

Approved 8/10/11

**SPECIAL PUBLIC MEETING OF THE
TENAFLY PLANNING BOARD
July 13, 2011**

Chairwoman Wilmit called the meeting to order at 8:15 p.m.

The announcement was made regarding compliance with the Sunshine Law.

The secretary was asked to call the roll:

Voting members present:	Mayor Peter Rustin	Councilman Barry Honig
	Mary Beth Wilmit	Kevin Tremble
	Gus Allen	Jeffrey Toonkel
	Marc Harrison	Steven Greene
	Eugene Marcantonio	John Kim

Voting members absent: Mark Zinna

Others present: Jeffrey Zenn, Esq.
David Hals, P.E.

A motion was made by Mayor Rustin and seconded by Mr. Allen to approve the minutes of the Regular Public Meeting of May 25, 2011, and the Special Public Meeting of June 8, 2011. A voice vote carried the motion. All voted in favor; none were opposed.

PUBLIC HEARING

PB#1-10-05 – Minor Subdivision

Applicant: Showl Hedvat
Block 2103, Lot 3 - 28 Elkwood Terrace

Mr. Carmine Alampi is the attorney for the applicant. Mr. Elliot Urdang is the attorney representing Saul & Jodi Scherl, property owners immediately to the north of the subject property. Board Attorney Zenn gave a brief synopsis of the application and reviewed the hearing procedures for the members of the public.

Councilman Honig noted that he, as of this evening, had still not listened to all tape recordings of this application. He has reviewed all files and materials. He will; however, finish listening to the recordings prior to the next hearing, should there be one, on this application and will certify that he has done so for the record. Mr. Greene also has not as of yet completed listening to the tape recording of the meeting that he had missed. Mr. Tremble recused himself from the meeting.

Mrs. Wilmit read into the record a letter from Harold Ritvo, Esq. dated July 13, 2011, to Mrs. Lorberbaum as follows:

I was involved in this matter at the request of the Chair and Jeff Zenn, Esq. as a result of the conflict of interest which Mr. Zenn might have had. Apparently, an employee of the now

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Borough Engineer's office has submitted documents and was to be called as a witness at tonight's meeting by Mr. Urdang's client.

Statutory and case law prohibits any representative or employee of the Borough from appearing before an agency of the Borough.

I advised both Mr. Alampi, the applicant's attorney, and Mr. Urdang of my opinion. It is my understanding that the employee of the Borough Engineer's office will not be appearing at tonight's meeting. An alternate engineering expert from another firm may be called at some time in the future.

It is my recommendation to the Board that any exhibits or reports by anyone from Mr. Maser's office be stricken from the record and not be considered by the Board.

I have advised both attorneys of this direction and I understand that they agree.

As a result of the Borough Engineer's representative no longer being involved in the matter, it is my opinion that Mr. Zenn no longer has a conflict. I am providing the Board with this letter so that Mr. Zenn, who has not, will not have any involvement in opining on the issue.

Both attorneys acknowledged that they are in concurrence with the issue. The board was directed to disregard all testimony and exhibits presented by Mr. Rached of Maser Consulting. This includes Exhibits O-2 and O-3. The objectors to this application can present alternate professionals at a future meeting.

Mr. Robert Beutel, Director of Public Works for the Borough of Tenaflly for the past 17 years, was sworn in to give his testimony. He advised the board that he had directed the homeowner of 12 Mayflower Drive, Mr. Scherl, to remove landscaping from the Borough right-of-way and that he was satisfied with the removal efforts. Mr. Urdang had no questions for Mr. Beutel.

Mr. Alampi entered the following exhibit into the record:

- Exhibit A-15, 7/13/11, Memo from Bob Beutel, Director of DPW, to Dee Lorberbaum, MLUL Officer dated November 3, 2010, regarding sight distance study.

Mr. Zenn read the memo "After reviewing the site, I agree that the plant material is planted in the Borough's Right of Way is blocking the view from the site driveway. The evergreen trees cannot be pruned to 3 feet. Therefore, plant materials should be removed."

He asked Mr. Beutel if he recognized the memo to which he replied that he did. Mr. Alampi entered the following exhibit into the record:

- Exhibit A-16, 7/13/11, for Identification, Azzolina & Feury, Proposed Alteration Plan dated 9/14/2005, of the Scherl property.

