

Franklin Borough Planning Board
Meeting Minutes for
July 5, 2018

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

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

ROLL CALL OF MEMBERS: Mr. Wes Suckey, Chairman (Present)
Mr. John Christiano , Vice – Chairman (Absent)
Mr. Nick Giordano, Mayor (Present)
Mr. Stephen Skellenger, Councilman (Present)
Mr. Floy Estes (Present)
Mr. Jim Nidelko, (Absent)
Mr. Jim Williams (Present)
Mr. John Friend (Present)
Mr. Richard Knop, Alternate #1(Present)
Mr. Ted Bayles, Alternate #2 (Present)
Mr. Michael Raperto, Alternate #3(Present)
Mr. Stephen DeFinis , Alternate # 4 (Present)

ALSO PRESENT: Mr. Dave Brady, Board Attorney
Mr. Tom Knutelsky, Board Engineer

SWEARING IN NEW MEMBER ALTERNATE #4

Mr. Brady asked Ms. Sharon Schultz to come to the microphone. Ms. Schultz was sworn in under oath as a Franklin Borough Planning Board Member Alternate #4. Mr. Suckey congratulated Ms. Schultz and the other members welcomed here to the planning board.

DISCUSSION:

-Draft of Recording Policy for the Franklin Planning Board.

Mr. Brady addressed the board in regards to the draft of the recording policy for the Franklin Borough Planning Board. Mr. Brady did his research and looked at some other boards and their policies along with New Jersey Supreme & Superior court rules on recording devices to help with drafting this policy. The public has the right to record. This policy does not in any way prohibit the right of recording it just allows for the board to monitor and control what is allowed. The recording cannot be intrusive or distracting to the meeting. There is also a part in the draft that asks for anyone wanting to use a tripod to let our board secretary know in advance so she could accommodate a designated area. Mr. Brady asked if the board had any questions or concerns. Mr. Suckey asked if we could break down parts of the draft. Some areas being to broad.

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Mr. Giordano stated that the most important thing to take away from this is that the public does have the right to record the meetings. Mr. Giordano wanted to express that he will not be adopting this policy at the town and council level.

Mr. Suckey just wanted to clarify that this policy does not prohibit anyone from recording the meetings. The policy is just to have the ability to have control and be able to mandate the rules that we put into effect. The board agreed and had no further questions or concerns. Mr. Brady said he would go back and revise the draft with the suggested recommendations and bring it back to the next meeting July 16, 2018 for the board to adopt and to immediately put into effect at the meeting.

Mr. Brady also touched on working on revising a new set of bylaws to provide to the board that gives a better understanding of what it is the planning board does procedurally and that can be set on the back table for the public to look at during the meeting.

Review and discussion of memo from acting Clerk regarding introduced ordinance on June 12, 2018 Mayor & Council Meeting. Ordinance 08-2018 “An Ordinance to amend Chapter 161. The land development Ordinances of the Borough of Franklin, regarding the mixed active adult MAAH Housing District”.

Mr. Skellenger and Mr. Estes recused themselves from this portion of the meeting at 7:38PM Mr. Suckey asked for Mr. Knop and Mr. Raperto to move up to the desk to sit in for Mr. Skellenger and Mr. Estes.

Mr. Brady explained that the ordinance that we have before us is the same ordinance as the 20-2017 except the slope disturbance has been changed to 10% 5% 2% from the recommendation by the planning board last November. Because the council is going through this adoption process, its being referred to us again. Our position now is to discuss as much or as little as the board desires. Then I would make a motion indicating if it should be recommended or recommended with any changes. Mr. Brady will then send a letter to the council and the attorney to the council. Indicating the board recommended Mr. Brady to follow it up with a memorializing resolution.

Mr. Williams stated that he is concerned about the building heights. Mr. Williams being a member of the Fire Dept. knows that they do not have a ladder truck or a platform that would be able to accommodate such building heights. Mr. Williams stated that this would be something he would be keeping a close eye on as the application proceeds.

Mr. Friend is concerned for the first aid squad and their ability to get in to the buildings. There have been issues in other buildings around town not being able to get into the people’s apartments. He believes there is a device that can be purchased. Mr. Williams explained that they are called knox box which holds the key to the building. The fire dept., along with the first aid squad would have access to a

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key to open the Knox box which would hold the key to the building that had the emergency. Mr. Suckey agreed and stated that was something they would look into at further meetings with the applicant.

