

**WEST AMWELL TOWNSHIP  
PLANNING BOARD MEETING  
May 19, 2015**

The West Amwell Township Planning Board Meeting was called to order at 7:00 PM by Chairman Tomenchok followed by the salute to the flag.

The following statement of compliance with the Open Public Meetings Act as listed on the meeting agenda was read into the record by Chairman Tomenchok: The meeting was called pursuant to the provisions of the Open Public Meetings Act. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and the Times of Trenton on January 29, 2015. Notice has been posted on the bulletin board at Town Hall on May 14, 2015 and has remained continuously posted as to required notices under the Statute. A copy of this notice is available to the public and is on file in the Office of the Planning Board and Township Clerk.

The following general policy statement of the Planning Board was read into the record by Chairman Tomenchok: The Board's general policy is to end the presentation of testimony on applications by 10:30 PM and to conclude all Board business by 11:00 PM. When necessary, the Chairman may permit a reasonable extension of those time limits.

The meeting was recorded via digital recording system and a copy of the CD is on file in the Office of the Planning Board.

**Attendance – Roll Call**

**Present:** Steve Bergenfeld  
Nella Hamtil  
John Haug  
Art Neufeld  
Hal Shute  
Rob Tomenchok – *Chairman*  
Chester Urbanski  
Bob Balaam – *Alt. #1*  
Jim Cally – *Alt. #2*  
Attorney Shurts  
Engineer Burr  
Planner McManus

**Excused:** John Dale  
George Fisher

**Approval of Bill List**

A motion by Mr. Bergenfeld, seconded by Mr. Urbanski to approve the vouchers for payment as listed on the Board's 5/19/15 bill list was approved by roll call vote with Mr. Haug abstaining.

**Resolutions of Approval**

**Resolution PB#2015-07: Approval of Amended Circulation Plan Element**

A motion by Mr. Urbanski, seconded by Ms. Hamtil to approve the amended Circulation Plan Element of the Master Plan was approved by roll call vote with Mr. Haug abstaining.

Chairman Tomenchok suggested the agenda be re-ordered to address the Looking Good, LLC Minor Subdivision application because he suspected the continued discussion on the Investment Group, LLC application would take considerably more time to get through. The Board agreed.

Attorney Mongelli, on behalf of Investment Group, LLC commented that he believes they have resolved all of the issues the neighbors had with his client's project and indicated the balance of their testimony shouldn't take too long to present. An unidentified woman from the public commented that additional property owners are present this evening to express other concerns. Chairman Tomenchok stated that he thought it would be best to hear the Looking Good, LLC application first in order to give the Investment Group, LLC application all of the time they need.

**Applications**

**Public Hearing – Looking Good, LLC – Block 8 Lot 38: Minor Subdivision – 36 Rocktown-Lambertville Road**

Present for the application was Attorney Gavin Oppermann, Land Surveyor Americo Lucchi and property owner Phil Muller.

Engineer Burr referred to his review memo dated 5/13/15 and commented that the applicant had requested waivers from several checklist items, all of which he believed to be reasonable because the applicant is not proposing any land development. Engineer Burr indicated he believes the application can be found to be complete. A motion by Mr. Urbanski, seconded by Mr. Haug to deem the application complete was unanimously approved by voice vote.

Attorney Shurts swore in Mr. Muller and Land Surveyor Lucchi. He noted the following exhibits:

**Exhibit A-1:** The application

**Exhibit A-2:** The public notice

**Exhibit A-3:** The subdivision plans submitted with the application materials

**Exhibit A-4:** The property survey

**Exhibit A-5:** A mounted color-coded subdivision plan Attorney Oppermann brought for this evening's public hearing

Attorney Oppermann explained that his client is proposing a minor subdivision of his property located at 36 Rocktown-Lambertville Road which is known as Block 8 Lot 38 and consists of approximately 31 acres. He indicated the property is in the Rural Residential District (RR-5) and the proposal is to create two lots: The existing Lot 38 will consist of approximately 20 acres and proposed new Lot 38.01 will consist of approximately 11 acres.

It was noted that Lot 38 will contain the existing single family residence and open pasture space. Lot 38.01 will contain the farmstead, a garage, metal barn and open pasture space.

