

**WEST AMWELL TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING**

**March 28, 2017**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:33PM by Chairman Fulper.

Chairman Fulper read the Open Public Meetings Statement as follows: This meeting is called pursuant to the provisions of the Open Public Meetings Law. Notice of this meeting was transmitted to the Hunterdon County Democrat and Trenton Times on January 9, 2017. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office.

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

Chairman Fulper led the Pledge of Allegiance to the American Flag.

**APPOINTMENTS/OATH OF OFFICE:**

**Deputy Secretary**

Chairman Fulper introduced Christine Rosikiewicz and explained that she and Secretary Hall worked together to prepare for this meeting. A summary of her work experience was provided in the meeting packet. Ms. Rosikiewicz gave a brief biography of her municipal experience to the Board at Chairman Fulper's request. She has been the Open Space Secretary for West Amwell since 2012 and is currently employed full time by Hunterdon County Vocational School District. Previously she worked part time for East Amwell Township for eleven years in various positions including Board of Health Secretary, Assistant Treasurer, and as secretary to numerous committees.

Mr. Fisher (alt #2) made a motion to appoint Christine Rosikiewicz as Deputy Secretary. Mr. Cronce seconded the motion. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Ashton-Aye, Sabatino-Aye, Fisher-Aye, Fulper-Aye.

**ATTENDANCE/ROLL CALL:**

Roll call on attendance: John Cronce-present, Brian Fitting-present, Joe Romano-present, John Ashton-present, -present, Frank Sabatino (alt#1)-present, George Fisher (alt#2)-present, Robert Fulper-present

Absent: Ruth Hall, Kevin Koveloski

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Board Engineer

**PRESENTATION OF MINUTES:**

Meeting Minutes – January 24, 2017 - Motion was made by Mr. Fisher (alt#2) with a second by Mr. Ashton to accept the minutes as presented with the following edits:

Clarification on page 3, third paragraph.

Page 7, 6<sup>th</sup> paragraph, insert "years" after the number 22.

Roll call: Cronce-aye, Ashton-aye, Fisher (alt #2)-aye, Fulper-aye

Meeting Minutes – February 28, 2017 - Motion was made by Mr. Romano with a second by Mr. Fisher (alt#2) to accept the minutes as present with the following edits:

Replace the 6<sup>th</sup> paragraph on Page 2 with the following:

Attorney Wohl referred to the Planning Board findings that still continue, specifically that the proposed use will result in the restoration and preservation of a significant historic structure and outbuildings which is one of the purposes to be advanced by zoning. The Planning Board also found that the applicant has established that the variance may be granted without substantial impact on the zone plans as the property fronts a heavily traveled state highway and is relatively low in intensity. There are commercial uses in the area including a used car dealership and a nursery. All of those conditions still exist.

Page 8, line 2: replace “Attorney Mongelli” with “Attorney Palilonis”.

Page 8, 7<sup>th</sup> paragraph, 6<sup>th</sup> line should read: “The two story building has an area of approximately 28,000 square feet”.

Page 15, 4<sup>th</sup> paragraph, replace “12PM to 8PM” with “12PM to 5PM”.

Roll call: Cronicc-aye, Romano-aye, Ashton-aye, Sabatino (alt#1)-aye, Fisher-aye (alt#2), Fulper-aye.

#### **RESOLUTION(S) OF APPROVAL:**

##### **David Rago Realty Block 16 Lot 17.02 – 638 Brunswick Pike (333 N. Main St. Lambertville**

Chairman Fulper said the resolution says the denial was made on December 17, 2016 but it should read December 7, 2016.

Mr. Cronicc said the resolution reads that the hours of operation are from 12-5.

Chairman Fulper said the lot is indicated at 17.01, it should be 17.02.

Chairman Fulper referred to the first line of section d. of the resolution in the second paragraph on page 2. The word “approval” should be removed so it reads “previous site plan” rather than “previous site plan approval”.

Chairman Fulper suggested “up to eleven auctions per year” should be included in the stipulation. He asked if the Board should stipulate “no more than eleven” or “up to eleven”. Mr. Cronicc recalled the Board stating eleven were allowed.

Attorney Mongelli approached the dais. He said eleven was a “pretty solid number” for the number of auctions per year due to the amount of planning and work that goes into them. Depending on what Mr. Rago finds there could be eight or twelve. He would request that “approximately” be used noting there are probably years they hold less.

He referred to paragraph A where 5:00 was changed to 5:30. He wondered if the hours of operation are a condition of approval. He said they are facts that they testified to and are accurate adding that this is how the business has been run for twenty years. There are weekends where the auctions are larger and staff may come in at 9:30 or 10:00 and slower weekends when they will be in less hours. Chairman Fulper said applicants get what they ask for, what they testify to is put into words by the Board attorney. He

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understands that they are asking for flexibility but residents could question if they have twenty in a year. Comments were exchanged among the Board members regarding this limit.

Attorney Mongelli does not believe it is practical that they could have fifteen to twenty a year but the number of auctions each year depends on what Mr. Rago finds. He said historically eleven has been the maximum. There are only a limited number of employees and a limited capacity to produce auctions.

