

# MERCER COUNTY PLANNING BOARD REGULAR MEETING MINUTES VIRTUAL ZOOM MEETING

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<http://www.mercercounty.org/departments/planning/planning-board>

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Webinar ID: 880 5029 9996

## October 9, 2024 9:00 AM

**PRESENT:** Michael Shine, Chairman  
William S. Agress, Vice-Chair  
Samuel Rubino  
Marvin Ross  
Maria Connolly  
Basit Muzaffar, County Engineer

**ALSO PRESENT:** Robert Ridolfi, Planning Board Counsel  
Matthew Zochowski, Planning Board Secretary

Chairman Shine called the meeting of the Mercer County Planning Board to order at 9:01 AM.

**I. STATEMENT OF ADEQUATE NOTICE**

Mr. Zochowski read the statement of adequate notice. Pursuant to the Sunshine Law, notice of this meeting and all meetings for the 2024 calendar year were sent to the Trenton Times on January 10, 2024, were posted in the County Administration Building on January 22, 2024 and were published in the Trenton Times on January 14, 2024.

**II. ATTENDENCE ROLL CALL**

All members except Commissioner McLaughlin and Dallas Barr were present for the October roll call.

**III. APPROVAL OF MINUTES**

Chairman Shine announced that minutes have been distributed from the September 11, 2024 meeting and asked if there were any comments or questions. There were no comment or questions. Vice Chair Agress made a motion to approve the September 2024 Planning Board minutes which was seconded by Samuel Rubino. All members voted to approve the minutes.

**IV. LAND DEVELOPMENT COMMITTEE**

Following approval of minutes, Chairman Shine requested that the Board pause the Planning Board meeting momentarily and jumps to the Land Development Committee meeting as there is only 1 application before the Board today. Chairman Shine would like to get that out of the way so the Board can spend more time on the Planning Board agenda.

**VI. NEW BUSINESS/ CORRESPONDENCE**

**JDN Appeal**

Chairman Shine began by asking Mr. Frank Petrino, Esq. to speak to the revisions that have been made that were part of the correspondence submitted. The October 4<sup>th</sup>, 2024 letter was shown and Mr. Petrino was promoted to the panel. Mr. Ridolfi asked that prior to beginning with Mr. Petrino's testimony, that Mr. Zochowski provide a brief history of the project and why we are here today.

**Mr. Zochowski Summary**

Mr. Zochowski mentioned that this project was originally approved by the Planning Board's Land Development Committee on October 13, 2021 and was subject to several conditions. On December 8th, 2022 the project was issued a Final Approval after all conditions of that approval were met. This application returned before the County Planning Board for a minor revision at the June 12, 2024 meeting for which the Board issued a new conditional approval with the condition that the applicant updates their stormwater maintenance manual. Applicant has since updated their stormwater maintenance manual and recorded the revision and County issued a new final approval on August 9, 2024 once applicant met the new condition of approval.

Thereafter, Michael Gan, Esq., representing the Objector, Mercer County Defense League ("MCDL") filed an appeal of the County Planning Board decision to approve the minor revisions to the Applicants plans with the County Board of Commissioners.

Letter briefs from the attorneys and reports from the respective engineers were submitted in advance of the September 10, 2024 hearing before the Commissioners. At the September 10, 2024 hearing, at the suggestion of the parties involved, the Commissioners decided that the parties meet in an effort to resolve their respective differences and thereafter return to the County Planning Board for a follow up meeting on October 9, 2024 with revised Plans so the Board could then decide on what action would be appropriate based on the Plan revisions and all accompanying engineering reports related to the revised Plans.

The Objector's reports were to be filed by September 25, 2024 and the Applicant's reports and the County's reports were to be filed by October 4, 2024. All correspondences and reports have been sent to Board in advance of this meeting for review. Four documents were sent on Friday and there was one additional document sent on Monday.

**Mr. Frank J. Petrino, Esq. Opening Statement**

Mr. Petrino began by making opening statements and proceeded to explain the revisions that have been made to the plans and gave an overview of the project and scope of the application. Mr. Petrino mentioned that the property is suitable for development and is not constrained by flood hazard areas or riparian zones. It is only limited by wetland areas delineated by NJDEP. Mr. Petrino asked if Daniel T. Sehna, PE could share the current plans on the screen and site plans were pulled up for all attendees of the virtual meeting.

Mr. Petrino mentioned that since the last meeting in June, and at the request by County Engineer, one additional change has been made. At his request, a 15" pipe will be replaced with a 24" pipe which discharges across the County Road into a wetlands area. The only other change was that the Stormwater Maintenance Manual needed to be updated which has since been completed. Mr. Petrino proceeded to discuss the project, nearby projects and prior approvals.