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Mr. Muller came forward and explained that the subdivision was designed around two existing pasture areas with consideration for a potential gas pipeline right-of-way that may be constructed through the property. The proposed subdivision also includes an 8.5 ft. wide easement along the north side of Rocktown-Lambertville Road for future road widening if needed.

Planner McManus commented that when subdividing land, it is always preferred that straight lot lines are created whenever possible. It was the consensus of the Board that in this case, keeping the existing pastures intact and providing consideration for the potential pipeline was more important.

Engineer Burr commented that the ordinance and the Master Plan require a 25 ft. right-of-way from the centerline of the road and noted that in this case only 16.5 ft. exists. It was recommended that an easement be created so the Township can access the property if necessary and the property owner will still own the land.

Mr. Muller noted that his intention is for the parcel to remain farm assessed. He stated that he had spoken with Tax Assessor David Gill who indicated the property will continue to meet the criteria for farmland assessment.

Attorney Oppermann clarified that variances are needed for the pre-existing structures that are within the setback. It was noted that the required setback is 100 ft. and the setback for the house is 88 ft., the barn is 42 ft., and the garage is 45 ft. Attorney Shurts agreed that variances are needed in order to keep the buildings intact.

Chairman Tomenchok opened the floor to public comment. Seeing no members of the public come forward, a motion by Mr. Urbanski, seconded by Mr. Bergenfeld to close to the public was unanimously approved by voice vote.

A motion by Mr. Urbanski, seconded by Mr. Bergenfeld to approve the requested variances to allow the dwelling on the newly proposed lot to be 13.1 ft. off of the augmented right of way, the garage to be located 55.1 ft. from the augmented right of way and the metal pole barn to be located 58.1 ft. from the augmented right of way where the required setbacks for all three structures is 100 ft. The variances were unanimously approved by roll call vote.

A motion by Mr. Haug, seconded by Mr. Bergenfeld to approve the minor subdivision subject to final revised plans being submitted, was unanimously approved by roll call vote.

**Public Hearing - continuation: Investment Group, LLC – Block 3 Lot 21: Preliminary & Final Major Site Plan Approval – 1483 Route 179 (Construction of Warehouse/Office Building)**

Present for the application was Attorney Rich Mongelli, his client Mark Wright, Planner/Architect Michael Burns, his assistant Courtney Haviland and Engineer Eric Rupnarain.

It was noted for the record that Mr. Haug recused himself from discussion on this application.

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Chairman Tomenchok noted that a jurisdictional question was raised at the last meeting regarding whether or not the existing activity on the subject site is permitted in the Highway Commercial (HC) district. He asked Planner McManus to address the matter and she explained that the applicant testified that the existing building on the property is used in conjunction with Strober Wright Roofing, a contractor roofing company and that the building provides office space, storage and other support space to the contractor business with no change to this existing use being proposed.

Additionally, the new proposed building will be used in support of the business in the existing building in that a portion of the materials currently being stored outside will be relocated to inside the proposed building. The floor plans indicate that the front of the proposed new building will be used for office space with the rear portion of the building to be used for warehouse space. It was noted that the applicant testified at the Board's 4/21/15 meeting that the remaining portion of the proposed new building will be available for tenant lease. While the potential future tenant or use is not known at this time; the floor plans indicate this portion of the building is open and does not include any office space and is labeled as warehouse.

Planner McManus noted that the HC district lists permitted uses in section 109-86.B which includes, "Warehousing and distribution activities carried on in a fully enclosed building and where such uses are also associated with office or retail uses." She explained that there are no amendment dates identified for the permitted uses. The conditional and accessory uses are noted as being amended on 3/23/11 and 7/25/12 with the 2012 amendments appearing to only address renewable energy facilities.

Planner McManus continued to explain that Schedule 3 lists many permitted uses in the HC district and was last amended on 3/23/11. She said the schedule includes two uses that could be deemed relevant to this matter: "Business Office" and "Contractor's Office." Schedule 3 is noted as being added 9/2/04 and amended 3/23/11. It was Planner McManus's opinion that Schedule 3 should supersede the list of permitted uses in section 109-86.B since it appears Schedule 3 was most recently amended and it provides more specific use identification. She noted that these findings are consistent with the prior Spectra Energy application. Planner McManus stated that the existing and proposed uses on the Investment Group, LLC Block 3 Lot 21 site appear to be permitted uses in the HC district. She clarified that the applicant will need approval from the Zoning Officer for any subsequent tenant and any proposed use that is inconsistent with Schedule 3 because such activity may require use variance approval from the Zoning Board of Adjustment.

