

**TOWNSHIP OF EGG HARBOR
PLANNING BOARD**

October 21, 2013

Solicitor: Christopher Brown, Esq., (Stanley Bergman, Esq., in attendance)

Engineer: James A. Mott, P.E., of Mott Associates (Robert Watkins not in attendance no Engineering)

Planner: Vincent Polistina, P.P., of Polistina and Associates, present

A and regular meeting of the Planning Board of Egg Harbor Township was held on the above date, 5:30 p.m., prevailing time, Egg Harbor Township Hall, Egg Harbor Township, New Jersey. The Chairperson opened the meeting by reading the statement in compliance with the Open Public Meetings Act.

Roll Call taken as follows:

Manuel E. Aponte, Vice-Chairperson, present	Robert Levy, on vacation
Committeeman John Carman, present	Mayor James J. McCullough, Jr., another engage.
Milas Cook, Alt. #I, present	Peter Miller, Township Administrator, present
Charles Eykyn, present	Paul Rosenberg, present
James Garth, Sr., Chairperson	MD Shamsuddin, Alt. #II, arr. 5:35 p.m.
Frank Kearns, present	

OTHER MATTER(S):

1. **MASTER PLAN AMENDMENT:** Discussion and review of proposed amendments to the 2002 Master Plan.

Township Administrator Miller advised would like to propose some changes to the amendment of the 2002 Master Plan. He asked Planner Polistina to note on Page 1, under introduction, sentence two (2) that the Judge did not overturn the decision of the Board but interpreted the Township zoning, therefore, he would like it changed from overturning to "rendering" an interpretation of the Township zoning.

Township Administrator then referred to Page 1, under "background and objectives" he advised that paragraph two, Neighborhood Commercial is referenced and it should be Neighborhood Business. He also asked that a clarification be added that states "in 1976 there was no such things as business zones in Egg Harbor Township when the Zoning Ordinance was adopted".

Township Administrator Miller advised Board Planner Polistina used a very strong example as to the interchange between business and commercial terminology. Board Planner Polistina stated there were no business zones in the Township in 1976, they were all commercial zones. He advised businesses were allowed in them, however, Township Administrator Miller advised the Township did not have anything called a business zone until the 1990's.

Township Administrator Miller referred to paragraph 4, at which time he stated he may be editorializing, however, the Judge interpreted that a second use on site is not permitted outside the Pinelands areas. Township Administrator Miller advised the intent of the comprehensive management plan was not to make businesses outside of the Pinelands area come in for a use variance to place a sign up. Board Solicitor Bergman advised that he believes this is correct. Township Administrator Miller stated this, in a way, is what his ruling states. Township Administrator Miller stated somehow we need to clearly state we are reacting to this and should be outlined at the end of paragraph 3.

Township Administrator Miller advised that in the 30 years of this he has been taught by Judges and Attorneys alike that there are purposes in zoning. He stated if it is not expressly permitted it is prohibited if expressly prohibited it is permitted. Township Administrator Miller indicated the ordinance expressly prohibited multiple uses in the Pinelands area and allowed then in other zones. He indicated if the Township expressly prohibited this the zoning ordinance would have expressed it.

Township Administrator Miller asked if this is something that needs to be addressed. Board Solicitor Bergman advised the Board should make their intent as expressive as possible. He stated someone can look back 20 years from now and know exactly what the specific intent was. He advised the more expressive the better. He further noted, the Township should not use legal premise but more toward the facts of Township and why it is referenced.

Township Administrator Miller advised the Township did not add the professional office zone until the early 1990's. He asked on Page 2 under the chart there could be something added that references this information with the specific date of when we identified business districts and it should be added that no business zones were adopted when the zoning ordinance was created in 1976. Again, he advised this is based upon the Judge's reading of the ordinance and inferring that if we allowed signs in commercial zones the Township would have noted it.

Board Planner Polistina stated this argument is not difficult to overcome. He stated Township allowed signs, free standing signs and outdoor advertising within commercial and business zones since they were interchangeable and it has been this way since 1976. Township Administrator Miller advised the objector's planner also agreed this was not a prohibition either. Board Planner Polistina stated he will add.

