

**MINUTES OF THE REGULAR MEETING OF THE  
HAWTHORNE ZONING BOARD OF ADJUSTMENT  
MARCH 15, 2010**

The March 15, 2010 regular public meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:33 p.m. by Vice Chairman Gallagher. All members were present except Messrs. Hallock, Terraglia and Silvestri. In addition, Charles C. Collins, Jr., Attorney/Secretary and Michael Kelly, P.E., representing the Borough Engineer were present.

The Vice Chairman announced that notice of the meeting had been published and posted in accordance with the requirements of the Open Public Meetings Act.

**Bills** On motion by Duffy, with second by Joustra, the bill of the Hawthorne Press for legal publications in the amounts of \$40.56 was approved for payment.

**Minutes** On motion by Chamberlin with second by DeRitter, Joustra and Duffy abstaining, the minutes of February 22, 2010, work and regular, were approved.

**Old Business**

**Hearings**

The Vice Chairman called for the continued hearing of the application of **Puddingstone Goffle Holdings, LLC**. 886 Goffle Road, Lots 10 & 11, Block 267. The applicant was represented by Harold P. Cook, III, Esq., Perconti & Cook, Esqs., 886 Belmont Avenue, North Haledon. At this time James Delia, Esq., Wells, Jaworski and Liebman, Esqs., introduced himself as representing opposing neighbors who had formed an unincorporated association, the "Five Corners Association".

Mr. Collins described the procedure for the conduct of the meeting and Mr. Cook called his first witness, Kevin Rooney, 435 Russell Avenue, Wyckoff, New Jersey. Mr. Rooney testified to his curriculum vitae and connections with the Township of Wyckoff. He is the son-in-law of the late Henry Shotmeyer, Jr., and managing partner of HMS Global Holdings, the organization owning the Shotmeyer service station sites. The members of HMS are Mr. Rooney and his brother-in-law.

He testified that the Shotmeyer family had kept voluminous records over the years and had acquired the property in question in the late 1930's when it was a real estate office. In the late 1940's it was leased to William White Holding Co. for a service station and thereafter in 1954 to Gulf Oil and in 1970 to Shell Oil. Shell Oil had operated a gasoline service station at the property until May 1, 2006.

At this point Mr. Cook advised the Board that although the application before the Board was premised on the contention that the gasoline service station was a pre-existing non-conforming use, the records showed that, in fact, a variance to permit the replacement of the building on the property for that use had been granted by the Hawthorne Zoning Board in 1969. A copy of the resolution and a survey of the property were offered in evidence. A later record evidencing the approval of a canopy on the property was also offered.

Mr. Rooney then described the environmental history of the property beginning with the discovery of soil contamination in 1996. The tenant embarked upon a remedial action work program supervised by its agent MOTIVA. The owner retained The Elm Group, Inc., an environmental liability management organization to protect its interests. At present all contaminated soil has been removed and tainted ground water is being managed by "natural attenuation". Shell's lease was not renewed in May, 2006 and the property has remained vacant since, used only for storage.

Elm has advised the owner that future development should not contain a basement because underground development could hamper the remediation process. The property should be limited to some kind of commercial use.

Mr. Rooney denied any intention to abandon the gas station use and stated the site still retained one hydraulic lift, air compressors, oil dispensers, three service bays, an office, two active bathrooms and the canopy. Underground storage tanks, gas dispensers and pumps have been removed.

He then began to provide statistics on the combination of service stations and convenience stores and testified that 60% of the HMS sites were combination sites.

The Shotmeyer family has decided to replace gas stations when possible and the 7 – 11 use of this property seemed a “good fit”. Mr. Rooney, a certified arborist, opined that the proposed landscaping would provide an effective buffer and stated that his experience indicated the truck deliveries for a service station, over which the operator can exercise no control, are worse than those for a convenience store.

Although some groceries had been stored in a refrigerator on the premises in the past and coke had been available for sale, the applicant acknowledged there had been no permission to for retail sale of non-automotive products and conceded that there had been no prior convenience store use of the property.

Mr. Cook again rejected the idea of any abandonment of the gas station use and agreed to submit the proposed development plans and the possibility of directing roof runoff underground to the DEP for approval.

On questioning from Mr. Delia the witness stated he could still “re-tank” the property for gas station use but had made the “deliberate” decision not to use the property for that purpose.

When asked the number of sites owned by HMS Mr. Rooney demurred. Mr. Collins decided that is an appropriate area of inquiry and requested the legal basis of the witness's refusal from Mr. Cook if his position persisted.

On redirect the witness again stated there is no intention to abandon the service station use.

Mr. Gallagher opened the questioning to members of the public not members of the Five Corners Association and Diego Cruz, 40 New York Avenue, proposed to ask a question but, when told he couldn't if he would be a member of the Association, he withdrew. Mr. Delia agreed to provide the Board and the applicant with an updated list of members.

Mr. Delia then asked the Board to retain an acoustical engineer at the applicant's expense to report on the noise from the proposed development contending the Association could not afford to. Mr. Cook agreed to provide Mr. Kelly with design specifications for the equipment to be used for decibel measurements as a first step to resolve the issue.

There being no further time available for another witness, Mr. Cook was advised that the next date for continuation would be May 17, 2010.

On motion by DeRitter with second by Schroter the matter was carried to May 17, 2010.

There being no further business to come before the Board on motion by Joustra with second by DeRitter on voice vote the regular public meeting of the Hawthorne Zoning Board of Adjustment for March 15, 2010 was adjourned at 9:58 PM.

Respectfully Submitted,

Collins, Jr.

Charles

C.

*Attorney/Secretary*