 9) she recognized as standard and said 10) is fine. Ms. Ward said they provided the DEP letter. Mr. Brady said he was in receipt, the DEP signed off on the work done and forwarded an email to Mr. Knutelsky. He will keep the language;
- 11) They agree to provide drainage easement for Mr. Brady to record;
- 12) Ms. Ward agrees to get all details of final as built and submit it. Mr. Brady requested the square footage calculation be reconciled as different numbers were submitted;
- 13) Is fine and is familiar with the process. Is part of the revised as-built. She's aware Mr. Wentink made revisions. Ms. Ward said same with 15 and 16;
- 17) She questioned, the 2<sup>nd</sup> sentence regarding existing signage. Mr. Brady provided an explanation. Mr. Lermond asked Mr. Brady in re the 3<sup>rd</sup> sentence. Ms. Ward stated this is the one she was referring to. Mr. Brady explained and said in either event it's compliant with land use regulations or they need a variance. Mr. Lermond said he recalls existing signs were to be recorded for a baseline. As future changes occur, they must comply with the regulations at that point. A brief discussion on prior signage transpired. Mr. Brady inquired of the point of contact and was advised it's the Zoning Officer. Mr. Brady said the verbiage could be "in connection with the installation of any future signs, the applicant shall file with the Zoning Officer showing similar signage details". Ms. Ward was in agreement;
- 18) & 19) Ms. Ward is in objection and doesn't want anyone looking back at old resolutions to figure out their meaning. She said if there are specific issues intended as part of the application; make them a numbered condition of approval; such as referenced in number 19. Ms. Ward read it. She said make it a condition and number it; 18, they agree. Ms. Ward further discussed 18 and 19.

Mr. Brady explained the process taken to streamline the resolution yet point out important conditions. Ms. Ward said for example, in number 18, I disagree with "notify the Planning Board and the Zoning Board". She said there's ordinance in place governing it in a municipality. The ordinance in relation to the applicant was

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discussed and argued. Mr. Cholminski asked Mr. Brady being the applicant comes in for tenant changes, does the applicant provide an impact on parking only, or comes, in total. Mr. Brady said there's an ordinance dealing with getting a zoning permit for tenant changes. This resolution requires square footage, parking and signage information. Mr. Cholminski said this provision looks broader.

Mayor Crowley said there are provisions going back to '83 about certain applications not be accepted; such as the use of sawdust in the air et al. We're here because they did not observe these things in the past; that's why they're in there now. Mayor Crowley said you go back to what should have been done in the past. Ms. Ward said she cannot change the past, she can only fix it as best she can right now. She referred to and read number 13.

Mayor Crowley said there were other things in the built about what type of operations could be had – whether they use toxic materials. Mr. Brady said one of the old conditions was each lease shall contain a restricted covenant clause prohibiting the manufacture and the processing of toxic hazardous and radioactive chemicals and materials; and there was nothing we went through in this hearing whereby the applicant said they'd like to have that removed as a condition. He said it's part of one of the conditions that allowed (the applicant) build without the Site Plan.

Mayor Crowley said those plans were not addressed at our hearings to change them so they should be kept in force. Ms. Ward said to the mayor regarding his example of chemicals, she knows they're regulated by the State and Federal Government with rate specificity. They do have to follow all applicable regulations in regard to those operations.

Jeff Fletcher, principal owner of Transbanc was sworn in at this time. Mr. Brady cautioned the Board, Mr. Fletcher and Ms. Ward that public hearing is closed. Testimony cannot be had by Mr. Fletcher other than clarification of the issue pertaining to what the resolution says.

Mr. Fletcher thanked Mr. Cholminski to hopefully resolving the matter. He said he doesn't really have issues with anything here. Mr. Fletcher said since 1983, when they had tenants in and out, they were never required to go to the Planning Board or do other things. They went to the Zoning Board. He said to make the process very cumbersome, very expensive to do something is his main concern. He felt they tried to do everything they could to clean up all the issues.

