

**BOROUGH OF WESTWOOD
PLANNING BOARD MINUTES
PUBLIC MEETING AGENDA
October 2, 2008**

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Worksession/Regular Meeting of the Planning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Mayor Birkner
Otokar von Bradsky
Robert Bicocchi
Thomas Constantine
Jaymee Hodges, Chairman
Ann Costello, Vice-Chairwoman
Councilwoman Cynthia Waneck
James Schluter
Richard Bonsignore (Alt. #1)
Daniel Olivier (Alt. #2)

ALSO PRESENT:

Thomas Randall, Esq., Board Attorney
Ed Snieckus, Burgis Associates, Board Planner
Louis Raimondi, PELS, Board Engineer

ABSENT: William Martin

The following Certifications of having listened to tapes of the Minutes was received from William Martin for the 5/8/08 meeting, Richard Bonsignore for the 3/27/08 meeting and Ann Costello for the 4/24/08 meeting.

4. MINUTES: None

5. CORRESPONDENCE: As distributed on the dais and read;

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6. **VOUCHERS:** None

7. **RESOLUTIONS:** None

8. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS

The Board Professionals were sworn in

1. **GMKC Investments LLC, 75 Bergen Street, Block 1407, Lot 11 - Subdivision - (Ed Snieckus, Burgis Associates recused; David Spatz, Community Housing Develop to act as Substitute Planner) - (Heard 6/12/08, 7/24/08 & 8/14/08) - Carried to the 10/16/08 meeting at request of applicant;**

2. **Dr. David Goldberg Child Care Center from Puccio, Carver Avenue, Block 2110, Lots 10 & 11 - Revised Site Plans received 9/17/08) - Site Plan w/variances (William Martin recused) - Carried to the 11/6/08 meeting;**

3. **Wachovia Bank, N.A. - Remand for Vote of Approval in Accordance with Judge Tosko's Order of 8/8/08 -** Mayor Birkner recused himself on the advice of Counsel, as the matter would be coming before the Mayor and Council. Councilwoman Waneck recused herself as her employer is involved in the acquisition. Thomas Constantine recused himself and stepped down from the dais as the he was not on the Board at the time, and neither was Daniel Olivier, and so he also stepped down. John J. Lamb, Esq. was present with Bruce Meisel. Mr. Lamb stated the Board Members could remain at the dais and deliberate, but cannot vote.

Mr. Randall gave an overview of the background, that Judge Toskos ruled that the Site Plan, Concept B, be approved and remanded the matter back to the Planning Board, which is ordered to conduct a public hearing. Any appeals would be preserved and deferred to the conclusion of the matter. The public notice was given 10 days in advance giving the date and place of the hearing, as well as mailing to property owners within 200'. The Board may impose conditions to the approval, but may not make any changes to the concept of which is being approved.

Jeffrey Hall, Esq. represented Wachovia and stated the Board was up to a motion to approve and the right to impose reasonable conditions, one of which is that Wachovia would go to the Borough Council and work out an agreement on the parking

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proposal. He is confident they will achieve that condition. They submitted a proposal to Mr. Huntington, who advised they would await the approval of this Board before moving ahead. The Council will likewise act in good faith in dealing with them and bring public parking to the area. Mr. Lamb rose, stating there is a jurisdictional issue. Mr. Hall objected. Mr. Randall advised it is a public hearing which was advertised, and if there is a procedural issue raised, it will be noted, but he has not heard it yet. Mr. Lamb had sent a letter via fax late this afternoon.

Mr. Lamb said we first have to decide whether there is an appropriate hearing to be had. First Mr. Hall provided public notice for this hearing. One of the issues he raised in his letter of 10/2/08, which was on the dais this evening. Mr. Hodges stated for the record, the Board had not had a chance to review it. Mr. Randall received it by fax and had read it. He understands the Court Order, but nothing addresses the issue of what happens when there is a pending appeal of this case, and a land use board can act during it. There is still a pending case going on. The Board voted unanimously to appeal it. They cannot appeal it until the end of this hearing. Lower courts lose authority. The law sides with judicial economy. The Board would be going through this for nothing and should not consider this. Further, there were many plans circulating around, and Wachovia should have filed the exact plan for which this remand hearing is being held. There is no plan on file for the public to review. Also, Wachovia is being taken over by Citigroup, and what is the status. The other thing is, if you look at the Board's decision, that a preliminary, not final site plan approval be granted with conditions. As a result of that, he commented they should go before the Mayor and Council. Mr. Hall objected. Mr. Lamb said this will lead to a procedural question. Mr. Randall advised it must be a procedural issue. Mr. Lamb stated the issue is whether a subdivision approval by a consolidation of lots is part of this. Lastly, they disagree with the Judge's decision.

Mr. Hall addressed those comments. The subdivision issue should have been raised in Court. The Intervener chose not to. Wachovia is still the applicant. There is a handshake with CitiGroup, and if the deal goes through, it will likely take over this branch. He agreed he did not file 10 days in advance. They filed in April, and they are only required to file once.

