

PRESENT: David Stringfellow, Chairman
 Paul Ziarnowski, Vice Chairman
 Jennifer Lucachik, Secretary
 James Liegl
 Mitch Martin
 Mary Ann Rood

ABSENT: David Bowen

ALSO	Thelma Faulring	Secretary to the Boards and Committees
PRESENT:	Ralph Galluzzi	Raphael's Restaurant
	Julie Galluzzi	Raphael's Restaurant
	Steve Rood	Observer
	Sean Hopkins	Heinrich Road Subdivision
	Andrew Romanowski	Developer – Heinrich Road Subdivision

Chairman Stringfellow called the meeting to order at 7:30 PM. Mr. Stringfellow asked if there were any corrections or additions to the minutes of October 28, 2014.

Mr. Martin: I'm marked as being present but I was not.

With that correction, Dr. Ziarnowski made a motion to accept the minutes, seconded by Mrs. Lucachik and carried.

Mr. Stringfellow asked if there were any corrections or additions to the Public Hearing minutes of November 12, 2014.

Mrs. Rood made a motion to postpone accepting the minutes of November 12, as the members only received the package this afternoon due to the blizzard last week, seconded by Mrs. Lucachik and carried.

CORRESPONDENCE

Secretary Faulring reported:

- Received Town Board letter dated November 6, 2014 tabling decision on appointment of Joseph Gallagher

Mr. Liegl: What does that mean? If it's tabled that means it's up for discussion again, doesn't it?

Secretary Faulring: I don't know what it means, there is no explanation. I did go back through my notebook of requests and appointments and compiled a list of correspondences:

- Presumably in May, there was no date on the letter, Mr. Gallagher sent a letter requesting appointment to the Planning Board
- Memo dated June 6 –Town Board forwarded Mr. Gallagher's request to the Planning Board
- Planning Board letter dated June 19 – sent to Mr. Gallagher requesting an interview on June 24, before making a recommendation to the T. B.
- June 24, 2014 meeting - tabled making a decision
- July 24 P.B. letter to Mr. Gallagher for second interview on August 12
 - Mr. Gallagher was a no-show
- August 12 meeting – P.B. 5 to 1 vote against appointment of Mr. Gallagher
 - Letter sent to Town Board
- T.B. memo dated September 4 to P.B. requesting that Mr. Gallagher be given a opportunity for a second interview
- P.B. letter dated September 15 to Mr. Gallagher advising that T.B. had requested a second interview
 - Mr. Gallagher was unable to attend
 - Mr. Gallagher asked for another opportunity for an interview
- P.B. letter dated October 3 to Mr. Gallagher advising of request for an interview on October 14
 - Mr. Gallagher was unable to attend
- P.B. letter dated October 21 to TB from the meeting of October 14;
 - Motion for recommendation to the Town Board not to appoint Mr. Gallagher...given the opportunities for a second interview...scheduled just 15 minutes prior to Planning Board meetings...appears obvious that he does not have enough time to attend Planning Board
- T.B. memo dated November 6 to P.B. – tabled decision of appointment for Joseph Gallagher

Mr. Liegl: So if they tabled it they've neither accepted or rejected what we said.

Secretary Faulring: Right.

HEINRICH ROAD SUBDIVISION

Mr. Stringfellow: For those of you who were not at the final Public Hearing, the Plat submitted was absolutely identical to what was submitted for the Preliminary Hearing which was approved. There was a motion to approve the subdivision at the meeting, there were only 4 members in attendance; by the Town Code for a vote to pass it requires a majority of the Planning Board members, whether those members are there or not, it's a 7 member board, 4 members were there, everybody had to vote yes or it was not going to pass, there were 3 yes votes and 1 abstention. An abstention is exactly the same as a 'no' vote; there was a quorum present, the vote legal and it did not get enough votes to pass. Personally I was very surprised but it happened. Where we are now I don't know, I certainly wish Mr. Kobiolka was here with us. Is there anyone here representing the applicant for that Heinrich Road Subdivision?

Mr. Romanowski: I don't have much to add from the last meeting. Do you want me to summarize the project?

Mr. Stringfellow: I am quite frankly lost; I do not have the Town Attorney here to advise me; he and I did talk after the meeting; there were 4 members present, that is a quorum by Code it must have 4 votes to pass, the Board is 7. It got 3 yes votes and 1 abstention, so it did not pass and I just don't know what to do about that, I don't have any problem with it.