Attorney Shurts commented that he agrees with Planner McManus's analysis and added that section 109-134 entitled, "Storage as Part of a Commercial Operation" says the outdoor storage or display of any article or material that is part of a commercial operation is permitted subject to the following regulations. He explained that those regulations are outlined A-D and he indicated that there is an apparent conflict between this section and the section that says, "Warehousing takes place inside of a building." Attorney Shurts remarked that what the Board has to do is make sense of the entire ordinance and he said outdoor storage is not a use, but rather an aspect of a use and in this case the use is a roofing business not outdoor storage. He clarified that warehousing is a use and the warehousing aspect of the business takes place inside the building. The outdoor storage is different from the warehousing and he said in his opinion both are specifically permitted.

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Attorney Mongelli came forward and acknowledged that any prospective tenant would have to be approved by the Zoning Officer. He also commented that they had presented all of their testimony in April and after hearing neighboring property owner, Mr. Hernandez's concerns they consulted with their landscape architect and have agreed to plant 31 forsythia plants along a fence that will be installed along a portion of the rear property line.

Attorney Larry Wohl representing objecting property owners Eric and Natalie Hernandez spoke up from the public and wanted clarification that "sufficient" planting will be installed which may mean more than 31 forsythia plants.

Architect Burns commented that they will submit their landscape plan to the Board's professionals for their input and review.

Attorney Wohl spoke up from the public again asking Planner McManus for clarification on the definition of "warehouse." Planner McManus remarked that she does not view the language in the ordinance as a definition, but rather a long winded explanation of a permitted use.

Attorney Wohl presented the following exhibits to demonstrate the existing buffering on the subject site is not sufficient:

**Exhibit O-2:** An 8.5"x 11" color photo of the existing trees on the subject site.

**Exhibit O-3:** An 8.5"x11" color photo of the existing trees on the subject site from a different perspective than exhibit O-2.

Chairman Tomenchok opened the floor to public comment.

Sonia Zuccarelli of 10 Ferris Wheel Drive came forward and expressed concerns that forsythia only blooms in the spring and will not provide adequate buffering in the winter. She also asked who is responsible for maintaining the landscaping if it is planted in the conservation easement as it's being proposed. Engineer Burr explained that the applicant will be responsible for posting a performance guarantee and after the certificate of occupancy is issued a maintenance bond will run for 2 years to ensure that the landscaping is healthy and maintained. Attorney Mongelli stated that the applicant will shift the landscaping onto his property and assume full responsibility for maintaining it.

Judy Smith came forward and did not provide her address for the record. She too expressed concern over the maintenance of the proposed landscaping.

Megan Carpenter came forward and did not provide her address for the record. She expressed concern over the newly installed septic system on the applicants other property, adjoining Lot 20.60 and remarked that a large pile of soil was left on the site and is an eyesore. Ms. Carpenter also expressed concerns over noise and lighting.

Planner McManus explained that the HC district does not have a specific noise ordinance and noted that there are noise provisions within chapter 166 which state, "It shall be unlawful for any person to make, cause, suffer or permit to be made or caused upon any unnecessary noises or sounds by means of the human voice or by any other means or methods which are physically annoying to persons which are so harsh or prolonged or unnatural that it is injurious to the lives, health, peace and comfort of inhabitants." She also added that chapter 109 section 153(f) and (g) of the land development ordinance includes

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performance standards for industrial uses and said that while it is questionable as to whether or not this site constitutes an industrial use she said for the sake of comprehensiveness she will provide the language which states, “There shall be no vibration which is discernible to the human sense of feeling beyond the immediate site for which the use is conducted... There shall be no excess noise from any use within the Township. The standard shall be those set forth by the New Jersey Department of Environmental Protection (NJDEP).” Planner McManus remarked that the NJDEP standards are based on noise levels measured from a residential property line to industrial, commercial or community service facilities to be not more than 65 decibels from 7:00 AM – 10:00 PM and 50 decibels from 10:00 PM – 7:00 AM. She noted that the only way for noise levels to be measured at this site would be for the residents to work with the Township’s staff to essentially file a complaint with the Zoning Officer stating there is excessive noise at this location and request that it be investigated and if appropriate, have a noise violation be issued.

