

REGULAR MEETING OF THE PLANNING BOARD OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY EVENING, JANUARY 10, 2019. CHAIRMAN RICH PICERNO PRESIDED.

The meeting began with an affirmation of the Open Public Meetings Act. The schedule of meetings is on file in the Borough Clerks' office, was posted on the bulletin board, and has been mailed to the Local Source, and the Star Ledger.

Pledge of Allegiance was led by Mr. Picerno.

**APPOINTMENT OF NEW MEMBERS**

The Board Secretary read the following Resolution from the Mayor and Council appointing new members to the Planning Board.

**BE IT HEREBY RESOLVED,** that the following Mayor's appointments of:

JOSEPH CALELLO as Class #4 for a four year term ending 12/31/2022

ANTHONY LAUDATI as Class #2, for a one year term ending 12/31/2019

ANTONIO CUPPARI as Alternate #1 for a two year term ending 12/31/2020

ROBERT SCHIELKE as Class #3

RYAN JONES as Mayor's Designee

To the Planning Board; be and the same are hereby confirmed.

**BE IT FURTHER RESOLVED,** that KATHLEEN MOSCHITTA be appointed Recording Secretary to the Planning Board.

Mr. Calello, Mr. Laudati, Mr. Cuppari, Mr. Schielke and Mr. Jones were sworn in by Mr. Rago.

**ELECTION OF OFFICERS**

Motion was made by Mr. Schielke, seconded by Mr. Grimaldi to appoint Rich Picerno as Planning Board Chair.

No other nominations were made.

Roll Call: Mr. Picerno voted yes, Mr. Schielke voted yes, Mr. Grimaldi voted yes, Mr. David voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Cuppari voted yes, Mr. Kenny voted yes and Mr. Jones voted yes.

Motion was made by Mr. Picerno, seconded by Mr. Jones to appoint Mr. David as Vice- Chairman.

No other nominations were made.

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Roll Call: Mr. Picerno voted yes, Mr. Schielke voted yes, Mr. Grimaldi voted yes, Mr. David voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Cuppari voted yes, Mr. Kenny voted yes and Mr. Jones voted yes.

### **ROLL CALL**

Mr. Picerno, Mr. Schielke, Mr. Grimaldi, Mr. David, Mr. Pantina, Mr. Mazzeo, Mr. Laudati, Mr. Calello, Mr. Cuppari, Mr. Kenny, Mr. Jones. Also present were Mr. Lou Rago, Esq., Mr. Kevin O'Brien, Planner and Mr. Christian Cueto, Engineer.

### **RESOLUTIONS**

#### **Resolution No. 1**

Introduced by Mr. Schielke, adoption moved by same.  
Seconded by Mr. David. Upon roll call all in favor.

**WHEREAS**, pursuant to the Fair and Open Process Rule advertisements for proposals were published in the Local Source and posted on the Borough of Kenilworth's Web Site and proposals were received and reviewed for the following Professional Service for the Year 2019 which anticipated cost will be over \$17,500 per year:

#### **PLANNING BOARD ATTORNEY**

**NOW, THEREFORE, BE IT RESOLVED** after review of said proposals, the Mayor's nomination of **LOUIS P. RAGO** as **PLANNING BOARD ATTORNEY** for the Year 2019 at \$1,000 per meeting, be and the same is hereby confirmed.

#### **Resolution No. 2**

Introduced by Mr. Schielke, adoption moved by same.  
Seconded by Mr. David. Upon roll call all in favor.

**WHEREAS**, pursuant to the Fair and Open Process Rule advertisements for proposals were published in the Local Source and posted on the Borough of Kenilworth's Web Site and proposals were received and reviewed for the following Professional Service for the Year 2019 which anticipated cost will be over \$17,500 per year:

#### **BOROUGH PLANNER**

**NOW, THEREFORE, BE IT RESOLVED** after review of said proposals, the Planning Board's nomination of **SHAMROCK ENTERPRISES, LTD** as **BOROUGH PLANNER** for the Year 2019 at \$135.00 per hour, be and the same is hereby confirmed.

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Mr. O'Brien thanked the Board for their confidence. His first application that he reviewed for the Borough was in 1996 and he thoroughly enjoys working with this Board and the people of Kenilworth.

Resolution No. 3

Introduced by Mr. Schielke, adoption moved by same.  
Seconded by Mr. David. Upon roll call all in favor.