Mr. Romanowski: I asked Sean Hopkins to be here with me because procedurally I don't...

Mr. Hopkins: I thought that the Board then rescinded the vote at the last meeting.

Secretary Faulring: They made a motion to table until this meeting.

Mr. Hopkins: You're absolutely right a 3 to 1 vote is not an approval. So I think why we're here tonight is that you wanted more Board members here, so we were asking to vote on the application that is pending in front of you.

Mr. Stringfellow: There was considerable opposition from the citizens who were present; I do not have an attorney to advise me; I am not going to take your attorney's advice on what the Board should do, I should not be taking the client's attorneys advice; so my recommendation is that we simply table this again until I have legal advice.

Mr. Hopkins: Say at the last meeting this Board had voted, and I'm not being your attorney I understand, but say at the last meeting this Board had voted 4 to 0 to deny it; at the next meeting you can reconsider that decision, it's not binding, only at the next meeting, that's our problem if you don't take action tonight then we could be in a legal gray area, because this is the next meeting. It's New York State Town Law, remember you're governed by New York State Town Law just like any other Town Planning Board.

Mr. Liegl: Define legal gray area. Gray area means you could be partially right, you could be partially wrong.

Mr. Hopkins: If the only time you can reconsider your vote is at the next meeting, meaning if you table it tonight and then wait to a subsequent meeting then if you didn't you can't reconsider it can't reconsider it basically, you're stuck with it. but it's my understanding at the last meeting it was tabled so there would be further...

Mr. Liegl: So what if we vote to table it?

Mr. Hopkins: Technically at the next meeting you can't reconsider.

Dr. Ziarnowski: Is there any reason Andy can't come back and say 'I'm putting this all out here again'? and we go through the same thing and have enough people and we vote it in. To me it's a...

Mr. Hopkins: Aren't there enough members here tonight to vote?

Dr. Ziarnowski: Yes there are.

Mr. Hopkins: If the Board were going to vote say subject to 'confirmation of proper procedure by the Town Attorney' I'd be okay with that; I'm not your attorney, I can't speak for your attorney, I know Michael very well, I could call him. We understand the residents don't want...; it is his right and I think we've addressed all the technical issues. The other problem is we have enough members here and if we table it you just never know then at the next meeting who's here, that's how it goes.

Dr. Ziarnowski: David, if we table it tonight do we have to go through the two Public Hearings again and start all over?

Mr. Stringfellow: As far as I know we would. I do not have Mr. Kobiolka here to advise me.

Mrs. Lucachik read from the minutes of the last meeting: Mr. Kobiolka: 'if the applicant asks us to place it back on the agenda, he certainly has the right to do that, and I'm sure you want to do that.' Mr. Romanowski: 'I would like to do that.' Then a motion was made to table.

Mr. Hopkins: So clearly no one left thinking that it was denied.

Mr. Stringfellow: The neighbors left thinking it was denied.

Mr. Hopkins: The problem is if we get stuck in the position where we have to back and start the process again, then Andy is in a legal dilemma, because if then the Board doesn't approve it the statute of limitations for him to challenge the decision is gone, we're stuck. Remember it's only a 30 day statute of limitations to challenge a Planning Board decision under New York State Law and that's to Andy's detriment.

Secretary Faulring: Couldn't he file and Article 78?

Dr. Ziarnowski and Mrs. Lucachik asked ‘what is that?’

Mr. Hopkins: An Article 78 proceeding is just a type of proceeding under New York State Law to challenge a decision by an administrative board, it would go to New York State Supreme Court and the reviewing judge would have to determine whether this Board’s decision was arbitrary and capricious.

At this point several attempts were made to reach Town Attorney Kobiolka by telephone – home, office and cell – no answer at any number.

Dr. Ziarnowski suggested that we move on to the next agenda item and come back to the Heinrich Road Subdivision discussion.

PROPOSED ‘RAPHAEL’S RESTAURANT’ – 8936 BOSTON STATE ROAD

Mr. Stringfellow: They have submitted a site plan. For any of the members that don’t know this building has been a restaurant previously; last time it was Brick Oven Pizza, so it’s the same building, the same lot.