Mr. Alampi commented that this had been submitted by Mr. Scherl to the Building Department. The sole purpose of the exhibit is to show the dimensions of the property and the right of way dimensions as they move around the Scherl property on Mayflower Drive. Board Engineer David Hals noted that the exhibit appears to be based on the survey. It is signed by a licensed land surveyor.

Mr. Alampi asked Mr. Beutel to review Exhibit O-4, 5/11/11, photos of Scherl property. Exhibit D shows a group of 3 photographs. Mr. Beutel recognizes the Scherl property as it appeared on his site inspection. He explained how the right of way for Mr. Scherl's property was determined for the board members. He consults a map to make the determination. This was a map given to him 17 years ago, which was probably taken from the tax map.

Mr. Alampi entered the following exhibit into the record:

- Exhibit A-17 a, b, c, d, e, f, 7/13/11, for Identification, Collective photos, 6 in total

He asked Mr. Beutel to try to identify these photographs. Mr. Urdang objected to these photographs as he has not had ample opportunity to view same. They should have been supplied to him and the board members earlier than now.

For purposes of moving this along, Mrs. Wilmit allowed the testimony to continue. Mr. Alampi was told to show the photos to Mr. Beutel and then Mr. Urdang. Mrs. Wilmit advised both attorneys that going forward; all exhibits must be exchanged between the attorneys and board members prior to the evening of the hearing.

Mr. Beutel testified that he has not been on the Scherl property since November 2010. He had met with Mr. Scherl, the landscaper, Frank Mottola, Zoning officer at the site earlier this year. He noted that there is no visual blockage at this time.

Mr. Beutel was unable to identify some of the photos, which he did not take himself. It appeared that the photos do not depict what is there at the present time. Mr. Alampi commented that he may have to recall Mr. Beutel and also suggested that Mr. Beutel take his own photographs. Mrs. Wilmit noted that the board asked Mr. Beutel to come to the meeting to testify about what and when he advised Mr. Scherl to remove from the right of way. He was not directed to take photographs. There was some concern that Mr. Alampi is leading the board to look at property that is not the subject of this hearing.

Mr. Urdang commented that Mr. Alampi should not have suggested that Mr. Beutel take his own photos. Mr. Urdang noted that his new traffic expert will be testifying as to what the situation is now. Mr. Alampi can cross examine the next traffic engineer. Mr. Alampi wishes to continue questioning Mr. Beutel to determine whether all the landscaping was removed from the right of way as required under the ordinance. Mr. Zenn clarified that the board would only be reviewing the landscaping in the right of way nearest the driveway.

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Mr. Alampi asked Mr. Beutel if he was familiar with the Borough's Zoning Regulations, specifically Section 35-802.18, Fences, Walls and Hedges and Clear View at Intersections. Mr. Beutel testified that he was vaguely familiar with this section; however, Zoning Officer Frank Mottola was who would have dealt with zoning matters. Mr. Urdang objected to this line of questioning noting that Mr. Beutel is not the Zoning Officer and he is being asked to answer questions outside of his authority. It was noted that Frank Mottola is no longer employed by the Borough.

Mr. Alampi questioned Mr. Beutel about his reasons for going to the property. Mr. Beutel noted that trees were blocking the site and there was some plant material in the right of way. It is his opinion that there is no longer any blocking of the site and that he is satisfied with the way the property is presently landscaped. He is satisfied that everything he requested to be removed by Mr. Scherl was removed.

The meeting was open to board members for questions of Mr. Beutel. There were none. The meeting was opened to the public for questions of Mr. Beutel. There being no one from the public with questions for him, this portion of the meeting was closed.

The board took a brief recess. The board returned to the hearing.

Messrs. Alampi and Urdang acknowledged that they had each received a copy of a letter from Board Engineer David Hals dated July 13, 2011 re: File Review—Driveway/Tree Removal, 28 Elkwood Terrace.

Mr. Robert Byrnes was sworn in to give his testimony. He is the Borough Construction Official/Zoning Officer. He testified that he had reviewed the file for this application. He had issued a stop work order and then lifted the same stop work order on the direction of Borough Engineer Hals. He became the Zoning Officer on April 15, 2011.

Mr. Alampi entered the following exhibit into the record:

- Exhibit A-18, 7/13/11, 2000 International Building Code, New Jersey Edition, Chapter 32, Encroachments into the Public Right-Of-Way

He asked if Mr. Byrnes was familiar with this document. Mr. Brynes noted that he has read it before. Mr. Alampi asked Mr. Brynes if he was familiar with the Zoning regulations, which he was. Mr. Byrnes noted that the International Building Code governs the encroachment of structures into the public right-of-way.

