

Approved 10/12/11

**SPECIAL PUBLIC MEETING OF THE
TENAFLY PLANNING BOARD
September 14, 2011**

Chairperson pro tem Rustin called the meeting to order at 8:00 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 Kevin Tremble
 Steven Greene Jeffrey Toonkel
 Marc Harrison Eugene Marcantonio
 John Kim Mark Zinna

Voting members absent: MaryBeth Wilmit Councilman Barry Honig
 Gus Allen

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

A motion was made by Mr. Greene and seconded by Mr. Toonkel to approve the minutes of the Regular Public Meeting of July 27, 2011, and the Special Public Meeting of August 10, 2011. A voice vote carried the motion. All voted in favor; none were opposed.

A motion was made by Mr. Marcantonio and seconded by Mr. Toonkel to approve the Resolution of Approval for the Application of Mark Columbo, t/a Auto Elite Corporation, Block 1305, Lot 2, 15 Hudson Avenue. The roll was called and the motion carried. Voting YES: Mr. Toonkel, Mr. Harrison, Mr. Marcantonio, Mr. Kim and Mayor Rustin.

A motion was made by Mr. Kim and seconded by Mr. Toonkel to approve the Resolution of Approval for the Application of ARI Realty, Inc., Block 1012, Lots 4, 5, 6 and 8. The roll was called and the motion carried. Voting YES: Mr. Toonkel, Mr. Harrison, Mr. Marcantonio, Mr. Kim and Mayor Rustin.

Mayor Rustin announced that Mr. Hedvat, the applicant for this evening, would be delayed for approximately 10-15 minutes. The Board took a brief recess.

The board reconvened its meeting. Mr. Zenn advised the public that in the absence of both the Chairperson and Vice Chairperson that the remaining Planning Board members elect a Chairman pro tem. At its Work Session preceding this meeting, the board members elected Mayor Rustin as the Chairman pro tem for this Special Public Meeting.

PUBLIC HEARING

PB#1-10-05 – Minor Subdivision

Applicant: Showl Hedvat

Block 2103, Lot 3 - 28 Elkwood Terrace

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Mr. Zenn noted that Mr. Greene and Mr. Kim had signed certifications that each had listened to the tape recordings of the meetings missed. Mayor Rustin signed a certification that he listened to the tapes recordings of the July 27, 2011, meeting that he missed. Mr. Zinna signed a certification that he listened to the tape recordings of the meetings of April 13, 2011, July 13, 2011, and July 27, 2011, all of which he missed. Mr. Zenn noted that everyone present was eligible to vote on the application this evening should the hearing be concluded.

Mr. Urdang called Henry J. Ney of H. Ney Associates to be sworn in for testimony. He gave his credentials to the board and was accepted as an expert in the field of traffic engineering.

The following exhibits were marked and entered into the record:

- Exhibit O-6, 9/14/11, Traffic Access Study, Proposed Subdivision, Block 2103, Lot 3, Elkwood Terrace, prepared for Saul Scherl, 12 Mayflower Drive, by H. Ney Associates
- Exhibit 0-7, 9/14/11, Enlarged copy of Stopping Sight Distance photo in report above
- Exhibit 0-8, 9/14/11, Enlarged copy of Intersection Sight distance photo in report above

Mr. Ney explained the report in detail to the board members. He reviewed the enlarged copies of photos and testified that the applicant's driveway fails to meet either the stopping sight distance or the intersection sight distance. Mr. Ney noted that the applicant's traffic engineer had used 20 mph to determine his calculations instead of the posted speed of 25 mph. Mr. Urdang had no further questions for Mr. Ney.

Mr. Hedvat began his questioning of Mr. Ney. He asked if Mr. Ney had inspected other driveways in the area. He had not. Mr. Urdang objected that other driveways are not relevant to Mr. Hedvat's application. There was much discussion between Mr. Hedvat and Mr. Ney regarding RSIS vs. AASHTO regulations. Mr. Hedvat commented that AASHTO recommends that each driveway intersection provide both Stopping and Intersection Sight Distances. It is not mandatory. Mr. Urdang objected and noted that AASHTO and RSIS regulations apply because this application is for a subdivision.

Mr. Hedvat asked Mr. Ney if he was familiar with Tenaflly's ordinances regarding sidewalk areas. Mr. Hedvat explained that there is landscaping in the sidewalk area of Mr. Scherl's property which blocks the sight distance to his driveway. Mr. Ney noted that there is no foliage in the right of way that prohibits sight distance. Mr. Hedvat referenced Exhibit A-19, series of photos showing landscaping and vegetation on the Scherl property in the right of way. He testified that the road is not safe because of all this vegetation in the right of way. There are no sidewalks because of this either. He believes that his driveway is safe.