Mr. Fletcher said his main concern is sending a prospective tenant with all the proper information required on the zoning permit, fill out a zoning application and it be judged on its own merit. He has no problem with that but thinks the proper way would be to follow the same procedures and have the Zoning Officer review it. Mr. Fletcher said he has no interest in hazardous chemical production. Mr. Cholminski

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said he would just like to keep the testimony in line and asked if Mr. Brady would object if something gets beyond (it). Mr. Brady said he would object and said Mr. Fletcher is repeating what Ms. Ward discussed regarding uniform treatment. Mr. Brady said he wants to make it clear his advice to the Board is going to be this is its own site that has its own approvals with their own conditions and not every site in town is treated the same.

Mr. Brady said it's more complicated. Mr. Cholminski agreed and said on the other hand I have to agree with the premise we don't want an applicant coming to the Zoning or Planning Board for every tenant change. There has to be process within zoning. Mr. Brady said, the interesting thing is 18 of section says, "notify the Planning Board and Zoning Board of Adjustment of the change in tenants"; it doesn't say apply to. He said the intent is it wouldn't be to the Board itself, it would probably be to Mr. Kilduff or Ms. Hough depending on who's the Administrative Officer of the Board. Mr. Brady said it's being appraised of what's going on. Mr. Fletcher said he has no issues with that.

Mr. Brady said he's repeating what it said in the old resolution and not adding something new. They never had to come here before for every single change in tenant and that's not the intention.

Mr. Foulds said there was an issue with the number of parking stalls. There was a discussion on parking and its affects going before the Board.

Mr. Foulds said it seems that word "notify" is what simplifies it as opposed to going through the whole process. This was further discussed. Ms. Ward said she doesn't object to written notification. Mr. Brady said he would put, "notify in writing"; Ms. Ward was in agreement.

Ms. Ward said she's unsure about the "no permanent certificate of occupancy will be granted." Mr. Brady said there may be alterations and there are provisions for banked parking. Ms. Ward said not to just elsewhere, it has a filing requirement. Mr. Brady said that's true it may be duplicative but think it's applicable. We did not go over this and agree to take out, but modify it.

Ms. Ward said for 2012, if there's a perspective new tenant, Mr. Fletcher will instruct them to come to the Borough, get the Zoning Application, submit that to the Zoning Officer, get whatever construction permits are necessary, when the inspections are done a CO is issued. Mr. Cholminski said that's the normal process. Ms. Ward said that's all he (Mr. Fletcher) wanted to know.

Mr. Cholminski said he will ask Mr. Brady to read the changes in the provisions into the record for the Board and request a motion.

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Mr. Christiano said under item 15, it talks about ADA compliance signage. He said New Jersey has its own version of the ADA called the NJ Barrier Free Code. A discussion was had on federal and state law. Mr. Brady explained. Ms. Ward suggested removing ADA and putting in compliance signage. ADA language was further discussed. Mr. Cholminski said to leave as is for a reference point and can ask Mr. Knutelsky at the next meeting. Mr. Brady concurred.

- Mr. Brady read for the record: Page 5, Paragraph 3, 5<sup>th</sup> line down, the phrase "The Board hereby reserves the right; Mr. Brady will add *"on notice to the applicant after an opportunity for a hearing"*.
- Page 7, Paragraph 17, bottom of page, last sentence he will change to read *"in connection with the installation of any future signage the applicant shall file with the Zoning Officer a permit application showing similar signage details of all existing and proposed signs prior to the installation of all future signage"*.
- Page 8, Paragraph 18, second bullet point that starts with the word "notify", he will add: *", in writing,"*.

Mr. Cholminski requested a motion to accept the resolution with the changes read into the record by Mr. Brady.

Mr. Lermond made a motion for **Approval of Resolution PB-09-12-2 Transbanc International Amended Final Site Plan, Block 24012, Lots 21 & 22**. Seconded by Mayor Crowley.

Upon Roll Call Vote:

AYES: Christiano, Crowley, Lermond, Cholminski, Alt #1 Foulds

NAYS: None                      ABSTENTIONS: None

Mr. Cholminski said he had a question on the letter from Mayor Crowley regarding a potential tenant at the zinc mine property.