**WHEREAS**, pursuant to the Fair and Open Process Rule advertisements for proposals were published in the Local Source and posted on the Borough of Kenilworth's Web Site and proposals were received and reviewed for the following Professional Service for the Year 2019 which anticipated cost will be over \$17,500 per year:

**BOROUGH ENGINEER**

**NOW, THEREFORE, BE IT RESOLVED** after review of said proposals, the Planning Board's nomination of **HARBOR CONSULTANTS** as **PLANNING BOARD ENGINEER** for the Year 2019 at \$135.00 per hour, be and the same is hereby confirmed.

**Resolution:** Application 364 & 5-21 Site Plan & Variance  
LNR Auto Transport Services, LLC  
515 Springfield Road & 2 Mark Road  
Block 3, Lot 1, 2, 3, 4, 5, & 9

Mr. Rago said regarding this resolution, our Planner, Kevin O'Brien suggested an additional condition that the non-residential development fee of 2% be assessed for non-residential development in the industrial zone, that was not in the resolution but can be added if the Board wants to proceed tonight, he can make that change and revise the resolution. He said one of the Board Members had a comment about electric cars only so on page 4, #5 one of the conditions that he had in the resolution was that the maximum number of motor vehicles stored on the lots shall not exceed 354 and all stored motor vehicles shall be the Tesla brand and shall be electric vehicles. He said if the Board has another comment, they can adopt this resolution tonight and if you want to move forward with it and he will add Kevin's recommendation. Mr. Picerno said the resolution says "and all stored motor vehicles shall be the tesla brand and shall be electric vehicles, he said that is one in the same...Tesla vehicles are electric vehicles....but they can have electric vehicles of another manufacture, just not gas vehicles. The way he reads that is that it is only Tesla vehicles. Mr. Rago said yes that is all that came up, in the body of the resolution he mentions Tesla, Tesla, Tesla and it was clearly what we were discussing. Mr. Schielke said he recalls during the hearing saying electric vehicles. Mr. Picerno said Tesla is the applicant and the brand but if Tesla went out and it was another electric vehicle, it would be OK. Mr. Schielke said or if for instance Ford bought Tesla then they could have electric vehicles. Mr. Picerno said are you saying you want to leave it that way or add ANY electric vehicle....because that is what he understood the Board agreed upon....what does the Board think? Mr. Kenny said it makes a good point, if Tesla is brought out by another company, in the off chance ....you don't want to limit it to Tesla brands if there is turnover in ownership, in the off chance that that happens....it's a good point. Mr. David counters that in that if

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somebody else buys Tesla, you don't know how they are going to run the business or what they are going to do with it and they can always come back to the Board to continue... Mr. Rago said that's an interesting question, he thought we were talking about Tesla Electric vehicles....he thinks as the market expands who knows what is going to happen, if Ford comes up with a whole fleet....we were only talking Tesla and electric. Mr. Picerno said he does not remember it that way, he remembers us discussing that there was an issue that it could not turn into a parking lot and auto shop or things like that but if Tesla decided to leave...another company that is in kind could use that facility for electric vehicles...he could be mistaken but that is what he thought was spoken about. Mr. Grimaldi thought we spoke about just the fact of if Tesla became Edison vehicles because someone bought it out, it could be that still because it's the same company with a name change, it's that company or the company that morphed it. Mr. Picerno said if Tesla sold to Bobs Electric vehicles they couldn't....Mr. Grimaldi said yes they could because it would still be that company in hold...just the name brand changed. Mr. Picerno said he does not think it reads that way. Mr. Rago said the variances are granted to the land, not so much to Tesla, if someone else came in with all electric vehicles and they were all Ford or whoever else is making electric vehicles, they may have a good argument to come in and say...you wanted electric vehicles...and we are electric vehicles. Mr. Picerno said the prior says to be Tesla brand. Mr. Rago said if you want that modified we can do it right now....if you want all electric vehicles, even though we are dealing with Tesla. Mr. Picerno said he remembers it quite well, he does not want to hold up this meeting with this resolution because of it but he thinks it needs to be researched because he thinks that is what the applicant was thinking and he thinks that is what we agreed upon....if someone is thinking other than what I just said then you have to speak up because that's a real interesting point. Mr. Schielke said he supports the Chairman's thought process. Mr. Rago said if someone comes in that is not Tesla and had all electric vehicles and brought this property, they could probably make a good argument that you wanted electric vehicles....we have electric vehicles....he does not know if we could hang our hat strictly on Tesla because if the main focus is electric vehicles then he could modify that....all stored motor vehicles shall be electric vehicles. Mr. Mazzeo asked if LNR is Tesla?....LNR serves a function and they process Tesla's vehicles, what if LNR took on a contract and started processing someone else's vehicles, as long as they are electric? Mr. Rago said we could delete Tesla if the Board so chooses, he can put all stored vehicles shall be 100% electric vehicles and whoever comes in there.... Mr. Picerno said remove Tesla as the brand because that limits.. Mr. Rago said he will take out the Tesla brand and put 100% electric vehicles.