Mr. Ney again noted that there is no vegetation blocking the sight distance to Mr. Hedvat's driveway. At this point, Mr. Urdang objected vehemently that this line of questioning is irrelevant. Mr. Zenn agreed and asked Mr. Hedvat to move on to another line of questioning.

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Mr. Hedvat questioned Mr. Ney regarding calculations used in determining a minor road from a major road. Mr. Hedvat doesn't believe there is that much traffic on Mayflower Drive. Mr. Hedvat asked Mr. Ney about other homes and driveways in the area. Again, Mr. Urdang objected due to relevancy.

There was much discussion again regarding stopping vs. intersection sight distance and times. Mr. Hedvat asked Mr. Ney about Tenaflly's land development regulations regarding corner lots, noting that Mr. Scherl's property is a corner lot. Mr. Hals, Board Engineer, explained that Mr. Scherl's lot is not a corner lot. Mr. Hedvat asked Mr. Hals how he could know what was written in the regulations he was reading from. Mr. Hals commented that he is the Board Engineer and knows Tenaflly's ordinances and codes. Mr. Hedvat then recommended that the Borough install a stop sign to make the street safer. Mr. Urdang objected due to relevancy.

Mr. Ney noted that Mr. Simoff's traffic study doesn't permit sight distance for the driveway either. Mr. Hedvat had no further questions.

There were no questions from either Mr. Hals or the board members.

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

The board took a brief recess. The board reconvened.

Mr. Hedvat was given the opportunity to question Mr. Scherl, who is still under oath from the meeting of May 11, 2011. Mr. Hedvat had Mr. Scherl review Exhibit O-4, 24 photos taken by Mr. Scherl. Mr. Hedvat asked Mr. Scherl to explain the photos, which he did. He also testified that he had been told by Messrs. Beutel and Mottola from the Borough to remove vegetation and landscaping from his right of way. When he had removed what he was asked to remove, he contacted those Borough officials again. He received notification that Mr. Beutel was satisfied with what he had removed.

Mr. Hedvat marked and entered the following exhibit into the record:

- Exhibit A-24a, b, c, 9/14/11, three (3) photos of dead trees taken by Mr. Hedvat prior to March 2011

Mr. Hedvat asked Mr. Scherl if he recognized the trees in the photos. Mr. Scherl commented that he did and that all those trees had been removed from his property as requested by the Borough.

Mr. Hedvat questioned Mr. Scherl about the berm shown in Exhibit O-4. Mr. Scherl noted that the berm had been removed over the years and that soil came from Mr. Hedvat's property under Mr. Scherl's fence, which he noted that he had never moved. There is a space under the fence which allowed the soil to erode onto Mr. Scherl's property. Mr. Hedvat asked if Mr. Scherl was an attorney. He noted that he is not practicing law now. He also testified that his wife is a lawyer but not a real

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estate attorney. Mr. Scherl believed that Mr. Hedvat removed the berm without fulfilling the proper requirements and noted that he did not sue Mr. Hedvat but was simply bring the matter to his attention.

Mr. Hedvat asked Mr. Scherl about the location of his shed on his property. Mr. Urdang objected. Mr. Hedvat asked Mr. Scherl why he is objecting to the subdivision. Mr. Urdang objected and did not let Mr. Scherl answer Mr. Hedvat.

Mr. Hedvat had no further questions for Mr. Scherl. Board members had Mr. Scherl clarify again the removal of vegetation and landscaping from his property within the right of way.

There was much discussion regarding whether Mr. Hedvat could give rebuttal testimony. Mr. Hedvat commented that his application seeks a small variance and that he is being treated unfairly by this board and the Borough. Mr. Scherl got numerous variances on his property. Mr. Zenn addressed Mr. Hedvat and told him that he has been treated very fairly by the Planning Board. He further told Mr. Hedvat that Mr. Scherl's property is not relevant to his application.

Mr. Urdang explained to the board that Mr. Hedvat had submitted a volume of documents about the Scherls to the Mayor & Council. The Scherls were vindicated by the Mayor & Council of all the charges brought about by Mr. Hedvat. Mr. Urdang would like any comments about the Scherls stricken from the record.

The application hearing for Showl Hedvat, 28 Elkwood Terrace, Block 2103, Lot 3, will continue on Wednesday, September 21, 2011, at 8:00 p.m. No further notification is required. Public comments will be heard on the application at that time. Messrs. Hedvat and Urdang will give their summations.

A motion was made by Mr. Marcantonio and seconded by Mr. Harrison to adjourn the meeting at 10:38 p.m. All voted in favor of the motion; none were opposed.

Respectfully submitted,

Valerie B. Nicolosi
Planning Board Secretary