Correspondence:

Mr. Stringfellow summarized Mr. Brox’s review:

- Mr. Brox’s review indicated 10 spaces, should be 20 spaces
- Is a reuse of an existing restaurant
- Is consistent with the Comprehensive Plan
- Parking
 - is more than adequate
 - with additional parking for employees
 - remove 4 parking spaces from the front, those nearest the road
 - replace those 4 spaces with green space

A very lengthy discussion followed including and will be categorized under the individual topic:
(abbreviated comments and not full statements for these minutes)

RG = Ralph or Julie Galluzzi – Restaurateur’s

PBM = Planning Board member

PBM Parking spaces

Measurements appear to be too small, determined to be correct

More provided than required

Remove the 4 spaces closest to the curb cut

Limits on how close parking spaces can be to bordering residential properties

PBM Signage

RG Plan to raise it 4 feet, current position obstructs view exiting out of parking lot
60” by 48”

Lit from under awning like it is now

PBM Seeing as how we just got this today, is it fair for us to be doing this?

PBM So far we have not approved a conceptual plan, so there are things on this that he is going to have to go back and change

RG Third time here

Want to open on December 3

Working on this place since August

Health inspector is coming on Monday

Talking about a couple of parking spaces and a sign

Willing to do what you want

This is an existing restaurant

Didn’t realize you couldn’t just open because it had been closed for over 12 months

PBM It is an existing building

There are several things on this property that do not meet the Code today, but probably did meet the Code when this first became a restaurant

When that is the case we try to bend a little because it gets to be a hardship at times

PBM (continued)

We are willing to bend a little but the process is you come first for a review of the concept, to let the Planning Board know what it is you plan to do

You submit enough information to see what you're planning and we make comments on it

Then you come back for a Final Review of your site plan

Then we refer it to the Town Board

The Town Board approves or disapproves

The Planning Board is simply an advisor to the Town Board

Don't believe the Building Inspector will give you a Certificate of Occupancy until the Town Board approves

RG I know he won't

PBM The Town Board meets the first Wednesday of the month, December 3rd

You couldn't possibly get a Certificate of Occupancy until December 4th

RG What if put it off until the 10th can I make it by then

PBM Probably not

There are a few things here that need to be changed

RG What do we need to do to change these things

PBM Lighting

RG Will use existing lighting on building

Will be enough to light up parking area

PBM Screening from neighboring residential property

RG Have fence on this side

Hedges on the other side

Fence along the back

PBM I would like to table any further discussion, we just got this today and there is a lot to be done

The man you paid to do this site plan should have been looking at the Code

PBM Dumpster

Code requires a dumpster to be as far back as the rear line of the building

RG Dropped off today at rear line of building against the fence

PBM Rear line of the building goes back beyond fence, rear line of the lot

RG That's an apartment, that has nothing to do with my restaurant

PBM There is a gate in the fence, probably for a dumpster

RG The landlord won't allow me to put a dumpster there, because of the apartment

Should I put the garbage at the street and not have a dumpster

PBM Will the garbage pick it up

RG I'm trying to be reasonable here

If I don't open in December I will be out of business

I don't understand what's going on here

PBM You need to get professional advice

RG I went to Frank Whelan

I told him everything he needed to know

Is 100% not correct or 10% not correct

Mrs. Lucachik read from information packet given to applicants for requirements.

PBM Your renting this space?

RG Yes

PBM I'm lost without the attorney here but I believe the owner of the property is responsible for this, not you

RG Regardless if he is or I am it's being done

We thought that because it was an existing restaurant we could go ahead with opening a restaurant

It's when came to the Building Inspector that he told us that because it was closed for more than 12 months that we had to go through this

PBM We want you to open your business; all we're trying to do is get you to understand what needs to be done so that you can get it done as quickly as possible so that you can open up and I can come and eat; you have to follow Code

- RG Do I have to go through this whole thing again
- PBM Unfortunately you'll have to, but the onus is really on the person you hired to do this, and they should be here with you do take notes and do it right
- RG Why couldn't we open and make the changes while we're open
We're only talking about parking spots; sign and dumpster
- PBM It's like driving your car without an inspection, you just can't do it
You can't get your permit until this is done
- PBM Is a temporary Certificate of Occupancy a possibility here? In other words you can't open a business until you have a Certificate of Occupancy; normally it says 'you're good to go and you're good to go forever' but if there are things that need to be done the Building Inspector may be willing to issue a temporary Certificate of Occupancy which lets open but within some certain time you have to bring it up to Code
- RG That's what I'm asking
- PBM I cannot speak for the Building Inspector or Code Enforcement Officer I don't know if he will do that or not

Mr. Stringfellow: The best thing I think for tonight is that you talk to the Building Inspector and see if he will issue a temporary Certificate of Occupancy.