Mr. Friend also suggested the installation of a fire chairs in the stair wells to help residents get out of the buildings faster. Their device that should be investigated going forward. Mr. Suckey noted Mr. Friend's recommendation. Mr. Suckey and the board members agreed that would be something that we would discuss with the applicant going forward at the applicant's hearing.

Mr. Suckey stated with no further questions or concerns from the board. I ask for motion to make a recommendation to adopt the 08-2018 Ordinance. Mr. Williams made the motion Seconded by Mr. Nidelko.

Upon Roll Call Vote:

AYES: Giordano, Friend, Nidelko, Williams, Knop, Suckey , Bayles, Raperto, DeFinis,

NAYS: None ABSTENTIONS: Schultz

Motion Passed

Mr. Brady will write a letter to the council and town attorney indicating that the board recommends that ordinance 08-2018 be adopted as is. Mr. Brady will follow up with a written resolution to be memorialized at the next meeting.

APPROVAL OF MINUTES:

None

APPROVAL OF RESOLUTIONS:

None

APPLICATIONS FOR COMPLETENESS:

None

ADJOURNED CASES:

None

APPLICATIONS TO BE HEARD:

None

OTHER BUSINESS:

None

PAYMENT OF BILLS:

Mr. Williams made a motion to approve the **Franklin Borough Planning Board Escrow Report** for July 5, 2018. Seconded by Mr. Nidelko

Upon Roll Call Vote:

AYES: Suckey, Friend, Nidelko, Williams, Knop, Bayles, Raperto, DeFinis, Schultz

NAYS: None ABSTENTIONS: Mr. Giordano

DISCUSSION:

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None

CORRESPONDENCE:

None

OPEN PUBLIC SESSION:

Mr. Williams made a motion to **Open to the Public**. Seconded by Mr. Nidelko All were in favor

Mr. Kevin Kelly introduced himself and addressed the Chairman and the board He introduced attorney Autumn McCourt as co-counsel representing the applicants. Mr. Kelly stated that he was very disappointed we were not able to speak tonight on behalf of their applicant. Mr. Kelly went on to say that the record does not reflect what you did tonight. This is all over one issue. Changing the steep slopes from the standard 20%30% 30% to what you now want changed to 10% 5% 2% Your applying a standard we cannot meet. Our engineer has been before you with evidence showing my clients project could not accommodate these standards. This has the effect off deeming the application uncomplete. An application that was already deemed complete. Then you will ask the applicant to apply for a variance.

Mr. Brady addressed Mr. Kelly explaining that this ordinance was per the MLUL. This was a board administrative function. This is a board function not a public hearing.

The board is not obligated for anyone to speak for a review of an ordinance. Secondly, Mr. Brady states he did not know that the applicant could not meet these requirements. It's been said that the applicant could not meet the requirements for the

20% 30% 30%requirements and the applicant was able to have an application with those standards.

Mr. Brady stated that the best place for you to be affective is to be before the council.

Mr. Kelly introduced Ms. Autumn McCourt for her comments at this time.

Autumn McCourt, an attorney with Brach Eichler, LLC,

Ms. McCourt introduced herself. She has been retained by the property owner to object the passage of the ordinance 08-2018 to engage in any ligation that may ensue in the result of the passage.

Ms. McCourt's first question was that she noticed that the Planning Board minutes from the June 6, 2018 meeting were not on the website and if we knew when they would be put on the website. Mr. Suckey explained that they were being worked on and should be put on the website for the next meeting.

Ms. McCourt also addressed Mr. Brady by saying that at the June 18th meeting your partner stated that if this ordinance if passed would be applied to the site plan

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application pending by the property owner. Mr. Brady responded by stating he doesn't know what his partner stated.

Ms. McCourt then asked if it is now the board's intention to apply the 08-2018 ordinance to the site plan application pending by the property owner. Mr. Brady responded by telling Ms. McCourt that he would speak with Mr. Kelly before the next meeting.