Mr. Cronic commented that Attorney Mongelli testified to eleven and is now coming back with something different. Attorney Mongelli said he is not changing his testimony, he is saying that this is how they run this business but there could be situations where they need a twelfth auction or are only holding nine. Eleven has been the capacity for the past twenty years. He would like the number of auctions to be in the body of the resolution but not a condition of approval. He said eleven is probably the ceiling.

Attorney Palilonis asked if the number of auctions held is an issue. Chairman Fulper noted the neighbor's concern.

Mr. Cronic recalled that eleven was stated. He asked if it was allowable to change this without the public present. Mr. Romano noted that there has not been a twelfth auction in twenty years. Chairman Fulper said the only problem is that the public was notified of the hearing, they heard the hearing and the resolution won't reflect what was in the hearing.

Attorney Mongelli again asked if the number could be in the body of the resolution.

Mr. Cronic commented on the public not being able to hear this change.

Attorney Mongelli would like the number of auctions and hours of operation to be in the body of the letter. He believed the conclusion of the Board was County septic approval and not well approval. Attorney Palilonis will take the well portion out of the resolution.

Attorney Mongelli said he would not object to a condition of "approximately" eleven auctions a year.

Mr. Cronic expressed concern about the public not being present at the meeting. He commented favorably on Rago being an outstanding neighbor for the community.

Mr. Fisher (alt #2) asked if there is a way the applicant can ask for relief in the future. Chairman Fulper said he could apply for an amended resolution.

Chairman Fulper asked if there was any more discussion on the resolution and said the following changes should be made:

Change the date in the third paragraph from December 17, 2016 to December 7, 2016.

Hours of operation should be 12-5 on the weekends and 9:00 to 5:30 on the weekdays.

Attorney Palilonis said the Board wanted to delete the well approval and add no more than eleven auctions in the calendar year. Mr. Cronic agreed. He asked if the applicant could go to Township Committee to request more than eleven auctions. Chairman Fulper said they couldn't.

Motion was made by Mr. Cronic to approve the resolution with the changes as per discussed. Motion was seconded by Mr. Romano.

Roll call: Cronic-aye, Fitting-abstain, Romano-aye, Ashton-abstain, Sabatino (alt#1)-aye, Fisher (alt #2)-aye, Fulper-aye

**APPLICATION(S):**

**Public Hearing: – 1872 River Road (The Generals Retreat) Block 26 Lot 17 — Amended Site Plan Application (8:19PM)**

*Application dated 3-14-17, checklist, application and escrow fee checks along with Zoning Board fee calculation, Executed Escrow Agreement, W-9 and Memorandum of Understanding, proof that taxes are paid current, Corporate Disclosure Information Statement, copy of certified list of property owners within 200 feet, Memo from Guliet D. Hirsch addressing pro-rata share of drainage and road improvements, letter report by John M. Hill, P.E. re: allocation of Old River Road improvement costs between the applicant and the Township, Engineers Estimate of Cost of Road and Stormwater Improvements prepared by Ted Bayer, P.E., and Preliminary and Final Site Plan, last revised March 9, 2017, prepared by Bayer-Risse Engineering were received and distributed.*

Guliet Hirsch, attorney with Grainer and Archer, introduced herself. She explained that this application is for The Generals Retreat hotel which the Board approved in October via resolution 2016-11.

Notices of service and publication were reviewed by Attorney Palilonis and found to be in order.

Attorney Hirsch explained the applicant's engineer, Ted Bayer from Bayer-Risse, has been working with Engineer Decker on revisions that are necessary as a result of the review letter. In the course of putting the changes into the site plan the improvements, particularly the storm water improvements associated with the widening of Old River Road, became dramatically larger and more expensive.

Attorney Hirsch said if it weren't for the prorated share determination, which is the split of costs between the developer and the Township, they would not be here tonight. The revisions that have been made are in keeping with the requirements that Mr. Decker has imposed in his review letters. The suggestion in their application is for splitting the approximate costs of \$25,000 to the developer of The Generals Retreat and \$50,000 to West Amwell Township for the cost of drainage and improvements. Attorney Hirsch referred to Ordinance 109-19 and read it to the Board, this ordinance states, in summary, that an applicant may be required to pay his or her share of prorated costs while providing reasonable and necessary...improvements on water, sewage and drainage facilities located off track of the property limits of the subdivision or development but necessitated or required by the development. She expressed that this language is also in the state statute. Although the ordinance does not define what the concept of "off track" means, this definition is in the state statute. Attorney Hirsch read the definition of "off track" from State statute as follows: Off tracked, as per state statute, is not located on the property, which is the subject of the development application, nor on the closest half of the abutting street or lane.

Attorney Hirsch said in this case it is not on the development lot and also not on the closest half of the abutting road, Old River Road. The other half of the center line is considered off track for this project.