Mrs. Lucachik: The Town Board will make the final decision after we make a recommendation to them.

Mr. Hopkins: Can I say something that's an idea even though I'm not involved. Could the Planning Board consider tabling it, if you're going to table it and make a recommendation to the Town Board that 'if appropriate by the Building Inspector give them temporary C.O. You're not endorsing, because you can't endorse it but at least that puts them in the running so you can report that's what the board did.

Dr. Ziarnowski: What if we do that and we don't like the final plan.

Mr. Hopkins: He'd have to change it. The temporary C.O. expires; it's at his own risk. And the Building Inspector may not be willing to do it but at least it's a possibility.

Mr. Martin: I make a motion to recommend to the Town Board, after Code Enforcement has a conversation with the business owner to give them a temporary C.O. a timeframe being set by the Code Enforcement Officer and the Town Board

Mrs. Lucachik: I'll second.

Mr. Stringfellow: The motion is open for discussion. The motion is as I understand it is that we table it now and we Recommend to the Town Board that subject to approval by the Code Enforcement Officer the applicant be issued a Temporary Certificate of Occupancy.

Dr. Ziarnowski: Then he still comes back to us, does this by the book?

Mr. Stringfellow: Yes.

Mrs. Galluzzi: When do we come back?

Mr. Stringfellow: You have to be all the way through the process before the temporary C.O. runs out or you're out of Business.

Mr. Martin: If they give you a C.O. for 90 days you've got to get this done both submitted back to us, approved, sent to the Board and they approve it before the 90 days are up or you're out of business, You do it now, within the 90 days.

Mr. Galluzzi: I can have this done in a week, I'll be talking to Frank about this tomorrow and he'll get this done,

Dr. Ziarnowski: My final question is who's watching the clock here? I'm not watching the clock, I don't think we're watching the clock.

Mr. Stringfellow: The Code Enforcement Officer will be in charge of that. Any other discussion? All in favor of the motion please say aye.

Dr. Ziarnowski was opposed to the motion; all others were in favor of the motion.

Mr. Stringfellow: Please tell your engineer not just the things that we discussed here, he needs to get the Code, read the Code and provide everything that the Code says to provide.

Mr. Galluzzi: And that's all on the website?

Dr. Ziarnowski: Yes and if he goes to e-code 360 you can go right to it and it's all there.

Mr. Martin: Sir and if he misses something that is in the Code and we catch it he is going to do it again, so he should read it carefully. He should come to a meeting.

HEINRICH ROAD SUBDIVISION

Mr. Stringfellow: Have we gotten anywhere with Heinrich Road Subdivision.

Mr. Hopkins: We didn't get ahold of Mike. I think everyone in the room agrees on the premise – the Board did not take a final vote last month otherwise why would it be tabled, why would we be here; so do we accept that premise?

Mr. Stringfellow: I thought it was final; there is no provision in the law for re-voting if you don't like the way it came out.

Mr. Hopkins: Are the minutes from that meeting; is the resolution filed? Of course there is.

Mr. Stringfellow: The minutes are 'draft' minutes at this...

Mr. Hopkins: Filed with the Clerk and stamped?

Dr. Ziarnowski: They weren't approved tonight.

Mr. Hopkins: Then right now you can vote. Town Law Section 276 – 9: Filing decision of Final Plat within 5 business days from the date of adoption of resolution stating the decision of the Board on the Final Plat the Chairman or other duly authorized member of the Planning Board shall cause a copy of such decision to be filed in the office of the Town Clerk. No decision is filed, it's not a final vote. So if it's not a final vote, tonight you can vote.

Dr. Ziarnowski: I think it's agreed upon that the project is a go, at least it is in my mind; but it's a procedural thing of the legality of how we get it done and so that's why we're at a standstill.

Mr. Hopkins: Here's what I propose. If we can agree that the Board didn't vote last meeting then Andy doesn't have to worry, otherwise he has to start a lawsuit right away.

Mr. Stringfellow: The Board did vote last meeting.

Mr. Hopkins: But then you tabled it.

Discussion between Mr. Stringfellow and Mr. Romanowski whether decision stands or was it tabled from the last meeting.

Mr. Stringfellow: It was agreed that we would put it on the agenda for the next meeting.

