

**MERCER COUNTY PLANNING BOARD
REGULAR MEETING MINUTES
FEBRUARY 13, 2019**

PRESENT: Michael E. Shine, Chairman
William S. Agress, Vice Chairman
Samuel Frisby, Freeholder
Paul A. Penna
Samuel M. Rubino
George Fallat, County Engineer
Leslie R. Floyd Planning Director (for Brian M. Hughes
County Executive)

ALSO PRESENT: Robert Ridolfi, Board Counsel
Lisa Fritzing, Assistant Planning Director
Richard Smith, Planning Board Secretary
Matthew Lawson, Staff
Andrew Lloyd, Staff
Regine Delcy, Staff
Matthew Zochowski, Staff

Mr. Shine called the meeting of the Mercer County Planning Board to order at 9:05 a.m.

I. STATEMENT OF ADEQUATE NOTICE

Pursuant to the Sunshine Law, notice of this meeting was sent to the Trenton Times, the Trentonian, and was posted in the County Clerk's office and the County Administration Building on January 25, 2019.

II. APPROVAL OF MINUTES

Mr. Agress made a motion to approve the minutes of the January 9, 2019 Planning Board meeting and Mr. Rubino seconded the motion. The minutes were approved with the following vote:

Y	Michael E. Shine	Y	Samuel M. Rubino
Y	William S. Agress	Y	George Fallat
Y	Samuel Frisby	Y	Leslie R. Floyd
Y	Paul A. Penna		

III. PUBLIC COMMENT

Chairman Shine asked for public comment regarding new business:

Bonnie Tillery asked if he Board Members received written comments prior to the meeting. Ms. Floyd stated that all written comments received before the Sewer Service Amendment Comment Period closed were given to the Board Members prior to this meeting.

Ed Pfeiffer asked the Board to confirm or not they received a letter from North Crosswicks Friends of Open Space. Mr. Smith confirmed that the Board received the letter.

Ms. Floyd noted that any correspondence which was received after the Comment Period was also given to the Board with the instructions that it was not to be considered in their decision. She noted that since it was correspondence to the Board Members it was given to them as correspondence. (See correspondence below)

IV. OLD BUSINESS

There was no old business.

V. NEW BUSINESS

a. Mercer County Planning Board Resolution No. 2019-01

Proposed Amendment to the Mercer County Water Quality Management Plan, "Radvany Baseball Facilities Hamilton Township," and associated expansion of the Hamilton Township Water Pollution Control Facility's sewer service area.

Ms. Floyd stated that the Board Members were provided a staff memorandum dated February 8, 2019 which provided details and clarification about the proposed Sewer Service Amendment. Ms. Floyd introduced staff member Andrew Lloyd who presented the proposed amendment to the Board and a brief overview of the memorandum.

Mr. Lloyd noted that there was one item from the January 9, 2019 hearing that required clarification. On pages 23-25, the applicant's representative Tony DiLodovico provides statements regarding NJDEP regulations that can be interpreted to the affect that if an amendment applicant succeeds in amending the Sewer Service Area (SSA), and the site in question is included in the SSA, then the project must indeed develop closely along the lines of that which was proposed during the amendment process, otherwise the SSA could be removed, or otherwise reconsidered by NJDEP. Mr. Lloyd then noted that the Mercer County Planning Staff did not comment on this interpretation during the hearing, but has since confirmed via email with NJDEP that once a WQMP amendment is adopted, the associated site remains in the SSA regardless of whether or not the site is developed as proposed, or whether or not the ownership of the property changes – in effect the SSA delineation "goes with the land," and is not subject to further review once adopted by NJDEP.

Mr. Lloyd further stated that according to N.J.A.C. 7:15, the WQMP sewer service area amendment review process requires that amendments be reviewed based on, among other things, uses allowed in local zoning ordinances, and local land use objectives. Mr. Lloyd continued with the following staff comments from the aforementioned memorandum:

- a. The local zoning ordinance relevant to this case clearly states that the RRC zone is largely defined by the fact that it is outside of Sewer Service, and does not include private recreational facilities in its list of primary nor conditional uses.
- b. Although Mercer County Planning staff raised the issue of this zoning inconsistency with NJDEP, their stated position was that the zoning inconsistency was essentially a local issue that would be taken care of at a later date, by local officials, and was not enough of a reason to withhold publishing preliminary notice of the amendment.

- c. According to N.J.A.C. 7:15, (the State regulations concerning Water Quality Management Planning) responses to the applicant's letter requesting consent that come from a governmental entity must be either in the form of a Resolution (if the entity supports the amendment), or a letter of objection stating the reasoning for the objection. The third option for a municipal government is to not offer a response either in support nor objection. Hamilton Township government has not issued a resolution of support, or a letter of objection, as of the date of the memorandum or of this meeting February 13, 2019.