Attorney Hirsch said under the law there are items for consideration. First are the improvements reasonable and necessary? She said it has been determined the road widening is requested by the fire chief for getting fire trucks in and out of the driveway to the site. Second are the improvements off track, which they are. Third are they benefitting other properties? Attorney Hirsch expressed that there are other properties that would clearly benefit from the road widening and drainage improvements to the road which include six residential properties on Old River Road and the public in general who use Old River Road as the road is very narrow and there is a ditch making it difficult to traverse. Improvement of the road would be a benefit to any development on the road in the future as well as the town in general. The fourth item is the formula for deriving the cost between the developer and the other properties.

Attorney Hirsch referred to case law on off track property, specifically a 1976 case between a construction company versus Franklin Township, where the court ruled that a request from Franklin Township regarding increased pipe size was the Township's share and the developer's pro-rated share is only what

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they need for the development. She referred to a case in Princeton Township where the court discussed a rational lexis between the costs imposed on the developer and the benefits to the developer.

Attorney Hirsh said the pavement of Old River Rd. is reasonable and necessary for The Generals Retreat. It will also eliminate existing unsafe and unsatisfactory road conditions that don't comply with the master plan. As a result of the road improvements drainage improvements need to be made. If the road is widened it will eliminate the ditch on the side of the road. The 36 inch pipe proposed by Mr. Bayer is not being put in place to control runoff from The General's Retreat hotel. All the run off from The Generals Retreat hotel will go into an underground detention facility as shown on the plans previously approved by the Board. The vast majority of the drainage area to this pipe is completely off The Generals Retreat site. She stated that if you think about it in that sense the pipe is clearly a public improvement and not an improvement that is serving in any way The Generals Retreat.

Attorney Hirsh referred to Township Ordinance section 109-20 where there are formulas for dealing with the allocation of road cost per state requirements. The formula for road improvements is the developer's peak hour of traffic divided by the total capacity of the improved road times the cost of the improvement which equals the developers share. If the developer's peak is ten cars and the capacity of the road is twenty cars then the improvement costs (10 over 20, 50% times the improvement cost) is the developer's share. Based up on analysis of the reports submitted the developer's share for the road improvements is just short of \$25,000. The drainage improvements have a different formula; the developer's peak rate to be accommodated by the improvement is the numerator, the denominator the capacity of the improvement. This is multiplied by the capacity of the improvement. She understands that the pipe, and the other improvements associated with the pipe, are a public improvement. A hundred percent of the pipe and related improvements is the Township's requirement to pay. Attorney Hirsh expressed that although the Ordinance assigns this responsibility to the Board, her understanding is what the Board is doing is more of a recommendation to the governing body. She believes this is because there are different ways the public cost can be financed: tax revenues, local improvement district created, and prorated share. She thinks the decision of how it is paid for is not for the Board to make, it goes with their recommendation to the Township Committee.

Attorney Hirsh said \$25,000 of on track costs are the responsibility of the developer; and additional \$50,000 is the responsibility of West Amwell Township. She said she is a lawyer and what she says is not evidence before this Board. She would like to bring forward two witnesses to describe the improvements and answer the Board's questions.

Chairman Fulper asked about who paid the bill in the Supreme Court case regarding the pipe size. Attorney Hirsh said none of the cases take it to the ultimate decision of how it was paid for. She is not aware if there have been many cases decided since the Municipal Land Use Law was decided in 1976. Further comments were exchanged on these cases. In the case in Franklin Township the defendant was the Planning Board. Chairman Fulper said the Planning Board writes the ordinance. Attorney Hirsh said it is within the Township Committee to decide how improvements would be paid for through one of the three mechanisms. Chairman Fulper asked Attorney Palilonis if the Board should hear this and make a recommendation. After discussion of the Planning Board ordinance with the Board Attorney Palilonis said the Board should hear the argument and make a recommendation. The applicant's engineer will provide an analysis and then the Board's engineer will respond. The Board will then come to a conclusion. Member Fitting expressed concern as the applicant agreed to the ordinance when they accepted the resolution. Attorney Palilonis and Attorney Hirsh exchanged comments on the type of variance that was applied for.

Attorney Palilonis asked to focus on the off track issue before the Engineer speaks. Attorney Hirsch confirmed that the improvements are not on the property but on the other side of Old River Rd. which is what makes it off track. She said Engineer Bayer will discuss this in more detail.

Further comments were exchanged by Board members. Attorney Palilonis said that these improvements agreed to by the Board require a certain amount of money and here is how it is allocated between the developer and the Township.

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Mr. Cronic commented that everyone agreed to this when the application was heard and now that the cost is known they want to put the burden on the taxpayers.

Attorney Hirsh said she appreciates and understands that comment. The drainage improvements were not part of the plan that were approved by the Board, they were required to be implemented through a comment in Engineer Decker's letter. That is when the issue came up. If not for the drainage improvements her client was willing to bear the cost and they may not be here tonight. Engineer Bayer looked at an extraordinary number of alternatives to avoid road widening and eliminating the ditch.

