

Franklin Borough Planning Board

Meeting Minutes for

November 16, 2020

The meeting was called to order at 7:33 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 (Present)
Mr. John Sowden, Mayor (Absent)
Mr. John Postas, Council liaison (Absent)
Mr. Floy Estes (Present) Via conference call
Mr. Jim Nidelko (Present)
Mr. Jim Williams (Present)
Mr. John Friend (Present)
Mr. Richard Knop (Present)
Mr. Michael Raperto, Alternate #1(Absent)
Mr. Stephen DeFinis, Alternate # 2 (Present)
Ms. Sharon Schultz, Alternate #3 (Present)

ALSO, PRESENT:

Mr. Correale, Planning Board Attorney

APPROVAL OF MINUTES:

Mr. Suckey asked for approval for the **November 16, 2020** meeting minutes.

Mr. Christiano made a motion to approve the November 16, 2020 meeting minutes.

Seconded by **Mr. Williams**.

Upon Roll Call Vote:

AYES: **Nidelko, Estes, Williams, Knop, Suckey, Christiano, DeFinis, Schultz**

NAYS: None ABSTENTIONS: None

Approved

PAYMENT OF BILLS:

Mr. Williams made a motion to approve the escrow report for **November 16, 2020**

Seconded by **Mr. Nidelko**.

Upon Roll Call Vote:

AYES: **Nidelko, Estes, Williams, Knop, Suckey, Christiano, DeFinis, Schultz**

NAYS: None ABSTENTIONS: None

Approved

APPLICATIONS TO BE HEARD (Interpretation)

Miller (PB-11-20-01) Block 2302 lot 32, 140 Corkhill Road, interpretation.

Mr. Suckey asked if there was anyone present that would be representing the applicants.

Michael Sweeney came to the microphone and introduced himself and stated that he was with the law firm Hunziker, Jones & Sweeney.

Mr. Sweeney stated that he was representing his clients Mr. and Mrs. Miller and this application that will be presented this evening.

Mr. Sweeney went on to give a description of the property on 140 Corkhill Rd.

Mr. Sweeney stated that Mr. and Mrs. Miller's property is just over six acres.

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Mr. Sweeney stated that on the property the Millers have their home, two greenhouses which one has an attached shed. There are two more sheds an old cow barn and a chicken coop. Mr. Sweeney stated that they also have a garage with an apartment above it.

Mr. Sweeney went on to explain that Mr. Miller has owned the property since 1988 and has ran his *Northern Hills Tree Farm business* from this property.

Mr. Sweeney stated that from that operation Mr. Miller has sold summer flowers, hanging baskets, poinsettias, Christmas trees, etc.

Mr. Sweeney stated that Mr. Miller has been doing this for 32 years.

Mr. Sweeney stated fast forward to the present time Mr. and Mrs. Miller have put their house up for sale and in doing so they listed the house in a mixed zone residential commercial.

Mr. Sweeney stated that he would like to commend the Borough's zoning officer who read the sale ad and reached out to my clients and explained to them that they were not in fact in a mixed residential commercial zone.

Mr. Sweeney explained that the property is actually in a R1 zone but by definition is not in a mixed zone that would permit commercial use.

Mr. Sweeney went on to explain the history of the property.

Mr. Sweeney explained that his clients purchased the property from Mr. Miller's aunt who had also ran the property as a mixed residential commercial zone.

Mr. Sweeney stated that the reason why my client is here tonight is to ask the board to provide a certificate of non-conforming use to the structures on the property.

Mr. Sweeney stated that if the board would like to hear from Mr. Miller and have Mr. Miller testify that everything that I just stated is in fact true, Mr. Miller could come up and provide more testimony on behalf of what has been already stated.

Mr. Correale stated that he would just like to clarify that the applicants do not foresee entering any exhibits being entered on to record tonight.

Mr. Sweeney stated that he does not foresee any exhibits being entered into the record tonight.

Mrs. Miller stated that anything that was related to this property and application has been copied and put into the application that was submitted.

Mr. Correale stated that he only asks because Mr. Estes is joining the meeting via phone conference and if there was going to be a significant number of exhibits that Mr. Estes would not be able to see then he would have to abstain from voting because he was not able to see the exhibits that were entered into record.

Mr. Correale stated that since you have stated that there will be no exhibits then we are fine and can processed with hearing testimony from Mr. Miller.