Catherine Pellone of 12 Terrell Road came forward and asked if this application was a done deal. She also asked about the noticing and commented this was the first she had heard about the application. Chairman Tomenchok indicated that this was not a done deal. He explained that tonight was the second public hearing on the application and indicated that all of the public noticing was provided in accordance with the Municipal Land Use Law requirements.

Eric Hernandez of 8 Ferris Wheel Drive came forward and asked about vibrations at the site. Planner McManus re-read the regulations outlined in chapter 109 section 153 for Mr. Hernandez’s clarification.

Megan Carpenter came forward again and asked if the applicant is requesting any variances. Planner McManus noted that testimony was provided at the Board’s last meeting regarding the variances and indicated there are 3 they are seeking relief from: The size of the freestanding sign, the light intensity on the property and relief from the required parking lot landscaping. Ms. Carpenter asked if the application complies with all of the required wetlands buffers. Planner McManus indicated that NJDEP has jurisdiction over any wetlands on the site. Engineer Burr clarified that the applicant has received a Letter of Interpretation (LOI) from NJDEP regarding the wetlands and the site is in compliance.

Herb Villa of 30 Ferris Wheel Drive came forward and expressed concerns with noise and asked how long the noise can last at the property line at a specific decibel. Chairman Tomenchok commented that the Planning Board has no jurisdiction over noise issues. Mr. Villa also expressed concern with the forsythia not providing adequate screening in the winter. Planner McManus indicated she agreed that other varieties of planting may need to be added for better buffering.

Catherine Pellone of 12 Terrell Road came forward again and stated that prior to the applicant setting up his business there was open space and now it’s become industrial. She commented that all of the animals are going away because of the development. Several board members commented that the applicant has a right to develop his land.

Seeing no other members of the public come forward, a motion by Mr. Urbanski, seconded by Mr. Bergenfeld to close to the public was unanimously approved by voice vote.

Ms. Hamtil asked Engineer Rupnarain if they had considered turning the proposed new building sideways so that the garage doors would face the existing building on the site and perhaps help mitigate some of the noise. She noted the activity would then be in between the two buildings rather than in the rear, facing the

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residential property owners. Architect Burns indicated that turning the building would not work logistically because they would not be able to maneuver equipment in between the structures. Planner McManus also commented that if the proposed new building was re-oriented it would create a negative view from the public right-of-way along Route 179 which is inconsistent with the Master Plan.

A motion by Mr. Urbanski, seconded by Mr. Cally to grant the requested design waivers/variances for relief from the size of the base of the freestanding sign, the light intensity on the property and the required parking lot landscaping was approved by roll call vote.

A motion by Mr. Urbanski, seconded by Mr. Cally to grant Preliminary and Final site plan approval provided the applicant revise the site plan to address all of the comments outlined in the Board professional's review memos, that a 25 ft. buffer be established on the subject site with fencing and a variety of plantings and that all items discussed and agreed to during the public hearing be addressed was approved by roll call vote.

The Board took a break from 9:15 PM – 9:23 PM.

**Unfinished Business**

**Discussion – Permitted Uses: Conditional Use Requirements and Definitions**

It was noted for the record that this matter will be carried to the Board's 6/16/15 agenda.

**New Business**

**Discussion – Accessory Structures – Possible Ordinance Amendment**

It was noted for the record that this matter will be carried to the Board's 6/16/15 agenda.

**Discussion – Industrial Noise Ordinance**

It was noted for the record that this matter will be carried to the Board's 6/16/15 agenda.

**Open to the Public**

Chairman Tomenchok opened the floor to public comment. Seeing no members of the public come forward, a motion by Mr. Cally, seconded by Mr. Urbanski to close to the public was unanimously approved by voice vote.

**Approval of Minutes**

A motion by Mr. Bergenfeld, seconded by Mr. Urbanski to approve the Board's 4/21/15 minutes as revised was unanimously approved by voice vote.

**Adjournment**

A motion by Ms. Hamtil, seconded by Mr. Bergenfeld to adjourn the meeting was unanimously approved by voice vote.

The meeting adjourned at 9:32 PM.

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Maria Andrews, Planning Board Secretary