Attorney Hirsh said the property will have a 30,000 gallon underground water tank for fire department use. She personally believes that tank will be used for properties within a mile from the site. Her client agreed to do this and it is in the nature of public improvement. The client has absorbed enough cost without saying to the town that there is a part here that is a public cost. Member Cronic, as former chief of the fire department, said that if there is a fire that water would quickly be used and depleted. He said it is a necessity for that property.

Dr. Michael Eirleich, property owner, approached the Board. Attorney Palilonis said Mr. Eirleich did not need to be sworn in as he is still under oath. Mr. Eirleich said he has been happy with the Board's support of the project. One of the conditions of the approval was an easement to the property of the south of the subject property which is owned by the State of New Jersey. There is a huge gully that was not maintained. Mr. Eirleich had to go back and redesign where the stormwater was going to go. He agreed to widen the road to give access and to provide the water tank for the hotel and any adjacent properties that would benefit from it. He explained that the pipe is for water coming over the mountain and has nothing to do with his property therefore he believes it should not be his burden to bear because of him wanting to improve the area. He noted that the gully has not been maintained by the Township. He spoke of the financial impact. He wants to do everything he is supposed to do.

Mr. Fitting says he understands what Mr. Eirleich is saying. He does not feel comfortable making a financial decision about it. Further comments were made by Board members. Mr. Fisher (alt #2) asked what the Board would be voting on. Attorney Palilonis said what the cost will be and how it should be allocated as an outgrowth of the site plan. The Board's decision would then go to Township Committee.

Mr. Romano asked if what they are to hear was reviewed by Engineer Decker to minimize cost. Engineer Decker says he hasn't. Mr. Romano said this is premature until Engineer Decker has a chance to review the ways the cost can be minimized.

Engineer Decker read from the applicant's traffic engineer April 2016 report regarding the 24ft width of the road. The road currently does not allow for two vehicles to use the road simultaneously. Local residents are familiar with the hazards and utilize caution. New users, who are unfamiliar with the site, may be confused if multiple users drive the road simultaneously. The report reads that per ordinance the road can be classified as a local road with a minimum of thirty foot carway, a residential access street with a minimum of a 26 foot carway, or a commercial driveway with a minimum of 24 foot. After discussion with the Board Engineer the road was proposed to be a commercial driveway with a 24 foot width from the site driveway to the intersection with Route 29. This was discussed and it was determined to make the road 24 feet; the applicant's traffic engineer agreed with this. Engineer Decker further read from the report that the widening of the road will be necessary to accommodate site traffic. He wanted to clarify that it wasn't just the fire official who said 24 feet.

Mr. Cronic asked if the plans should be reviewed by the Board engineer and reported to the Board. Engineer Decker said what is being submitted is for the 24 foot road with drainage improvements including the roadside ditch to be realigned and piped along with significant improvements made to the swale to satisfy the Delaware Raritan Canal Commission requirements that are more stringent than the Township's. The alignment of the pipe is necessitated by the widening of the road to 24 feet. Engineer Decker said moving the pipe to the north is not viable. It was again stated that the widening of the road is for the use of the site.

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Attorney Hirsh said she wanted to be clear that the widening of River Rd. being necessitated, required or reasonably connected to this particular development. The road is not wide enough to accommodate existing traffic let alone the additional traffic which will be generated by the hotel.

Attorney Hirsh asked if they could put in their testimony and then come back if the Board wants additional information. She indicated that she would like to start the presentation as it was noticed for tonight.

Chairman Fulper asked Engineer Decker if he was okay with this. Engineer Decker said he did not have a problem with this and that he has questions. He has spoken to Mr. Bayer on the phone about this.

Mr. Fitting asked if this is the plan in place that was agreed on, and it costs one hundred thousand dollars, he does not feel responsible or comfortable saying what amount they should be responsible for. If Engineer Decker can make the plan cost less for the Township then that is fine. Attorney Palilonis asked Engineer Decker if he is prepared to respond tonight. Engineer Decker said typically when there is a prorata off track contribution there is a road that already has two way traffic on it, this is not a typical situation. Typically with a prorata there is a through road and sites are accessed from both sides. The improvements are for the length of the road and an estimate what the improvement costs are, widening, surface, and drainage, and that is what you prorate the amount on, not just where there is frontage. You then prorate what it would take to improve the rest of the road. In this case Old River Rd. is closed off at the Township line. The road goes from West Amwell into Hopewell and is chained off where it enters Hopewell therefore there is no access from the other location; in that regard the rest of the community is served by this entrance. In this case you just can't widen half of the road because that still would not make the road 24 feet wide. Engineer Decker said there is a question of how much frontage this property actually has. The property line goes to the other side of Old River Road. There is a right of way that cuts through the property. The southern side of the right of way is a small triangular piece of property which is identified on the plans as being under the ownership of 1872 [Old River Rd.]. If this is still their ownership he believes they have frontage on both sides of the right of way as the triangular piece is part of the property. He would like to hear the testimony about this.

Attorney Hirsh asked Chairman Fulper to go over Engineer Bayer's credentials and have him sworn.