Mayor Crowley talked about people who contacted him regarding a conceptual idea. He discussed the ideas presented to him for a school concept for approximately 400 patients and about 200 employees. He also spoke of their intended plans for the Railroad Museum and their willingness to review the problems associated with the DEP. Mr. Cholminski commented on the public's possible view of this proposal. Mayor Crowley acknowledged the people's desire for Main Street.

Mayor Crowley said the (potential applicant) would like a commercial aspect to it. Industrial space was briefly discussed. Mayor Crowley said they are legitimate and hopes the next step would be their coming to the Board. He thought it's important if the Planning Board does not want this type of operation to inform them early on. Mr. Cholminski commented on conceptual plans. Mr. Brady provided a brief explanation of power differences between the Planning Board and the Zoning Board.

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A discussion regarding conceptual approvals, its affect on the applicant, the Board and the Borough was had. Mr. Brady said he's been on both sides and also provided an example of three different plans he had. The Board continued their discussion.

Mayor Crowley said the (potential applicant) want to get their investors. He said he told them he would support their idea as it was presented to him. A discussion regarding non-taxable status was had. Mr. Christiano said, if you look at other similar organizations like Willow Glen Academy, they employ a lot of people. Maybe there are no taxes but there are more people going to work; maybe that's the trade off. Mr. Cholminski said it brings money into the town and doesn't bring money for the expenses of the town.

Mayor Crowley said it's a trade off, and have to inquire of their employment intents. Mr. Kilduff said he wanted to add it's important to provide the availability of concept hearings. Developers need to get a sense of the Board's approach and get the correct read from the Planning Board that's available to them which they can't do with the Zoning Board. He said it's a unique feature that helps them decide.

Mr. Cholminski asked Mr. Brady for Executive Session procedure advice. Mr. Brady said he's done meetings where they went into Executive Session and announced as they went into Executive Session; they were going in and would adjourn out of Executive Session with no further public participation. He said, if you announce that, you could adjourn out of Executive Session; but, you cannot come back in here after you've made the announcement, "we're not coming back" and all of a sudden, come back. Mr. Kilduff said, so actually you go out of Executive Session, adjourn out of it, and then make the motion even though you're sequestered you then make the motion to adjourn the meeting.

**PAYMENT OF BILLS:**

Mr. Lermond made a motion to approve the **Franklin Borough Planning Board Escrow Report** for December 17, 2012. Seconded by Mr. Oleksy.

Upon Roll Call Vote:

AYES: Christiano, Lermond, Oleksy, Zydon, Foulds, Cholminski

NAYS: None                      ABSTENTIONS: Mayor Crowley

**OPEN PUBLIC SESSION:**

Mr. Lermond made a motion to Open to the Public. Seconded by Mr. Foulds. All were in favor.

No one from the public came forward.

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Mr. Oleksy made a motion to Close to the Public. Seconded by Mr. Lermond. All were in favor.

Mr. Cholminski read the Resolution to go into Executive Session for contract negotiations.

Mayor Crowley made a motion to go into Executive Session. Seconded by Mr. Lermond. Mr. Cholminski added, upon adjournment of the Executive Session, we will adjourn the meeting for the night with no further public input. Seconded by Mr. Lermond.

Mr. Cholminski requested a Roll Call for the motion to go into Executive Session.

Upon Roll Call Vote:

AYES: Christiano, Crowley, Lermond, Oleksy, Zydon, Foulds, Cholminski

NAYS: None                    ABSTENTIONS: None

**APPLICATIONS FOR COMPLETENESS:**

There were no applications for completeness.

**ADJOURNED CASES:**

There were no adjourned cases.

**APPLICATIONS TO BE HEARD:**

There were no applications to be heard.

**OTHER BUSINESS:**

**DISCUSSION:**

**CORRESPONDENCE:**

**ADJOURNMENT:**

There being no further business to come before the Board, the meeting was adjourned at 8:37 PM at the conclusion of the Executive Session.

Respectfully Submitted,



Ruth Nunez  
Secretary