Ms. McCourt stated that this application was already deemed complete. NJSA 40:55D – 10.5 clearly states "Those development regulations which are in effect on the date of submission of an application for development. Shall govern the review of that application for development and any decision made for that application for development." Thus, ordinance 20-2017 applies to the property owner's application. Ms. McCourt then stated to Mr. Brady you're not sure and would ask Mr. Kelly. Mr. Brady replied by stated he never said he wasn't sure. What he said is that he would speak to Mr. Kelly before the next meeting.

Ms. McCourt continued by explaining that the October 2017 consent order is also very clear in that the Borough is obligated to permit the property owner to build 300 residential units. Thus, assuming ordinance 08-2018 passes, and assuming the planning board could apply to the property owner's application, the Borough would then be obligated to grant a C Variance to permit 300 residential units.

Simply stated, the 08-2018 ordinance and its purposes are consistent with the master plan, are consistent with the October 2017 consent order entered into the Borough of Franklin. Furthermore, should the ordinance pass and be applied to the already pending application, would be against the laws of New Jersey. For these reasons as set forth in more detail in our objection letter we submitted to the clerk on June 26th the applicant objects to the passage of this ordinance. Should this ordinance pass, applicant will proceed with any and all litigation warranted to force the town to comply with their obligations under the October 2017 consent order. Ms. McCourt thanked the board for their time and walked back to her seat.

Mr. Suckey asked if there was anyone else from the public who would like to come up to speak.

Nick Daurio – JCM investors asked to speak.

Mr. Brady explained to him that typically when you are here by two counsel you do not come up to speak on your behalf. Unless you have something you really need to say and your counsel consents to it and the board is willing to listen to it.

Mr. Daurio Continued by asking Mr. Brady if you're not attending to apply he proposed slope ordinance to my project.

Mr. Brady replied by saying "I didn't say we weren't attending to apply it to your project."

"I said, "I would speak to Mr. Kelly before the hearing on the 16th."

Mr. Daurio "so you don't know why you're doing this?" Mr. Brady explained he did not say that. He stated "I said I would talk to Mr. Kelly before the 16th"

Mr. Daurio stated so you're not going to give me an answer?

Mr. Brady said "No, I'm not going to give you an answer. I will talk to Mr. Kelly before the hearing on July 16th."

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Mr. Daurio are aware if you do, do this the board and the borough are going against New Jersey law.

Mr. Brady stated that was your position Mr. Daurio

Mr. Daurio said thank you and went back to his seat.

Mr. Suckey asked if anyone else wanted to come up to make a comment.

Robert Moss – Bloomfield New Jersey

Mr. Moss introduced himself and explained that he has been following this closely. He just wanted to point out that the council for the applicant along with the applicant are assuming that the 10% 5% 2% restrictions did not pass legally. In my opinion and only my opinion not being an attorney, which is not true. The 10% 5% 2% was clearly passed according to the Council meeting minutes. The way it was posted to the website 20% 30% 30% was clearly an error. Mr. Moss thanked the board and had no further comments.

Greg Gorman -Hamburg, New Jersey

Mr. Gorman represents the Skylands group New Jersey Sierra Club State chapter. Mr. Gorman being their chair person.

His understanding is at the June 12th council Meeting you vacated that ordinance that was passed or published. In my experience working with the federal government as a contracting officer working with lawyers, if you have no authorization to act on something then you can't act on it. With that being said, I would recommend rejecting their application at this point.

Mr. Gorman then explained at length that shortly after the ordinance was passed last November there were amended applications made. Applications made in terms of the amendment to the water quality management plan. Mr. Brady irrupted and explained that this was not the right time to discuss such issue. We are not here tonight to discuss the application. Mr. Gorman understood and said he stood corrected. Mr. Brady suggested that Mr. Gorman bring up his concerns he has at the next council meeting. Mayor Giordano stated that the next meeting would be next Tuesday July 10th Mr. Gorman said that is what he would do.

Mr. Suckey asked if there was anyone else at this time that wanted to make a comment. Seeing know one coming up I ask for a motion to close the meeting to the Mr. Williams made a motion to **Close to the Public**. Seconded by Mr. Nidelko. All were in favor.

ADJOURNMENT:

There being no further business to come before the board, the meeting was adjourned at 8:07 PM on a motion by Mr. Friend , seconded by Mr. Giordano All were in favor.

Respectfully submitted,

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Michelle Babcock,
Planning Board Secretary