Township Administrator Miller stated on Page 3, some of the language is taken from the existing master plan. He advised under "Business" it discusses "a zone will be located along Hingston Avenue", however, this has been done. Board Planner Polistina stated the text was taken verbatim out of the 2002 Master Plan. Township Administrator Miller stated maybe something could be added that these changes have already been done based upon the 2002 Master Plan. Township Administrator Miller again, referring to Page 3, under "commercial", paragraph 4, again, something should be added that this has also been accomplished.

Township Administrator Miller, still referring to Page 3, paragraph 5, Marine Commercial, asked if something can be added that under the 1982 amendment to the zone allowed for diverse commercial uses. He indicated Board Planner Polistina has paraphrased the purpose, but did not point out what that purpose did, which was to allow for more diverse commercial uses.

Township Administrator Miller advised, Page 3, last paragraph under commercial, again since the Township did create the GC zones it should be referenced that it was completed.

Township Administrator Miller referred to Page 5, sign chart, under the second chart, the language that "no lights of intermittent or flashing type permitted" and then the language for "Changeable message" is current and consistent. Township Administrator Miller asked that within the last paragraph on Page 5, where it discusses 1,000 feet a reference be placed that it is in accordance with the New Jersey Department of Transportation standard of measurement. He indicated we have been using this standard for 20 years and we need to make sure it specifically referenced as to why we use standard.

Township Administrator Miller refer to Page 6, under “relationship to other plans” the second paragraph can you place in there that Egg Harbor Township was the fastest growing municipality from 1990-2010 which is based upon census information and I believe it is important that people understand what this Board has been doing and that we have dealt with the most activity then anyone in the State.

Township Committeeman Carman: advised he does not believe billboards should be allowed in the MC zone. He advised there are four (4) zones and the Township should not allow them there. Township Administrator Miller advised on the Margate Boulevard there are existing billboards. He indicated in the Marine Commercial Zone there is a proposal that they will have a different standard then within the other zones.

Township Committeeman Carman advised he does not believe they should be permitted in the MC zone. Board Member Aponte advised he is concerned about taking rights away from owners that already exist. Township Committeeman Carman advised they are grandfathered. Board Member Rosenberg asked if the existing signs would be able to be converted. Board Planer Polistina stated the owners would be able to do certain things, however, he would not commit based on the Department of Environmental Protection requirements that some of the existing could be replaced.

Board Member Rosenberg stated he has concerns with impeding upon or restricting in the future. Board Planner Polistina advised there are two (2) areas, one on the Margate Boulevard and the other on Somers Point Mays Landing Road where billboard(s) exist. He advised the Board could do something for just these two (2) zones. Township Committeeman Carman advised there are four (4) zones, Margate Boulevard, Ocean Heights Avenue, Longport Boulevard, and Somers Point-Mays Landing Road. Board Planner Polistina stated the Board could treat them differently.

Chairman Garth stated there appears to be wetlands that run up to the road that would be a concern. Board Planner Polistina advised there are some up lands in these area(s). Board Member Rosenberg stated changes could occur overnight to the requirements. Board Planner Polistina stated the existing billboards are grandfathered. Again, he stated the Board could treat the two (2) areas will billboards differently than the others. Township Committeeman Carman advised they should be taken out of the zone completely.

May the record reflect: the Board voted as follow(s):

Motion Carman/Aponte no billboards to be permitted in the MC Zone: Vote 3 Yes: Carman, Cook, Garth. **6 No:** Aponte, Eykyn, Kearns, Miller, Rosenberg, Shamsuddin.

Vote was taken to not allow billboards within the MC zone. Vote did not pass. Second vote was taken to leave billboard within the MC zone.

Motion Miller/Kearns to leave language as currently written for MC zone to permit static billboards no more than 600 sq. ft., Vote 6 Yes: Aponte, Eykyn, Kearns, Miller, Rosenberg, Shamsuddin. **3 No:** Carman, Cook, Garth.

Vote passed to keep language within the proposed amendment of the 2002 Master Plan to allow static billboards within the MC zone no more than 600 sq. ft.

Board Planner Polistina advised this amendment is no different than what the Township has been doing since 1976. He advised the Board will conduct a public hearing on the amendment next month, the Township Committee will introduce the ordinance(s) if they chose.