Ms. Floyd stated that the Hamilton Township Committee met last week and the County has not received any information from them concerning this amendment. She also noted that the County has not received any correspondence from the Township Administration.

Chairman Shine opened Board discussion and stated that paragraph e. of the staff memorandum was critical because it outlined the three paths that the board could take: approve the Sewer Service Amendment, deny the Sewer Service Amendment or request further information, including something from Hamilton stating their position.

Mr. Frisby stated that he would feel more comfortable voting after the Board received feedback from Hamilton Township. He referenced the fact that the Freeholder Board does not take action that will affect a municipality without their concurrence.

Ms. Floyd stated that Hamilton Township is not required to comment or provide the Board with any more information.

Mr. Rubino stated that he also would like to have feedback from Hamilton Township.

Ms. Floyd stated that Hamilton Township had 60 days from early December to respond and they have not, nor is a response expected at this time.

Mr. Penna asked if the Board requests additional information from the Township, the Board's third option, what is the time frame for their response?

Ms. Floyd noted that if Hamilton did not respond while under a deadline, what reason is there to believe that they would respond in the absence of a deadline?

Chairman Shine responded to Mr. Penna and indicated that the Board cannot dictate a time frame to Hamilton Township within which to answer.

Mr. Frisby again noted that he would still like to have the Township's feedback.

Mr. Fallat asked Mr. Lloyd for more clarification on the Board's options.

Mr. Lloyd stated from the February 8, 2019 staff memorandum that according to the Mercer County Water Quality Management Planning Amendment Procedures, adopted on August 12, 1993, the Planning Board may reach the following decisions:

- i. Recommend approval to the County Executive (minor modifications to the amendment, acceptable to the NJDEP and the Planning Board, may be incorporated into said recommendation).
- ii. Request more information from applicant (decision to be within 30 days after requested information is received).

iii. Recommend disapproval to the County Executive.

Mr. Fallat asked if the Board can deny the application without prejudice.

Mr. Ridolfi explained the options and process to the Board.

Mr. Fallat stated that the Board needed to hear from Hamilton Township.

Mr. Agress also stated that he would like to hear from the Township and was surprised that there was no comment from the Township planners.

Ms. Floyd noted that the comments are to come from the Township Committee in the form of a resolution of support or from the Administration in the form of a letter of no support.

Mr. Smith stated that he has not heard any response from the Hamilton Township Planning Staff, Planning Board or Zoning Board.

Chairman Shine stated that the Board has been provided with a draft resolution recommending approval and a draft resolution recommending denial of the proposed Sewer Service Amendment and asked for additional comments.

Chairman Shine hearing no additional comments from the Board made a motion to recommend disapproval of the proposed amendment to the Mercer County Water Quality Management Plan and adopt Resolution No. 2019-01 and Mr. Frisby seconded the motion. The motion was approved with the following vote:

Y	Michael E. Shine	Y	Samuel M. Rubino
Y	William S. Agress	Y	George Fallat
Y	Samuel Frisby	Y	Leslie R. Floyd
Y	Paul A. Penna		

VI. CORRESPONDENCE

- a. 1/24/2019 letter from Assemblyman Daniel R. Benson to NJDEP.
- b. 1/15/2019 letter from Edward Pfeiffer (North Crosswicks Friends of Open Space) to Chairman Michael E. Shine.
- c. Copy of 6/13/2011 letter from Edward Pfeiffer (Save Hamilton Open Space) to Dennis Pone (President, Hamilton Municipal Council).
- d. 1/23/2019 letter from Stuart J. Lieberman, Esq. to NJDEP.
- e. 2/5/2019 letter from Richard D. Fornaro, Esq. to NJDEP.
- f. 1/24/2019 letter from Michael L. Pisauero, Jr., Esq. (The Watershed Institute) to NJDEP.
- g. 2/8/2019 letter from Delaware Riverkeeper Network.
- h. 2/12/2019 letter from Richard D. Fornaro, Esq.
- i. 2/12/2019 letter from Stuart J. Lieberman, Esq.

VII. ADJOURNMENT

Mr. Agree made the motion to adjourn the meeting and Mr. Rubino seconded the motion. The meeting was adjourned at 9:38 a.m. with the following vote:

Y	Michael E. Shine	Y	Samuel M. Rubino
Y	William S. Agress	Y	George Fallat
Y	Samuel Frisby	Y	Leslie R. Floyd
Y	Paul A. Penna		

Respectfully Submitted,



Richard J. Smith, Planning Board Secretary

Attachments, if any, which are listed in the minutes, are made part of the permanent record in the Minute Book and are available upon request.