Mr. Urdang asked Mr. Byrnes if he inspected the Mayflower Drive Property or the neighboring Hedvat property. He commented that he does not routinely inspect to see if landscaping is in the right of way.

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The meeting was open to board members for questions of Mr. Byrnes. There were none. The meeting was opened to the public for questions of Mr. Byrnes. There being no one from the public with questions for him, this portion of the meeting was closed.

Board Engineer David Hals was sworn in to give his testimony. He had been the Borough Engineer from 2004-June 2011. He has been the Planning Board Engineer from 2004 to present. He entered the following exhibit into the record:

- Exhibit B-2, 7/13/11, Letter to Tenaflly Planning Board dated July 13, 2011, regarding File Review, Driveway/Tree Removal, 28 Elkwood Terrace

Mr. Hals had reviewed the file provided by Mr. Alampi after the last Planning Board meeting, his own office file and also the Building Department file for the property at 28 Elkwood Terrace. A zoning permit had been issued on 4/9/07 for the construction of a driveway, swimming pool and patio. The driveway was constructed; however, the swimming pool and patio were not constructed. He noted that the topography for the property had changed from 2004 to 2007.

Mr. Hals entered the following exhibits into the record:

- Exhibit B-3, 7/13/11, Site Plan, 28 Elkwood Terrace, Proposed Pool & Patio, dated 3/9/07
- Exhibit B-4, 7/13/11, Site Plan, 28 Elkwood Terrace, Proposed Pool & Patio, dated 3/9/07, last revised 11/19/07

Mr. Hals will provide copies of these exhibits as well as his inspection notes and the tree removal permits to the attorneys and board members. He reviewed Exhibit O-1, previously submitted, along with the above exhibits. The contours of the property were changed from 2004 to 2007. Steep slopes were eliminated. Some type of grading would have been done to change the topography. He testified that nothing natural could have removed the steep slopes.

Councilman Honig asked if having the slopes removed would change the application for a subdivision. Mr. Hals noted that if there are no steep slopes, then the application would not require a variance. If there are steep slopes >25%, then a variance would be needed. Mr. Hals noted that he believed the steep slopes were removed. He had visited the site in 2005 during the first application on this property and viewed these steep slopes. The steep slopes are not present now.

Councilman Honig inquired as to whether the Building Department had received complaints about soil removal from the site. Mr. Hals had nothing in his file to indicate that complaints had been received.

The meeting was open to board members for questions of Mr. Hals. There were none. The meeting was opened to the public for questions of Mr. Hals. There being no one from the public with questions for him, this portion of the meeting was closed.

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The board looked at the upcoming schedule for Planning Board meetings. The application hearing for Showl Hedvat, 28 Elkwood Terrace, Block 2103, Lot 3, will continue on Wednesday, July 27, 2011, at 8:00 p.m. No further notification is required. Witnesses for the evening will include DPW Director Bob Beutel with cross examination by Mr. Alampi, cross examination of Mr. Hals by both Messrs. Urdang and Alampi, and cross examination of Mr. Scherl by Mr. Alampi.

A motion was made by Mr. Harrison and seconded by Mr. Allen to amend the annual meeting schedule to reflect that a Work Session will commence at 7:30 p.m. prior to the public hearing on July 27, 2011.

Mr. Urdang added that he would like to have his new traffic engineer present at the September 14, 2011, meeting. It was suggested that the board open the Work Session on September 14, 2011, at 7:30 p.m. and convert the rest of the Work Session to a Special Public Meeting at 8:00 p.m.

A motion was made by Mr. Harrison and seconded by Mr. Greene to amend the annual meeting schedule to reflect that the September 14, 2011, Work Session will commence at 7:30 p.m. The remainder of the meeting will be converted to a Special Public Meeting at 8:00 p.m.

Mrs. Wilmit asked Mrs. Nicolosi to advise Mrs. Lorberbaum that a special public meeting may need to be scheduled for the Re-Examination of the Master Plan.

A motion was made by Mr. Harrison and seconded by Mr. Greene to adjourn the meeting at 11:05 p.m. A voice vote carried the motion. All were in favor; none were opposed.

Respectfully submitted,

Valerie B. Nicolosi
Planning Board Secretary