Mr. Correale stated that he would at this time swear Mr. Miller in under oath.

Mr. Miller was sworn in under oath.

Mr. Miller gave the history of the property for as long as he has owned it.

Mr. Miller stated that he ran the property as a farm/nursery he sold firewood, eggs, cared for animals, sold flowers from the green houses and sold Christmas trees.

Mr. Miller stated that he ran a successful business for many years.

Mr. Sweeney asked Mr. Miller if he had ever had any direct contact with anyone from the Borough about his business on his property.

Mr. Miller stated that 29-30 years ago when Mr. Miller put up the green houses a gentleman from the town came and stated that if people from the public would be going into, the greenhouses that they would need to be inspected.

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Mr. Miller stated that he bought the property from his aunt and uncle.

Mr. Miller stated that he always had animals and a tree farm on the property for as long as he could remember.

Mr. Sweeney asked if his aunt and uncle ever qualified to be farm assessed.

Mr. Miller stated yes, and that he also provided paper work in the application in regards to he also being farm assessed.

Mr. Miller stated that when he purchased the house over 32 years ago, he applied to be farm assessed and application was approved and he has been farm assessed ever since and has been running the same operations on the property ever since.

Mr. Correale asked about the written statement that was included in the application and asked Mr. Sweeney if he or Mr. Miller would be willing to read the statement.

Mr. Sweeney read the statement a loud and asked Mr. Miller if everything that was read aloud was in fact the truth.

Mr. Miller stated that it was indeed the truth.

Mr. Sweeney stated that he and his client have nothing further to share.

Mrs. Schultz asked if Mr. Miller ever had a CO for the apartment above the garage.

Mr. Miller stated yes.

Mrs. Miller gave the document in regards to the proof of the CO.

Mr. Correale stated that the document would be entered as an exhibit.

Mr. Correale stated the document would be marked as A1 with today's date of November 16, 2020.

Mr. Suckey asked why the CO document was dated for October 19, 2020.

Mr. Suckey also asked if there was an original form when you bought the property.

Mrs. Miller was asked to be sworn under oath so she could testify and help answer the questions that were being asked in regards to the CO document.

Mr. Correale swore Mrs. Miller in under oath.

Mrs. Miller was sworn in under oath and was now allowed to processed with answering the questions that Mr. Suckey asked in regards to the date on the CO document that was submitted.

Mrs. Miller stated that the CO has a date of October 19, 2020 because they did not know they needed one until things started progressing with the sale of their property within the last couple of weeks.

Mrs. Miller stated when they bought the house over 32 years ago.

Mrs. Miller stated that there was gentleman already living in the apartment above the garage and we just honestly didn't think anything needed to be done.

Mr. Suckey stated that he also noticed on the third to last page of the application that you submitted that there was denial or loss of the property being farm assessed in 2005.

Mr. Suckey asked why the application was denied at the time.

Mr. Miller stated they were late in getting their application in and it was denied.

The town said that it could be appealed.

Mr. Miller stated that at that time they did not have the money for lawyers and the process and they let it go.

Mrs. Miller stated that they were farm assessed every year from 1988 when they bought the property on.

Mr. Sweeney stated that document was attached to the application.

Mr. Suckey stated that the document in the packet is the original copy and he sees that it is signed by the applicant but does not see a signature from the tax accessor.

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Mr. Sweeney stated that both his clients Mr. and Mrs. Miller have been sworn under oath and have testified that everything that they are saying is the truth then it is the truth that their property has been approved for farm assessment from 1988 to 2005.

Mr. Suckey gave the document to Mr. Correale to further review.

Mr. Suckey asked Mr. Miller who owned the firewood business.

Mr. Miller stated it was owned by a friend of his.

Mr. Miller stated that his friend is renting the space from him.

Mr. Suckey asked for Mr. Nelson to give his report and add anything that he may need to address.

Mr. Nelson stated that it is his understanding that within just a few hours ago with emailing the applicants that they are only looking for the buildings to be sanctioned. Not the commercial use of the green house or the apartment.

Mr. Nelson stated that the applicant is now just looking for the sanction of all the accessory buildings on the property.

Mrs. Miller stated that the buyer has recently informed them that she is not looking to use the greenhouses for commercial use.

Mrs. Miller stated that the buyer would just be using the greenhouses for her personal use.