Theodore Bayer introduced himself. He is a principle at Bayer-Risse Engineering. He is a graduate of Rutgers School of Engineering and has been practicing as a consulting engineer since 1984.

Engineer Bayer was sworn in by Attorney Palilonis. He stated his name and address for the record: Theodore Bayer, Bayer-Risse Engineering, 78 Route 173 West, Hampton, NJ.

Engineer Bayer referred to drawings he had provided and the Board had copies of. The drawings were introduced as exhibit G1. These drawings were revised after receiving input on March 9, 2017.

Engineer referred to sheet 2 of 17 on the site plan where the outbound property lines are identified. On the south of River Rd. there is a triangular piece of property. It appears as a triangle as the right of way transects the property. The southern property line comes down the mountain at a point that is approximately fifty feet east of the existing driveway entrance. The property line makes a course that turns it south to about the existing center line of Old River Road then at the next course goes down to Route 29. The municipal right of way comes from Route 29 and extends up, crosses the southern property line, and continues on around Old River Rd. forming the small triangular piece of property that Engineer Decker referred to.

Chairman Fulper asked if the right of way was by easement. Engineer Bayer said he did not know, it was on the survey done by Heritage. Engineer Bayer referred to the existing drainage ditch on the drawing. It starts approximately 100 feet beyond the driveway entrance on the south side of Old River Road. It is a fairly shallow ditch, it gets deeper as it approaches Route 29. There is a 15 inch diameter existing pipe which passes underneath Old River Rd. to an existing headwall. The stream becomes extremely pronounced at the headwall, between four and five feet deep, as it travels down to Route 29. Before it gets to Route 29 the natural drainage pattern is such that the storm water turns in a southerly direction and passes on to B 27 L 1. This property is owned by NJ DEP and leased (under a long term lease) to Mr.

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Brown, who owns the Golden Nugget. The ditch picks up a significant portion of the storm water that comes off of the mountain.

Engineer Bayer presented a set of three drainage area maps; this was marked G2. The third map shows the drainage area off site. He referred to highlighted parts of the drawing pointing out the orange, which is the storm water that contributes to the developed portion of The Generals Retreat, and two distinct raised areas that come down from the summit of the hill. He further explained the drainage areas in detail. There is a larger portion, 32.25 acres, which starts at the top of Goat Hill Mountain and flows down across River Rd. to behind the Golden Nugget where there is a berm that channels all the runoff along River Rd. to the drainage ditch. There is a 32 acre drainage area that all contributes to this ditch. A smaller 10 acre drainage area also comes down from the summit of Goat Hill Mountain, passes over a portion of the subject site, and enters a concrete sluice on site. The concrete sluice starts near the existing swimming pool and crosses down property and enters a small drainage ditch. There is a headwall which is the initial point of the 15 inch pipe which goes underneath Old River Rd., the other portions of that area past the mountain, and cross over the other properties. There is an existing concrete pipe underneath the first neighboring property and then an existing drainage ditch on the north side of Old River Rd. Those two ditches come together and that is the contributing drainage area to the fifteen inch pipe which then enters the large drainage ditch. All of the storm water, at this point, is unchanged due to the proposed development. Engineer Bayer further explained the flow of the storm water comes down the mountain, enters the concrete sluice or existing drainage ditch on the north side of River Rd., passes underneath River Road, or comes down the 32 acre drainage area and enters the ditch on the south side of Old River Road. All the storm water ends up on Block 27 Lot 1. Engineer Bayer referred to a red line on the site plan which is an existing stone wall on the north side of Old River Road.

Engineer Bayer said they have looked at a number of different driveway entrances. The existing driveway will be widened with a 24 foot wide entrance into the property. They had to show that the West Amwell Fire Company's hook and ladder truck can turn off of Old River Rd. into the site and make the turn down in front of the proposed hotel building. There is a significant turn radius for the truck. Engineer Bayer went over options considered for the driveway entrance. Moving the driveway entrance closer to Route 29 was considered so the widening would not come beyond the existing drainage on the south. This would work for fire truck access but not from a traffic standpoint there was not enough room for the cars to stop as West Amwell ordinance requires a fifty foot separation from the return to the start of the driveway. This fifty feet is about twenty-five feet beyond where the drainage ditch turns south. With this option the fire truck could not make a complete 180 degree turn which ruled out this option.

Engineer Bayer considered gaining access from Block 29 and pursued this with the property owner but negotiations did not work out.

Engineer Bayer considered a new driveway entrance off of Route 29. There is ten feet elevation difference, therefore this would not be safe for drivers on Route 29.

Mr. Fisher (alt #2) inquired if accessing the property through the neighboring property would be for all vehicles or only emergency vehicles. Dr. Eirleisch said the access would have been for all vehicles, it would not just be an easement as you would have to build through the property.