Mr. Petrino mentioned that there was a challenge to the April 22, 2022 local approval. Plaintiffs challenged the approval and the Resolution memorializing the approval which was 45 pages long. That complaint was a 3 count complaint of which 2 were dismissed in January of 2024. The third count was dismissed on August 5, 2024.

Mr. Petrino asked about how much more information he should share and Mr. Shine asked that only items pertinent to the jurisdiction of the board be mentioned and to keep things brief.

Mr. Petrino mentioned that the objector wrongfully asserted on page 4 of their letter brief (dated July 26, 2024) that the change to the one basin approved by NJDEP actually affected the design and required changed

The reason why we are here is because the applicant has asked us and said specifically that the drainage system wasn't adequate to convey the storm. And it would be flooded because it is part of our infrastructure. The County Engineer has asked the applicant's engineer to look into all the storms they have designed it for and to give him an answer. They came back and told the County Engineer that they would increase the size of the pipe from a 15" RCP pipe to a 24" RCP pipe which would be more than adequate to convey the storms in the two pipes.

In County Engineer's response letter on page 2, he mentions we have excess capacity for the 100 year storm. The regulations as intended only require facilities to be designed to the 25 year storm. County Engineer stated that they exceed what is required by the standards. Even the original 15" pipe was adequate enough for the purpose. County Engineer stated that he is more than satisfied with the design based on what is required to be transmitted.

The other item discussed was the H&H analysis. The horizontal component of the infiltration speaks to the mounding. County Engineer stated that County does not look at mounding analysis but the reduction in the peak flows. In his discussions with the design engineer, all the soils are being replaced with soils of the appropriate K value and a higher safety value. Applicants are bringing in truck loads of soils that meet that criteria so infiltration in his mind will not be an issue.

Moving onto the stormwater management report, the applicant has adequately addressed County concerns and the maintenance plan been registered and recorded with the County. County Engineer is satisfied and has no more concerns and is available for additional questions.

#### **Mr. Frank J. Petrino, Esq. Response**

Chairman Shine asked Mr. Petrino if he wanted to make any clarifications and mentioned Mr. Gan will have the same opportunity. Mr. Petrino pointed out that in addition to what the County Engineer stated, the applicant revised the O&M manual and one of the revisions was that to provide, if there are any issues going forward, additional testing and applicant will be required to remediate problems.

Mr. Petrino continued to discuss the time of application rule and clarified that there are at least 10 or more references in the MLUL to the County Planning Board and conformity and working with the County Planning Board on site plan and subdivision applications. In the County Planning Act there are numerous references to the MLUL and it states that the purpose is to create uniformity of processing applications. If Mr. Gan were right, the Township would be required to apply the regs of March 2021. Mr. Petrino argued that this would require on stormwater report for the Township and one for the County. This would be inconsistent with the two regulating acts and would not allow for uniform processing of applications. Mr. Petrino discussed the preamble Mr. Gan brought up. Mr. Petrino continued at length about Mr. Gan's testimony.

#### **Mr. Michael C. Gan, Esq. Response**

Mr. Gan mentioned that in regards to the groundwater mounding analysis, the MCDL does believe that this is part of the County purview. In the new Land Development Ordinance, it mentioned that the stormwater recharge should be reviewed which entails a groundwater mounding analysis review. He mentioned the unpublished appellant case which Mr. Petrino brought up in his response was a State case and can be applied. The court in its holding stated that, "That statute to municipal agencies deciding land use applications under local zoning laws. In regards to the preamble, Mr. Gan mentioned that the purpose of the preamble shows that the inland flooding rules were applied to for health and safety.

#### **County Engineer Conclusion**

The County Engineer reiterated further that he was more than comfortable with the 15" pipe going across CR 571 and with the change he has more than enough capacity to handle bigger or more catastrophic storms. He is comfortable with what has been presented as a revised option. With the larger pipes, there will be a need to be a minor change in the headwalls as well to accommodate the new pipe size. Mr. Sine asked if that would be a condition to the approval. County Engineer stated that yes, that would be necessary and since he has not seen the design. If that is acceptable to him and his staff, it will be approved.

**VII. PUBLIC COMMENT**

There were no new public comments or new items.

**VIII. ADJOURNMENT**

Chairman Shine asked for the motion to adjourn the meeting and Vice-Chairman Agress made the motion. Samuel Rubino seconded the motion. The meeting was adjourned at with the following vote:

Y Chairman Shine  
Y Samuel Rubino  
Y Marvin Ross  
Y Maria Connolly

Y William S. Agress  
Y Samuel Frisby  
Y Basit Muzaffar

Respectfully Submitted,



Matthew Zochowski, PP/AICP  
Planning Board Secretary