Mrs. Miller stated that if a few years from now the buyer is interested in turning it into a commercial property she would go in front of the planning board and ask for a variance herself.

Mrs. Miller also stated that as far as the apartment, the buyer is not looking to rent it out at all.

Mrs. Miller stated that she will use it as a pool house.

Mrs. Miller stated that the buyer is more concerned about the buildings and greenhouses being permitted.

Mrs. Miller stated that if the buildings and greenhouses have to be taken down our buyer will no longer be interested.

Mrs. Miller stated that's the most important issue tonight we would like to see be resolved so we do not lose our buyer.

Mrs. Miller also stated that if we do lose the buyer, we would still like to be able to use the greenhouses and other structures like we have been for over 32 years.

Mr. Suckey stated that the firewood business would also have to be eliminated.

Mrs. Miller stated that she understands that and she has talked to the tenants for both the firewood business and the apartment.

Mrs. Miller stated that everyone is aware that once we sell our property that they are no longer allowed.

Mr. Suckey asked if Mr. Nelson had anything to add.

Mr. Nelson stated no.

Mr. Suckey stated that the clarification is not that you are looking for an interpretation as a commercial property, you are looking to grandfathering the accessory buildings in.

Mr. Sweeney stated that is correct.

Mrs. Miller also stated that there is an issue with the property card that she was given. Mrs. Miller stated that the acres of her property is different than what her records state.

Mr. Suckey stated that is not something the planning board will not be able to help with.

Mr. Suckey stated that she needs to get in touch with the tax assessor and he would have to help resolve that particular issue.

Mr. Suckey apologized for not being able to help her with that particular issue but stated that he and the board may be able to help with the bigger issue discussed this evening.

Mr. Suckey asked Mr. Correale for some guidance on how they should move forward.

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Mr. Correale stated that the board needs to decide if they have received enough evidence in the application and or from the testimony heard tonight if in fact that this can be approved for non conforming.

Mr. Nelson stated that the issue at hand is now a lot easier for the board to look at and decide what they would like to see happen with this property with the testimony given this evening.

Mr. Nelson made a point to state that a lot of the issues could be pre dated zoning rules and restrictions.

Mr. Nelson stated that the easiest would be to approve the existing accessory structures that are already on the property.

Mr. Suckey stated that if the buyer wants to come forward at a later date to ask for a variance and submit a planning board application then he or she could do that.

Mr. Suckey stated right now we are just looking to approve and permit the greenhouses and the structures that the property has on it now which Mr. and Mrs. Miller have been maintaining.

Mr. Nelson stated that approving the buildings and structures on the property at this time to be used only for residential purposes would be the simplest way to go.

Mr. Nelson stated then if the prospective buyer wants to come in at a future date to establish the green houses as a commercial use, the new owner can submit an application to do so.

Mr. Sweeny suggested that the board looks at this in almost as two different parts.

One being that the board consider approving the existing accessory structures on the property.

Mr. Suckey stated which would be written and memorialized through a resolution.

Mr. Correale stated yes, and assured Mr. Suckey and the rest of the members of the board, anything that would be discussed and approved tonight would be written up in the resolution.

Mr. Suckey asked if any of the board members had any further questions or had anything to add at this time.

Mr. Christiano stated that he believes that the applicants attorney has the right idea which is to treat these issues as two separate issues.

The first issue to resolve is to approve the buildings and the accessory structures first.

Then when the new property owner comes forward that is when we will address and look further into the commercial use.

Mr. Christiano stated that as long as the prospective buyer is fully aware once the property is bought that all of the commercial structures will no longer be allowed for anything other than residential use.

Mr. Sweeney stated that would be written in contract and understood.

Mr. Correale stated that it would be written within the resolution as well.

Mr. Williams stated that he believes that the ethical thing to do is that this needs to all be addressed at the closing so that the new owner is fully aware of what stays and can be used for personal use and what is going because it can no longer be used commercially because of the sale and it not being zoned for commercial use.

Mr. Sweeney assured Mr. Williams that would in fact be addressed at the closing and that Mr. Sweeney is sure that Mr. and Mrs. Miller will also be very open and honest to the potential buyer.

Mr. Nelson asked if inventory could be taken and submitted of all of the buildings and structures on the property to keep on file.