Engineer Bayer referred to the site plan sheet 14 of 17 where he detailed the improvements to Old River Rd. The two drainage ditches on the north side of Old River Rd. remain the same as does the existing pipe under the driveway on the adjoining property. The existing fifteen inch pipe underneath River Rd. with the two headwalls remains but because Old River Road will be widened they will abandon the headwall on the south on Old River Rd. and install storm water inlet. The ditch that starts as result of the berm along Old River Road will be replaced for 103 feet with a thirty inch diameter pipe with a catch basin. A thirty six inch pipe will connect the inlet to a storm water manhole. The manhole has an outlet, which is also a 36 inch pipe, which comes to a constructed gabion outlet structure. Initially a scour hole was shown which would extend on to Block 27 Lot 1 but there was a problem negotiating an easement with the State of New Jersey, who owns the property. Engineer Bayer said they then looked at keeping all the drainage improvements on the subject property or within the Old River Rd. right of way.



Engineer Bayer recalled how in November he designed a 2:1 slope coming down off Old River Road and kept all the scour hole on the property. Typically a 3:1 slope is used for stabilization which is one foot vertical over three feet horizontal. The proposed 2:1 slope is steeper. Engineer Decker asked for a plan of this, which Engineer Bayer referred to. The discharge from the 36 pipe would go into a gabion structure. Engineer Bayer went over this on the drawing. Water passes through the gabion structure and dissipates the velocity of the stone. He provided a cross section highlighting the headwall structures including the proposed storm water inlet at the upper end of the 36 inch diameter 103 foot long pipe that leads to the second inlet. He also showed the bottom of the existing road side ditch which is between four and five feet at the deepest. There is a dip in the ditch where the existing drainage course comes back out to Block 27 Lot 1. This keeps all the improvements on the property or the Township right of way.

The grading on the proposed widened part of Old River Rd. needed to be changed. Initially a crown was shown in the road which would be pitched from the center line in each direction so the water would shed both from the south and north. When they widen Old River Rd. they increase the impervious coverage by about 1600 square feet. For storm water purposes of the Delaware Raritan Canal Commission 95% of solids need to be removed. A storm water management system could be installed to do the suspended solids removal. He has super elevated Old River Rd. so the whole road is pitched at 2% from south to north and all of the rainfall that falls on the widened road is now going to fall on route to the north on the property in the right of way to a bio retention swale.

Engineer Bayer said they are proposing the bio retention swale and a mechanical manufactured treatment device as the swale removes 80% of suspended solids and they have to get to 95% for the DRCC. The Jellyfish device was to be proposed. It has since lost its certification but should receive it back in the next few months therefore Engineer Bayer did not specify the name of the device in the drawing.

The bio retention swale is depicted on the second sheet. There is a fairly steep slope. Engineer Bayer explained how the bio retention swale works, solids need to be picked up periodically. He is proposing a series of check dams across the slope.

These improvements are strictly to control the runoff from Goat Hill Mountain. Engineer Bayer referred to the drainage area map and highlighted where storm water will be in the improved area of the lot.

Attorney Hirsh asked Engineer Bayer how the runoff will be treated. Engineer Bayer said the runoff from the site is treated via pervious pavement and a storm system collecting runoff from the garden and lawn areas on the east side of the building. There is a detention structure and hopefully the Jellyfish.

Attorney Hirsh asked Engineer Bayer if he reviewed Engineer Decker's March 21st review letter. Engineer Bayer responded that he had. Attorney Hirsh asked if there was anything in that letter he did not feel he could respond to. Engineer Bayer said that Engineer Decker suggested that the triangular parcel be dedicated to the municipality, he does not believe the client would have a problem with this. Engineer Bayer referred to page 3 of the letter which references between the storm water report submitted in November and the plans. There is an existing storm water pipe that comes from Lot 29 onto the property which will tie into a proposed storm water manhole. A request for an easement was submitted. Engineer Bayer said Engineer Decker asked in the letter who would be responsible for the bio retention swale and maintenance of it. Engineer Bayer said the swale is close to where the stone wall was and is in the right of way. The applicant is responsible for maintaining the bio retention swale. The treatment device will be located at the end of the swale. The plans refer to a dry well which is a mistake on the plans.

Engineer Bayer said all the other items from Engineer Decker have all been satisfied.

Attorney Hirsh asked Engineer Bayer to explain what is off track for road improvements and drainage. Engineer Bayer referred to sheet 14 of 17. He broke it into three separate items. The first is site preparation which includes soil control measures, clearing trees and brush, applying topsoil, excavating pavement, and regrading. The total cost of this phase of the project is \$22,537.90. The center of the right of way is the center of Old River Rd. The proposed widening is from the existing centerline out. The existing center line is the proposed center line for most of the road. The off track portion is the half of the

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right way from the far side of the property. The cost is \$11,268 for the applicant's fifty percent of the cost. The cost of building the road including the asphalt, street striping, street signs, and guardrail on the south and north side due to the 2:1 slope, is a total \$67,180. Half of this is \$33,590. The final component of the improvements is the storm water system including the two inlets, storm water manhole, gabion structure, 103 feet of 30 inch pipe, 60 feet of existing pipe removed, and 27 feet of 36 inch pipe, total is \$29,507. All the improvements are on the south side of Old River Road. The total construction on the far half of the right of way on the township side is \$74,368.

