

Approved 9/14/11

**REGULAR PUBLIC MEETING OF THE
TENAFLY PLANNING BOARD
July 27, 2011**

Chairperson Wilmit called the meeting to order at 8:09 p.m.

The announcement was made regarding compliance with the Sunshine Law.

The secretary was asked to call the roll:

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

Voting members absent:	Mayor Peter Rustin	Kevin Tremble
	Mark Zinna	

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

PUBLIC HEARING

PB#1-10-05 – Minor Subdivision

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

Mr. Zenn noted that Mr. Greene had signed a certification that he had listened to the tape recording of the December 8, 2010, meeting that he missed. Mr. Kim has also signed a certification that he listened to the tape recordings of several meetings. Councilman Honig noted that he, as of this evening, had not listened to all tape recordings of this application, but was only ½ cd away from completion. He will finish listening to the recording prior to the next hearing on this application and will certify that he has done so for the record.

Mr. Carmine Alampi addressed the board. He will be withdrawing as counsel to Mr. and Mrs. Hedvat. He noted that Mr. Hedvat cited financial reasons for this decision. Mr. Hedvat will proceed as a pro se applicant without the benefit of counsel. Mr. Alampi noted that he may return should there be an appeal on the application. He also advised the board that a claim has been filed with the title insurance company; and he is representing the Hedvats in that matter. Mr. Alampi advised Mr. Zenn of this change at 5:00 p.m. this evening. He added that it has been a pleasure appearing before the Tenafly Planning Board.

Mr. Zenn questioned Mr. Hedvat to ascertain that he understands that he will continue the hearing without Mr. Alampi's representation. Mr. Hedvat understands and is aware that at the July 13, 2011, meeting, hearing dates were scheduled for this evening, September 14 and September 21. Mr. Hedvat advised the board that he is prepared to cross examine Messrs. Beutel, Hals and Scherl this evening as time permits and that the matter will not be adjourned due to his decision not to be represented by counsel.

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Mr. Urdang noted for the board that he expects Mr. Hedvat to follow the same rules and procedures that he would have to follow. He will also need Mr. Hedvat's contact information.

Councilman Honig questioned the decision by the Planning Board Chairman to decide against the adjournment. Mr. Zenn noted that letters had been received from both Messrs. Alampi and Urdang regarding this evening's meeting. Mr. Zenn noted that the Planning Board controls its schedule and the chairman is the decision maker to set the schedule. Due to the Open Public Meetings Act, a poll cannot be taken of board members and the board cannot have an electronic meeting. Witnesses had been scheduled for this evening so it was decided to proceed with the hearing.

Mr. Robert Beutel, DPW Director, was called to testify. He is still under oath from the last meeting. Mr. Hedvat questioned Mr. Beutel about his memo of 11/3/10 (Exhibit A-15). He noted that he had asked Mr. Scherl to remove plantings in the Borough right of way and that Mr. Scherl had complied fully. The work was done to his satisfaction. Mr. Hedvat questioned Mr. Beutel about the definitions for pedestrian walkway and sidewalk. Mr. Beutel advised that it is the responsibility of the resident to clear the pedestrian walkway, not the Borough. Mr. Hedvat also asked Mr. Beutel if he was familiar with the applicant's traffic engineer, Mr. Simoff's, report. Mr. Beutel noted that he had read this report.

Mr. Zenn marked and entered into the record the exhibit as follows, which Mr. Urdang objected to, not having seen any documentation/photos at all prior to the hearing:

- Exhibit A-19, for Identification, 7/27/11, Packet of information and photos of landscaping and electric lighting taken by Mr. Hedvat on 7/22/11 within 12 Mayflower Drive Right of Way

Mrs. Wilmit cautioned Mr. Hedvat and urged both he and Mr. Urdang to be sure to get information in to each other and the board members in a timely fashion prior to the hearing. Both gentlemen will comply with this request. Mr. Hedvat was permitted to continue his questioning of Mr. Beutel, asking him about the photos.

Mr. Hedvat asked Mr. Beutel to explain why there was not a violation of Borough ordinances on 12 Mayflower Drive if there were plantings in the right of way. Mr. Urdang objected citing that the purpose of the hearing is for a subdivision, not a code enforcement issue on a neighbor. Mr. Hedvat commented that Mr. Scherl had made the road unsafe. He could question Mr. Beutel about the landscaping. Mr. Zenn stressed that only the sight lines to the Hedvat property should be the topic of discussion. After more questions directed to Mr. Beutel, Mr. Urdang again objected stating that a traffic engineer should be answering Mr. Hedvat's questions, not Mr. Beutel. He stressed that a code enforcement issue is not something for this board to decide. Mr. Hedvat had no more questions for Mr. Beutel.