Mr. Suckey asked if this was something that could be done fairly quickly and given to the attorney before the resolution is written so that document could be added to the resolution. Mr. Sweeney assured Mr. Suckey that he would have that done by early next week and submit it to Mr. Correale for the resolution.

Mr. Sweeney wanted to ask for clarification that if his client's potential buyer falls through that his clients would then have the opportunity to be able to come forward as some point to apply for a variance.

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Mr. Suckey stated yes that will always be an option for both the current owners and any potential buyers who buy the property.

Mr. Correale stated that he wanted to ask Mr. Estes if he was ok with not seeing the exhibit A1. CO Document from the building department. that was distributed this evening but understood what it was and feels comfortable enough with that to be able to vote.

Mr. Estes stated yes, and that he understood the dialogue and understood what was being addressed.

Mr. Suckey stated that he would take a motion at this time.

Mr. Correale repeated the drafted motion stating that the motion should read as the following: The applicants have proven to the satisfaction of the board that the existing structures on the property have been characterized as non-conforming structures and the variances have been addressed. The firewood company will end its operation. The commercial use of the green houses will decrease. The commercial dwelling above the garage would no longer be used as a commercial dwelling. The attorney for the applicant will submit an inventory of the buildings and structures on the property and submit by the end of the week so the board's attorney could enter that information into the resolution. The applicant and or potential buyer will still be able to come forward in the future to apply for a use variance if the sale does not go through and the current owners want to go forward with the use variance or if the new owner decides that he or she would like to apply for the use variance he or she may be able to at any time.

Mr. Williams stated that he would make the motion that Mr. Correale has outlined for the board.

Seconded by Mr. Estes.

Upon Roll Call Vote:

AYES: **Nidelko, Estes, Williams, Knop, Suckey, Christiano, DeFinis, Schultz**

NAYS: None ABSTENTIONS: None

Approved

DISCUSSION:

Mr. Suckey stated that in the members packet there was an application referencing the renewal license for Hillside Estates (Trailer Park) in Franklin.

Mr. Suckey explained that this is something new and that he spoke to Mr. Brady about it and Mr. Brady feels there are no conflicts however he stated that it should be discussed and on record for the board members to add any input they might have to add.

Mr. Suckey asked if anyone had anything to add or anything that they want to further discuss.

Not hearing anyone Mr. Suckey asked for a motion to approve Mr. Suckey to sign the renewal license for Hillside Estates Trailer Park in Franklin.

Mr. Williams made the motion that we approve that the chairman of the planning board sign the application for the renewal license for the mobile home park Hillside Estates in Franklin.

Seconded by Mr. Christiano.

Mr. Suckey asked for an all-in favor.

All were in favor.

Mr. Suckey said that he would like to have another discussion that was not listed on the agenda because it keeps coming up and Mr. Suckey stated when talking to the Mayor on the phone that he would address the matter at the next meeting.

Mr. Suckey stated that the board needs to discuss a Zone Change for the Armory (Littell Center).

The armory building is currently in a R1 zone. Mr. Suckey stated that he is not sure how or why it would be zoned in a R1 zone.

Mr. Suckey stated that the property next to the armory is zoned as industrial.

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Mr. Suckey asked if the board would be willing to make the Armory building zoned for industrial as well.

Mr. Suckey stated that the building was sold and the new property owners have ideas for the use. Mr. Suckey stated the ideas they have in mind will not work until the property is no longer in a R1 zone and is moved to an Industrial zone.

Mr. Suckey stated if the board was in agreement, the motion would be to authorize Mr. Brady to write a letter to Mr. Ursin the town attorney to start the process of moving forward with making the Armory building property go from an R-1 zone to industrial.

Mr. Suckey stated that he believes that the town council is on board and is just waiting the recommendation from the planning board to begin the process.

Mr. Christiano stated that he knows the back of the property bumps up against wetlands.

Mr. Christiano stated would this have any effect on the wetlands.

Mr. Suckey stated no this would not affect the wetlands at all.

Mr. Suckey asked for a motion.

Mr. Williams made a motion to authorize Mr. Brady to write a letter to Mr. Ursin to change the armory property located in a R1 zone to an industrial zone.

Seconded by **Mr. Nidelko**.