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He addressed the case law cited by Mr. Lamb and disagreed with citing the Morton case.

Mr. Lamb stated the parking lot was not part of the application. Mr. Lamb asked if there were existing leases and contracts. Mr. Hall said they are still in effect. There were counts raised on the site plan and adjudicated on with finality. There is another rule governing appeal, and it is not final.

Mr. Randall advised the appeal is preserved. There are plans currently on file; he has no idea if the public would know what Concept "B" is. There may be an issue with notice or the Board's requirements for submission of plans 10 days in advance. Nonetheless, we are operating under Court Order and obligated to not go beyond 60 days. Whether we agree or disagree with Mr. Lamb, it is not our prerogative. Our duty under the Court Order by Mr. Toskos is to go forward and hear this matter. Mr. Hall filed the notice 10 days in advance and the notice states plans are on file. He is not in a position to be in contempt of Judge Toskos' Order. Mr. Hall made an effort to clear up Concept "B", as he observed there was some confusion. He requested a five minute adjournment while he had a discussion with his client.

Mr. Hall returned and proposed to the Board to request an adjournment to 11/6/08 and would provide for submission of the plans and not seek an enforcement of the order and/or would agree to enter into a consent order to extend the time within which the board has to act. R. Randall advised the Board would prefer a Consent Order. If the Board would indulge them they would take care of this one issue. The matter was adjourned to the 11/6/08 meeting. Mr. Hall asked for an announcement without notice being required. Mr. Randall advised to the effect there are not defects in the notice, there would be no further notice.

Mayor Birkner, Councilwoman Waneck, Mr. Constantine, and Mr. Schluter returned to the dais. The time was 9:10 p.m.

9. DISCUSSIONS:

1. Draft Open Space and Recreation Plan dated 7/8/08 by Ed Snieckus, Burgis Associates - Ed Snieckus distributed the final version of Open Space & Recreation Plan dated 9/18/08. Mr. Snieckus gave an overview. The purpose of plan was to

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assist the Borough in achieving the goal of being committed to protecting open space and providing a full range of recreational activities to the citizens of the Borough, as well as the related goals detailed in the Borough's Master Plan. In order to achieve those goals, this plan includes an assessment of the Borough's existing open space and recreation facilities and its environmental characteristics. It further analyzes the current and future recreation and open space needs of the Borough and provides recommendations based on these assessments. Conserving natural places allows important biological resources and natural habitats to remain in tact and remain ecologically healthy. Economically, open space and recreation areas, together with historic and cultural sites, generate value to the Borough by promoting a desirable community, balancing the built and natural environment and promoting vitality and commerce.

Mr. Snieckus continued. The Plan spoke to consistencies with the Borough Maser Plan, Bergen County Open Space Plan, State Development and Redevelopment Plan and Open Space and Recreation Goals and Policies. Background information was provided, such as demographics and environmental resource database. There was also a needs analysis, wherein the use and need of fields for sports related activities became very apparent. Alternative modes of transportation, i.e., a bikeway, was recommended. Lastly was an open space acquisition analysis. Several maps were attached. Mr. Snieckus completed his presentation and explained the next step would be Board discussion followed by a vote.

Comments from the Board followed. Mayor Birkner thanked Mr. Snieckus for an excellent report and plan, stating it is very important to the Borough. The key components were driven by the various recreation groups. It will go a long way with future grant funding and gives a much clearer direction of the path the Borough would want to go, and he should be commended on doing such a terrific job. Mr. Olivier said it was a brilliant booklet. Mr. von Bradsky echoed the comments, and Mr. Schluter agreed, stating the bike trail was a great concept. Councilwoman Waneck asked if the schools were aware of this, and Mr. Snieckus stated they were. She was very pleased with the bikeway; the Mayor and Council had been discussing same. Mr. Constantine commented it was an excellent report and commented the fields and bike paths were needed, elaborating, and he looks forward to them. Ms. Costello commented it is a great document.

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Chairman Hodges commended Mr. Snieckus on the plan and commented he would be interested in an ice hockey rink. Mayor Birkner elaborated on the ice hockey program that was in the works at the High School with River Dell. A motion for approval was made by Ann Costello and seconded by Thomas Constantine. On roll call vote, all members voted yes.

2. Update of Site Plan Application - Mr. Snieckus explained the intent is to update the application and checklist and solicited any suggestions from the Board. Any amendments would have to be officially adopted by the Board. Mr. Bicocchi asked if the applicant was aware of the professionals' rates in advance and felt they should be advised of same. The procedure was discussed. Mr. Hodges stated the Board will continue to review this. Any recommendations may be emailed to Mr. Snieckus. There were no further discussions

10. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approximately 9:20 p.m.

Respectfully submitted

**MARY R. VERDUCCI, Paralegal
Planning Board Secretary**