Councilman Honig inquired whether everything was removed as suggested by Mr. Beutel. He stated that it was. He noted that if he or one of his foremen sees a sight obstruction or other issue, the code enforcement officer is notified.

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Mrs. Wilmit inquired as to what percentage of residents have plantings/mailboxes, etc. encroaching into the Borough right of way. Mr. Beutel estimated that 25-30% of residents have something in the right of way. It is common for mailboxes and landscaping to be located in the right of way. The residents are responsible for maintenance of the right of way.

Mr. Urdang marked and entered into the record another exhibit as follows:

- Exhibit O-5, 7/27/11, 3/11/11 email from Mr. Mottola to Mr. Beutel

He read into the record the following portion of the email as follows: "It certainly has not been our policy to make property owners remove long standing growth in their adjacent R.O.W. areas." Mr. Beutel commented that this was an accurate statement. Mr. Hedvat interjected that trees and retaining walls in the right of way are violations. Mr. Urdang objected that this is a code enforcement issue and not for this board to decide.

The meeting was open to the public for questions of Mr. Beutel. There being no one from the public with questions, this portion of the meeting was closed to the public.

Mr. David Hals, Borough Engineer, was called to give his testimony. He also was previously sworn in at the last meeting. Mr. Hedvat questioned Mr. Hals at length regarding the issue of steep slopes.

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

Mr. Zenn marked and entered into the record the following exhibits:

- Exhibit A-20, for Identification, 7/27/11, Letter from Mr. Scherl to Mr. Mottola from 12/05 re: 12 Mayflower Drive, 28 Elkwood Terrace
- Exhibit A-21, 7/27/11, for Identification, Letter from Mr. Hals to Mr. Mottola dated 1/6/06 re: Proposed Lot Grading, 28 Elkwood Terrace
- Exhibit A-22, 7/27/11, for Identification, Memo from Mr. Mottola to Mr. Hedvat dated 1/19/06 re: Site Grading & Tree Cutting Approvals
- Exhibit A-23, 7/27/11, for Identification, Letter from Mr. Hubschman to Mr. Hals dated 4/28/04 re: Minor Subdivision, 28 Elkwood Terrace

Mr. Hedvat asked Mr. Hals to explain how a surveyor prepares contour lines. They reviewed this procedure for the board members using Exhibit A-15, previously submitted. Mr. Hals noted that the underlying field notes would be required in order to know exactly what information the surveyor used to prepare his plans. Some plans are computer generated, some are done manually and some are produced with computer generated and manually entered data.

Mr. Hedvat questioned Mr. Hals at length again about the steep slopes on the property. Mr. Hals again noted that steep slopes appear to have been removed from the property since the 2005 application.

Mr. Hedvat had Mr. Hals review Exhibit O-1, previously submitted. This was the prior subdivision plan submitted by Mr. Hedvat in his first application. Mr. Hedvat asked Mr. Hals if he had initially reviewed these plans, which he did. He asked Mr. Hals if he had approved his application for a driveway, swimming pool and patio in 2007, which he did. Mr. Urdang objected to all these questions as they do not relate to the subdivision application before the board. Mr. Hedvat asked Mr. Hals if he cut trees on his property, which he did. Mr. Hedvat installed a seepage pit and curbs around the driveway and cut the curb in front of the street as requested by Mr. Hals. Mr. Hedvat asked if he did anything illegal to apply for the permit or violated any laws or construction rules to get the permit. Mr. Hals indicated he did not know.

Mr. Hedvat began to question Mr. Hals on Exhibit A-6, Filed Map #4307, dated 1/23/62 and also a 1954 deed of purchase. Mr. Hedvat wants to question Mr. Hals regarding the street frontage variance. Mr. Zenn stopped this line of questioning as the need for the variance for street frontage has already been established. Mr. Hedvat had no further questions of Mr. Hals at this time.

Mr. Urdang asked Mr. Hals to review Exhibit A-14, dated 3/11/05 previously submitted, showing steep slope areas. He noted that Mr. Hals had testified that there was a change of the steep slopes between 2005 and 2007. The 2007 map showed no or significantly less steep slopes. He asked if there was a change in topography in this plan and the one being reviewed with this subdivision. Mr. Hals indicated that there had been a change. Mr. Hals was asked by Mr. Urdang if this could have been a natural activity. Mr. Hals did not believe that was the case. He testified that this appears to be a man-made change in the slopes.

Mr. Hedvat had Mr. Hals compare Exhibit O-1 and Exhibit A-14, previously submitted. Mr. Hals indicated that there are 3 months between the dates of these plans. The later dated plan still shows steep slopes; however, the steep slopes don't line up with the contours. The topography appears to have changed. It was noted that Mr. Hubschman did both plans. Mr. Hedvat indicated that Mr. Hubschman may have corrected his plan. Mr. Hals noted did not know what Mr. Hubschman had done with the plans.