Mr. Stringfellow: In the absence of any legal advice I will make a decision that we will vote again on this and if it's wrong, it's wrong. I don't know what else to do, there is no lawyer here to tell me.

Mr. Martin: Could we make a motion that as long as it's legal...

Mr. Hopkins: I'm okay with that subject to Town Attorney verification, that's fine

Mrs. Lucachik read from page 6 of the 'draft' minutes of November 12, where Mr. Kobiolka explained that the applicant could request to be put on the agenda for further consideration; Mr. Romanowski did make that request.

Mr. Martin: I make a motion to take the Heinrich Road Subdivision off the table to take a vote.

Mrs. Lucachik: Second.

There was no further discussion. All were in favor of the motion.

Dr. Ziarnowski: Did you get a timeframe the drainage?

Mr. Romanowski: We didn't get a timeframe, we got an quantification on the dollar amount of \$30,000.00 I believe, but no timeframe.

Dr. Ziarnowski: I think that should be in the motion. What's the normal 2 years, 5 years?

Mr. Stringfellow: In my opinion it is the responsibility of the Town Engineer to review the plat and ascertain that the drainage is proper and adequate and in my opinion there should not be any condition or any bond required. That is my personal opinion on the subject.

Mr. Romanowski: We have done that, that was submitted on the plan, I believe before the preliminary with the grading and the rip-rap, that all went to the engineer.

Mr. Stringfellow: The motion as it was made included the bond for the drainage, correct?

Dr. Ziarnowski: Yes.

Discussion followed regarding Mrs. Rood's presence during the subdivision discussion if she abstained on the last vote and is planning to abstain on a new vote.

It was determined that she did not have to recuse herself or be out of the room for discussion.

Mr. Romanowski made the following comments:

- I reluctantly agreed to the drainage
 - because it was addressed with the engineer
 - in my experience once that happens there really isn't a need to post a bond
 - it's hard to monitor, which pretty arbitrary

Mr. Liegl: I have to apologize; I just got on the Board so a lot of this for me is...I'm voting on something that I don't have full knowledge of and also I would have been at that meeting but when I was put on the Board I also mentioned there were certain dates that I wouldn't be here and that was one of those dates; it was unfortunate because I think that would have solved a lot of problems here.

Mrs. Lucachik: I make a motion that we vote again on the Heinrich Road Subdivision removing the bond for the drainage.

Mr. Stringfellow: Is there a second on that?

Dr. Ziarnowski: I second it.

Mr. Martin: I'd like to discuss that. We need to add an amendment that it be approved by the Town Attorney; the legality of this vote. I making the recommendation that you amend your motion.

Mrs. Lucachik: I am amending the motion that we approve the Heinrich Road Subdivision minus the drainage bond with the final review and approval from our Town Attorney that we were following the process correctly.

Mr. Martin: I second the amendment.

Mr. Stringfellow: Any discussion?

Mr. Stringfellow: Being no further discussion, Thelma would you do a roll call vote please?

Secretary Faulring:	Mr. Bowen	absent
	Mr. Liegl	yes
	Mrs. Lucachik	yes
	Mr. Martin	aye
	Mrs. Rood	I abstain
	Mr. Ziarnowski	yes
	Mr. Stringfellow	yes

You have 5 yes in favor of the motion.

Mr. Stringfellow: The motion passed subject of course to the Town Attorney's telling us it was okay to this.

Secretary Faulring: What do I do with the plans?

Mr. Hopkins: Have the Planning Board sign them and you hold onto them until you get the gree light from Michael that they can be released to Andy so that they can be filed.

LIAISON – COUNCILMAN BOARDWAY

Mr. Stringfellow: Continuing with the agenda. Liaison Councilman Boardway, he's not present.

Dr. Ziarnowski: Can I say something about that? I'll go on record okay that we ask the Town Board to get us a representative on this Board that shows up. Thanks.

TOWN ATTORNEY KOBOLKA

Mr. Stringfellow: Town Attorney Kobiolka, he's not present.

Mr. Stringfellow: Next adjournment by motion. Who wants to make the motion?

Mrs. Lucachik: I make a motion that we adjourn the meeting (8:45 PM).

Mr. Stringfellow: I second.

All were in favor of the motion to adjourn.

Respectfully submitted,

Thelma Faulring
Secretary to the Boards and Committees

Time did not allow for a Work Session.