Board Member Eykyn asked if it is clear as to the measurement of the 1,000 ft. He advised this was a questions during the hearings? Township Administrator Miller advised the Department of Transportation measures from face to face on the same side of the road. So it is clear.

Board Planner Polistina stated he will revise the amendment based upon the recommendations presented this evening. He advised it will be noticed for public hearing and the Board will receive the revised version prior to.

Motion Rosenberg/Kearns to schedule public hearing on Monday, November 18, 2013, 5:30 p.m., for the proposed amendments to the 2002 Master Plan. Vote 9 Yes: Aponte, Carman, Cook, Eykyn, Kearns, Levy, Miller, Rosenberg, Shamsuddin, Garth

PUBLIC HEARING(S):

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| 1. <u>SPPF 09-13</u>
Hope & Comfort a NJ Nonprofit Corporation
Zone: CRW, 22.42 Acres, septic/well, applicant
Proposes to construct a 9,331 sq. ft. building to be utilized as a 15 bed hospice facility with 18 off-street parking spaces. Other improvements include a storm water management facility, landscaping and a free standing sign. CAFRA | Preliminary/Final Major Site Plan
8701/5.04
170 Wharf Road
Waiver of Time – Not Granted |
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Chairman Garth advised the above-captioned application would not be going forward. Board Secretary Wilbert indicated Hope and Comfort has advised the office they will be amending their application to include another block and lot. Therefore, they will have to re-notice all property owners within 200' ft. of all properties now associated with the application.

Board Secretary Wilbert noted she does not have the amend application, however, she would like to schedule for November, 2013 public hearing, but is not asking for a motion to do so, since again, the applicant will be required to re-notice.

MEMORIALIZATION OF RESOLUTION(S):

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| 1. <u>SD 04-13</u>
Harem, LLC | Minor Subdivision
6601/6
3067 Ocean Heights Avenue |
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Motion Carman/Aponte to approve resolution granting requested checklist waiver(s), variance relief, and conditional minor subdivision approval. Vote 9 Yes: Aponte, Carman, Cook, Eykyn, Kearns, Miller, Rosenberg, Shamsuddin, Garth

SUMMARY MATTER(S):

1. **Discussions of matters pertaining to the Board: SECTION I:**
 - a. General public discussion

Motion Aponte/Carman to open meeting to general public discussion. Vote 9 Yes.

Dr. Richard Levitt, 2204 Bay Drive, Northfield, New Jersey, sworn in: Dr. Levitt advised he would like to discuss a few points of order. He indicated he shares the Board's concern by making an existing business non-conforming. Dr. Levitt noted there are eleven (11) billboards on the Margate Boulevard, however, he indicated they are not within the MC zone they are within the CRW zone.

Dr. Levitt advised there are five (5) areas of the Township that are zoned MC. Board Solicitor Bergman suggested it is more appropriate for Dr. Levitt to discuss these issues at the time of public hearing for the Master Plan. Dr. Levitt advised he would like to assist and on November 18th it will be the final draft. Board Solicitor Bergman asked what issues will be discussed with Board tonight that cannot be addressed on November 18th. Dr. Levitt advised there is relevant information that will help the Board and rather than having another public hearing this can help.

Chairman Garth advised the Board will listen to what Dr. Levitt has to offer. Dr. Levitt then presented a hand out marked Exhibit Levitt-1: dated 10/21/13. Chairman Garth asked that the Planner and Attorney also be presented one.

Township Administrator Miller asked Dr. Levitt if he is prepared to make the same presentation next month. Dr. Levitt stated he is not sure what he is going to say. Board Solicitor Bergman advised he should be prepared not to repeat himself next month. Dr. Levitt asked if that means he will not be permitted to speak. Board Solicitor Bergman advised the final draft of this master plan amendment will be considered next month and there will be a public portion. He stated Dr. Levitt should not be repetitive. He advised the record will be there.