Engineer Decker asked, with regard to the alignment of the Old River Rd. improvements, was offsetting the road to the north away from the road considered. Engineer Bayer said it was looked at this but the fire truck would not be able to turn on the site.

Engineer Decker referred to sheet 14, the widening extends approximately 80 feet past the entrance. Could this be tapered back to the existing road sooner to provide access to the site but the remainder of the road would remain fourteen feet eliminating the need for some of the piping.

Chairman Fulper asked if there is agreement with the concept that the Township should pay for half the cost of the road improvements. Engineer Decker said his opinion from an engineering standpoint is that the widening of the road is necessitated by the development. The drainage improvements is necessitated by the widening of the road thereby necessitated by the developer. It is very unusual that there are off track improvements that are needed to provide access to a development. Typically there are off track contributions to widen other sections of the road to bring it into compliance in which case you would take the entire length, calculate the total costs to widen and drain it, and then calculate the prorata share. He has no question of the prorata calculations by percent of the traffic generated by this site. There is a triangular sliver which their boundary survey extends to the other side of the right away and the right away passes through their tract. From an engineering standpoint, although it is a small sliver, there is lot frontage on both sides of the right of way. This is why if the road can be tapered down to the entrance of their site and eliminate the 103 pipe and some of the widening then the improvements over the road, except for a small section of pavement, fall along the frontage of the site.

Chairman Fulper asked Engineer Decker, in his opinion as an engineer, since the applicant owns both sides of the road this would not be something to cost share on as any of the improvements made only benefit the applicant. Engineer Decker said that even if the Township was asked to contribute to this he is unsure of the timing as the Township is in budget discussions and this was not "on the radar". Chairman Fulper asked if the Township or any agencies had required anything that has created this problem.

Mr. Ashton asked Engineer Decker to confirm that the road is needed for the development, the drainage is needed for the road, and if it wasn't for that there is nothing that precipitates this, it potentially benefits other people but the reason it is required is because of the development. Engineer Decker said this is correct.

Mr. Ashton asked about vacating that portion of land. Engineer Decker said that was one of his comments. There is a triangular piece of property on the tract that is useless to the applicant. This is part of the right of way as the drainage is within. Mr. Ashton asked if this triangle is vacated does the road become more clearly offsite. Engineer Decker replied yes.

Attorney Hirsh said the vacation would be after and not affect this determination. She said her client would be willing to vacate that property and give it to the Township. With regard to the budget concerns the improvements would be put in by the developer with some type of reimbursement from the Township without a timeframe attached to it. The timeframe can be worked out with the Township Committee and would not be an imposition on the current budget.

Mr. Romano asked what aspect of the costs are attributed to the location of the access driveway into the property as a result of fire access. Engineer said this is the only place where the firetruck can enter and make a u-turn, therefore 100%. Mr. Romano asked if they could access from Route 29 for emergency access only. Mr. Romano spoke of preferring extra engineering costs to make this work rather than burden the Township with the expense.

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Board members commented favorably on the possibility of redesigning the access. This would bring the patrons' entrance closer to Route 29 and have emergency access off of Route 29.

Engineer Decker said the ordinance anticipated a hotel due to the zoning but it was anticipated on Rt. 29 and not on Old River Rd.

Dr. Eirleich said the whole area including Old River Rd. is zoned commercial. He said that one way or another at some point the Township would have to address Old River Rd. even if another solution is found. He said they are not asking for money now, at the time when they are asking for money this hotel will be built and paying taxes that will help pay for the improvements commenting that it is not an unfair arrangement. He views it as a just request due to the storm water situation and subpar, almost dangerous, situation on the road right now.

Mr. Fitting expressed that this request should go to Township Committee.

Attorney Palilonis said the Board's job is to come up with a percentage of the cost of road improvements.

Chairman Fulper said the Board has to not just decide the percentage but if they want to forward this to the Committee.

Attorney Palilonis said the Board engineer will determine what the proper improvements are. If the proper improvements bring in off track improvements then the Board has the obligation to determine the percentage.

Mr. Romano said the site plan was developed without the knowledge of the constraints they are forced with after the site has been developed. They are now trying to make it work on their site. Engineer Bayer said other options were looked at including putting access off of Route 29. The Board relieved them of disturbance of steep slopes. From the edge of the parking lot to Route 29 is a very steep slope at over 25% and they were granted relief from that in the site plan. They have minimized any disturbance in the steep slope area. They came up with what they thought was the best solution. If they were to move the development back they would have been encroaching further up the steep slope going up the mountain. The development was kept in the flat area. Engineer Bayer said the site plan best addressed the site constraints and minimizes the disturbance to the critical areas and off of Route 29. He went over the constraints from accessing from Route 29. He thought the site plan created was a viable option, there was a lot of concept that went into it before it went to the Board.

Mr. Romano commented on the Board reacting accordingly to new information. Mr. Fitting commented on financial hardship. Board members commented on alternative access to the property and the new information given tonight.