Upon Roll Call Vote:

AYES: **Nidelko, Estes, Williams, Knop, Suckey, Christiano, DeFinis, Schultz**

NAYS: None ABSTENTIONS: None

Approved

APPROVAL OF RESOLUTIONS:

There are None

OLD BUSINESS:

None

NEW BUSINESS:

Historic Preservation Plan

Mr. Suckey explained to the board members that the plan was distributed this evening and it is around 48- 50 pages.

Mr. Suckey stated that Mr. Estes and Mr. Friend would have to come to the Borough hall at some point to pick theirs up.

Mr. Suckey stated that he would like for everyone to read the plan and be prepared to discuss at our next meeting.

Mr. Suckey stated that at first glance he has noticed some corrections that need to be made.

Mr. Suckey asked Mr. Nelson to give a brief background on the plan and how it came about.

Mr. Nelson stated that this was done by the county at no cost to the Borough.

Mr. Nelson stated that the county hired a firm to write this plan that was required by someone in accordance to the new bridge.

Mr. Nelson stated that there was room in the budget that allowed him to put in some input into the document.

Mr. Nelson stated that once everyone reads and reviews, he will discuss and explain anything that needs more clarification.

Mr. Nelson stated that ultimately this is the boards document and the intent is for the plan to be adopted by the board as part of the master plan.

Mr. Nelson stated that this plan does not need to be adopted as is.

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Mr. Nelson explained that modifications can be made.

Mr. Suckey stated that Angela is the women who has worked on this and she is willing to come to our next meeting to discuss and answer any questions any board members may have.

Mr. Suckey stated that once the board is comfortable with any modifications made, we would then adopt the plan.

Mr. Suckey stated this is the last piece to the completion of the bridge project.

DISCUSSION:

Mr. Suckey stated that he needs to bring up an issue that has come to his attention within the last few days.

Mr. Suckey stated that there has been a lot of texts and emails going around amongst the members.

Mr. Suckey stated that he is advising all the members if they have a question for any of the professionals to ask the professionals directly do not cc other members on the email.

Mr. Suckey stated this will be a safe way not to encounter any violations of the Sunshine law act.

Mr. Suckey stated that Mr. Brady and he has discussed this and Mr. Brady has asked Mr. Suckey to mention it again at tonight's meeting to make sure that everyone fully understands that when members and professionals chime in on an email it could get the board into some trouble.

Mr. Suckey stated that he also needs to know if any member needs special accommodations for our meetings, such as a call-in number.

Mr. Suckey stated that he needs to know because he is the one who is making the decisions on how the meetings will be conducted as the chairman.

Mr. Suckey stated that tonight will be the last night that the board will have a split meeting. Mr. Suckey explained from here on out meetings will either be all in person or all conference call.

Mr. Suckey stated when he was talking to Mr. Brady this afternoon on the phone, Mr. Brady stated that there are new rules and guidelines in reference to public meetings from the state.

Mr. Suckey asked Mr. Correale if he agreed and if everything that was just stated was correct.

Mr. Correale stated yes, and that everything makes perfect sense.

Mr. Correale stated that he would just like to add one more point.

Mr. Correale stated that if members of the board go to an applicant's property to get a better picture. However, there should be no dialogue between the board member and the applicant other than explaining to the applicant/ owner who you are and what you're looking for.

Mr. Correale stated that a board member should never discuss the nature of the application with the applicant/property owner.

Mr. Correale stated that would also be another violation.

Mr. Suckey stated that from now on when an application is being presented, Mr. Brady will ask did anyone go on an onsite investigation and or have any communication with the applicant.

Mr. Suckey stated that if you did you would have to let the board know the nature of the conversation with the applicant so it becomes public record.

Mr. Suckey stated just be mindful of those things to keep yourself and the board out of any trouble that may come from those sorts of violations.

2021 Meeting Dates

Mr. Suckey asked if everyone was still ok with the meeting date and times.

The first Wednesday of the month being reserved for workshop meetings if needed and the third Monday of each month being the regular meeting dates.

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Mr. Suckey stated that the January and February meetings will fall on the Tuesday due to the holidays on the Mondays.

OPEN PUBLIC SESSION:

Mr. Suckey stated that there was no public present on the conference call.

Mr. Suckey closed the meeting to the public.

ADJOURNMENT:

Mr. Christiano made a motion to adjourn.

Seconded by **Mr. Nidelko**

All were in Favor.

The meeting adjourned at 9:33 P.M

Respectfully submitted,
Michelle Babcock
Planning Board Secretary