Dr. Levitt advised he did not prepare enough of Exhibit – Levitt-1 and asked if the members would share and bring back next month. Board Member Rosenberg stated he does not want to be responsible for keeping information until next month. Board Solicitor Bergman asked what Exhibit Levitt-1 is? Dr. Levitt advised it is pictures showing there are no billboards in the MC zone. He indicated there are also none on Somers Point Mays Landing Road, or Longport Boulevard. He stated there may be one on the property line with Seaview Village Marina but he is not sure. He advised all the billboards are within the CRW zone so the Board would not be making anything non-conforming. Dr. Levitt stated he does not want the Board to add billboards to a zone that never had them. He advised this is different than adding them to where they were not built.

Township Administrator Miller asked Board Planner Polistina to confirm where the billboards are located along the Margate Causeway. Dr. Levitt stated the mission is to protect the sanctity of the Marine Commercial Zone and he would like the Board to reconsider their vote. He advised there are a lot of things that are not the way they seem. He indicated, however, he can wait until the public session to discuss.

Dr. Levitt did state the Marine Commercial zone is a pristine zone that never had a billboard. He also advised Board Planner Polistina that missing from his statement within the amendment is "what is the public benefit for allowing billboards within the Marine Commercial zone".

Dr. Levitt thanked the board for listening and he advised he will have more discussions during the public hearing.

Chet Atkins and Jessie Atkins, president – vice-president of Jersey Outdoor Media, sworn in: Mr. Chet Atkins advised he came Egg Harbor Township to operate a business. He advised he actually owns

property within the Township and he also sells advertising. He indicated he has been in the billboard business for 35 years. He stated he has never heard anything like what has happened here. He indicated he had Cooper Levenson represent him, as well as, Ponizio office and they are professionals. He stated he has been given permits twice to construct the billboard. Mr. Chet Atkins advised he has lost over \$400,000.00 and now they may not be permitted.

Mr. Chet Atkins stated in order for the billboard to be considered we obtained an easement from the Simon's, we submitted permit fees, escrow fees, in lieu contribution from curb and sidewalk and now there is a 60' billboard not being used. He indicated if the Board considers the height of the billboard in the MC zone to be 25' ft. that would make it 5' ft. off the ground. He indicated he can place the digital feature somewhere else but there is a lot of steel and Mr. Hackney would lose \$50,000.00 for the boats that he could no longer store in the area where the billboard would fit.

Mr. Chet Atkins advised that everyone wants this billboard. He indicated this sign is the top producer of people wanting to be placed on it. He stated he would hope the Board would think about all people involved and not just one person. He indicated they have lost a lot.

Mr. Jesse Atkins stated Dr. Levitt and The Press have made this some type of conspiracy theory and we are paying people. Mr. Jesse Atkins stated Dr. Levitt is the Chairman of the Planning Board for Northfield and they prepared a resolution against this project and their Attorney is involved with Margate and they prepared a resolution against. He indicated this is also political.

Mr. Jesse Atkins advised they are a three (3) person business and they have lost a digital billboard and it took a lot of money. He stated by the Board now coming back at 25' ft. high his company would not have been there. He stated 60' ft. is permitted. He advised the Department of Environmental Protection has approved this 60' ft. billboard and so has the Department of Transportation.

Mr. Jesse Atkins stated three (3) Judges were also involved with this case. He stated his firm acknowledges they will be losing money. He asked the Board consider allowing for a 40' ft. height requirement versus the 25' ft. He also noted that Mr. Hackney will lose \$50,000.00 a year in boat storage if the sign were to be at 25' ft. He also advised by having the sign at 40' ft. there would no longer be the issues Mr. Levitt raised.

Mr. Jesse Atkins advised when you look down Margate Boulevard it is not scenic marshland this area has billboards. He stated his billboard sites in front of Gifford's warehouse in Hackney's Marina. He stated this is not a pristine area where unicorns are.

Mr. Chet Atkins advised they will appeal the Judge's decision and will enjoy building their sign.

Motion Carman/Rosenberg to close general public discussion. Vote 9 Yes.

Motion Carman/Aponte to adjourn at 6:30 P.M. Vote 9 Yes: Aponte, Carman, Cook, Eykyn, Kearns, Miller, Rosenberg, Shamsuddin, Garth

Respectfully submitted by,
Theresa Wilbert, Secretary