Mr. Hedvat read the following from Exhibit A-23, 7/27/11, for Identification., Letter from Michael Hubschman to David Hals dated April 28, 2004...."Note that the area in the northeast corner is actually a pile of fill placed there during previous construction, and while noted on the plans as a steep slope area, thus I don't believe that this area is contemplated under the ordinance for protection." Mr. Hedvat contends that this area should not be considered steep slope.

Board members questioned Mr. Hals about the steep slopes. He had testified that he walked the area several times. He indicated that he thought there were steep slopes on the property previously. In 2007 the area that had been steep slopes was no longer there.

Councilman Honig asked if Mr. Hals had ever contacted borough officials about the change in steep slopes. He testified that he had contacted Mr. Mottola, Zoning Officer, via telephone. He asked if such a re-grading had been done, would it have been a violation of the town's ordinances. Mr. Hals indicated that yes it would be a violation; however, he and Mr. Mottola

had decided to wait until the application was heard by the board. Mr. Hals testified again that when the regrading came to his attention, he had a discussion with Frank and it was decided not to pursue as a violation because the application was coming before the board and the board would hear the disposition of steep slopes. Councilman Honig questioned that if this board is not responsible for code enforcement issues, why would Mr. Hals wait for something to be heard from this board. Mr. Hals explained that if a notice of violation was issued against Mr. Hedvat for disturbing his property...it would have been referred to the prosecutor for prosecution and then before it would have been heard by a judge it would have been referred back to the Planning Board or Zoning Board as an application.

Mr. Hals noted that there were steep slopes shown on the application for Mr. Hedvat's driveway, and they are now gone. Councilman Honig commented that what was relevant is the state of the property now. Mr. Hals countered that this is not the case. The board can determine that there was a disturbance of the steep slopes; and Mr. Hedvat would need to seek a steep slope variance. It is Mr. Hals opinion that there were steep slopes on the property; and they are not there now. The steep slopes were disturbed on the site and a variance for steep slopes is required.

Mr. Hals reviewed the history of the numerous reports and letters regarding this property. The subdivision application was submitted in 2005 and then was withdrawn. Shortly after this application was withdrawn, Mr. Scherl submitted his letter in December 2005 saying there is disturbance on the site. In January 2006, Mr. Hals issued a letter that steep slopes were on the property should not be disturbed. Mr. Mottola sent a similar letter end of January 2006. In 2007, Mr. Hedvat submitted a pool application. The topography in 2007 was different than the original 2005 subdivision maps.

Councilman Honig questioned that why there wasn't an objection raised in 2007. Mr. Hals indicated that the application wasn't specifically reviewed by him personally. The plan that was submitted did not have steep slopes on it. The engineer who reviewed the application wasn't familiar with the subdivision application which had been submitted 2 years prior. Councilman Honig questioned Mr. Hals about his reviewing all work coming from his office. Mr. Hals commented that he does a cursory review of everything that comes out of his office and he missed the change.

Mr. Hals reviewed again what work had been done to the site. When the construction started, it came to their attention by Mr. Scherl that there were steep slopes on the property. Mr. Hals issued a stop work order because steep slopes were in the area where the driveway was to be construction. The Stop Work Order was lifted when it was determined that the driveway design was altered to avoid disturbance of the steep slopes.

Mr. Hals indicated that he does not look at the history of each property. Mrs. Wilmit noted the tremendous amount of time and cost in order to do that. She asked Mr. Hals if he himself had seen the steep slopes. He indicated that he visually saw that the steep slopes had changed.

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Mr. Urdang addressed a comment Councilman Honig had raised regarding the steep slope variance. The objector's position is that this board will now consider this application as if the applicant was now applying to remove the steep slopes. Even though the steep slopes are gone now, the board still has jurisdiction over a variance if a variance is required.

There were no more questions from board members or the public for Mr. Hals.

Mrs. Wilmit noted that the board has already reserved September 14 and September 21 to continue with this application. Mr. Urdang advised the board that his traffic engineer will be present at the September 14, 2011, meeting.

Mr. Zenn noted this application will be continued to Wednesday, September 14, 2011, at 8:00 p.m. The objector will present testimony of his traffic engineer. Any reports will be given into the Office of the Planning Board 10 days prior to the meeting. Mr. Hedvat will cross examine the traffic engineer as well as Mr. Scherl that evening if time permits. There is no further notification required at this time.

A motion was made by Mr. Marcantonio and seconded by Mr. Harrison to adjourn the meeting at 11:27 p.m. All voted in favor of the motion; none were opposed.

Respectfully submitted,

Valerie B. Nicolosi
Planning Board Secretary