Chairman Fulper asked what the Board's choices are tonight. Attorney Palilonis said the Board has to do what is required in the ordinance. Chairman Fulper asked the definition of off track. Attorney Palilonis read that off track means not located on the property which is the subject of a development application or one the closest half of the abutting street or right of way. Chairman Fulper asked if the improvements are on the property. Engineer Decker said based on the location of the triangular sliver to the south and that is part of the property the way he reads it. There is a small section if they were to taper it back to the existing roadway width where there are improvements 25 feet past the end of the triangle. Mr. Ashton asked if there would be a small piece that would be off track but everything below it would be on track is Engineer Decker's opinion. Engineer Decker said that would be his opinion.

Chairman Fulper asked if it is all on site then are we done. Engineer Decker said that was his opinion that the sliver is part of the lot.

Attorney Palilonis said the statue is simple and commented on the unusual situation but it is not located on the property.

Attorney Hirsh said that there are no improvements proposed on the sliver. The sliver is a separate lot although it is part of the tax lot. It is not connected in any way to the main track that the hotel is proposed

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on. It is separated by the main track by Old River Road. She does not think it is a reasonable interpretation of the language in the statute.

Attorney Palilonis said they are proposing to improve the road to service the property. The issue is what constitutes the property that is the subject of a development application.

Attorney Hirsh referred to the drawing and pointed out the closest half to the edge of the property. She read from the statute regarding the definition of off track not located on the property which is the subject of the development application nor on the closest of the abutting street or right of way.

Mr. Fitting said this is with the assumption that the triangle portion is not a part of the property.

Attorney Hirsh said it is not part of the property which is the subject of the development.

Mr. Ashton asked if Attorney Hirsh is saying the subject property is not necessary Block 26 Lot 17 in its entirety; it is a specific portion of B 26 L 17, is how she is putting forth it should be interpreted.

Attorney Hirsh said that is correct commenting that it is a very unusual circumstance. It is as if there is a separate lot on the other side.

Mr. Fitting commented on the Board making a decision on whether the triangle is part of the property or not.

Chairman Fulper said it is as the engineer's testimony identified it.

Mr. Ashton said the applicant's attorney is making an assertion that the property in question is not B 27 L 17 in its entirety; it's just this portion of it where they are developing. He asked Attorney Palilonis for the legal perspective on this. Attorney Palilonis said on site means located on the lot in question and excluding any abutting street or right of way, to him this implies off track would be off the lot. Mr. Ashton asked if they should be looking at the triangle as part of the lot. Chairman Fulper said he does not accept Attorney Hirsh's opinion and he would like the Board to discuss this. Mr. Ashton said that to the effect of the triangle that sits there the abutting road isn't an abutting road, it is cutting through where the triangle is. If there are improvements above the triangle, even though the property line sits out further than the middle line of the road, that is the abutting road and it is on the opposite side of the abutting road. For the street improvement where the property lines comes up from the street from what Attorney Palilonis described it sounds like anything above the triangle on the abutting street on the opposite side of the center line would be something the Board would have to consider. Engineer Decker said what is currently proposed is tapering back the existing road about thirty-five feet, this was from the suggestion he had of tapering the southern portion of the road. Chairman Fulper asked if there is a possibility of all the improvements could be made inside the property line. Engineer Decker replied yes.

Attorney Hirsh said her client would like to review whether there are any additional options including some discussed here tonight and withdraw the request for the off track improvement contribution. She has listened to their analysis and they have brought forth to her some things they were not aware of. This leaves them back in compliance review. This issue is withdrawn so the Board need not decide it. She apologized for using the Board's time on this.

Engineer Decker commented that the applicant is going through the DRCC review which is more restrictive than the Township's. He is comfortable with resolution compliance and that can be handled administratively. If any major site changes comes up they should let the Board know.

Attorney Palilonis said this could continue for a couple of months.

Attorney Hirsh said they are not deferring this. They are withdrawing their request for Township contribution towards the cost of the road and drainage improvements. The engineers can continue in the compliance review and if they can reduce the road that is fine, if they can't it has no impact on the township as they will not ask for contributions.

## **CORRESPONDENCE:**

County Municipal Informational Roundtable March 28, 2017: Chairman Fulper attended this today.

**Approval of Bill List 2/28/17:**

Chairman Fulper presented the revised bill list with a total of \$2280.98.

Motion was made by Mr. Romano with a second by Mr. Cronic for the approval of the Bill List contingent upon certification of funds. Motion carried on voice vote - all ayes.

**DISCUSSION:**

There were no items for discussion.

**OPEN TO PUBLIC:**

The floor was opened to the public. (10:20PM)

Hearing no additional comments/questions, the floor was closed.

**ADJOURNMENT:**

Mr. Cronic asked if there is a required time limit regarding the approval for Barnyard Ventures. Attorney Palilonis believes it is eighteen months after approval is given.

A motion was made by Mr. Ashton to adjourn the meeting, seconded by Mr. Romano. All members voted in favor of adjournment at 10:21 PM

Respectfully submitted,

Christine A. Rosikiewicz

Deputy Zoning Secretary