Motion was made by Mr. Grimaldi, seconded by Mr. Schielke to approve Application 364 & 5-21 Site Plan & Variance

Roll Call: Mr. Picerno voted yes, Mr. Schielke voted yes, Mr. Grimaldi voted yes, Mr. Calello voted yes, Mr. Cuppari voted yes and Mr. Jones voted yes.

**Approval of December 13, 2018 Minutes**

Motion was made by Mr. David, seconded by Mr. Mazzeo. All in favor.

**Communications:** None

New Business:           Application #369 Site Plan  
                                  ADHP Real Estate, LLC  
                                  1700 Galloping Hill Road

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Block 182, Lot 2

Mr. Gary Goodman presenting for applicant ADHP Real Estate which is a real estate limited liability company that owns 1700 Galloping Hill Road. The owner of the building is Mrs. Patel. The proposal is for a variety of medical uses. There will be one individual who will be developing the medical uses which is her husband Harshad Patel. Dr. Patel is proposing radiology, dialysis, MRI and X-Ray suites. He said 1700 Galloping Hill Road is sort of an island, it's across the street from Merck, its next to a cemetery and on the other side is the Parkway. He said in regard to impact on the neighborhood.....they are the neighborhood. The witnesses this evening, in addition to Dr. Patel will be the engineer, Ed Dec who will testify as to the site plan, Robert Sicone, architect who will testify as to the new portion of the building that is being proposed. There is an existing building of approximately 95,000 sq. ft. of which 31,000 sq. ft. is the lower level parking area, of that 31,000 sq. ft. which is the lower level 5,000 to 6,000 sq. ft. is going to be built out for medical use. There is a concrete slab in the rear where new construction will be proposed. The balance of the building remains as is. In the planners report there is concern about over development in the sense that we don't have adequate parking so he will be calling Jim Cacalus who is medical facility consultant and who has experience working for the State of New Jersey Board of Health in qualifying these facilities for New Jersey licenses, he will be testifying with regard to the architectural aspects of these types of uses and the parking that is required. Mr. Picerno asked if he was an expert in the field? Mr. Goodman said he is a licensed architect in the State of New Jersey and he has provided Mr. Rago with his resume. He said you will be able to ask questions in regards to his qualifications but his life experience is dealing with these medical facilities both in terms of consulting with people who are trying to open them and working for the State of New Jersey holding them to the requirements that the State has.

Mr. O'Brien and Mr. Cueto and Mr. Dec were sworn in by Mr. Rago.

Mr. Goodman said the Board should have Mr. Dec's plans and a set of the architectural plans from Robert Scione.

The Board did not have architectural plans. Mr. O'Brien said he has the plans but sometimes applicants send plans to him and not the Board.

Mr. Picerno said no one on the Board has seen the architectural plans and neither have they been available to the public. He asked Mr. Goodman when they were supplied to Borough Hall? Mr. O'Brien said the set that he has was dated September 5, 2018, and the rule is whatever they send to him has to also be sent to the Administrator/Secretary. Mr. O'Brien asked Ms. Moschitta if she received independent sets for the Board and she replied that if the Administrator received 18 sets of architectural plans they would have been distributed to the Board. Mr. Goodman gave a document to Mr. Rago which was sent to the Borough and signed by Ms. Johns which stated that 5 full sized sets were received. Mr. O'Brien said those drawings were supplied to the Borough as the sheet indicates, however one was 9 sheets, one was 12 sheets, he received the same sheets before July 2, 2018 and actually one of them had 19 sheets. The materials that were submitted to the Borough were DCA approved construction plans for the medical facilities that are proposed in this building. The applicant went on a separate path and got various approvals from outside entities. He received them as part of a submission before July 2<sup>nd</sup> and he ruled that those sheets were inadmissible because he could not read them, they were construction drawings. He also requested a floor plans showing where everything was going to go, not detailed construction plans and he deemed that inappropriate for this Board.

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Mr. Picerno said the Adult Daycare A1-9 and the Dialysis A1-12 were deemed incomplete. Mr. O'Brien said he deemed the application incomplete and specifically ruled that those were not acceptable to the Board. They were detailed construction plans with electric, plumbing, walls, insulation and that was declared incomplete on July 6, 2018, they were re-submitted to the Borough on August 22, 2018 and he ruled again that they were inappropriate because they are the same thing that had been sent before. He requested and received on September 14, 2019 5 sheets showing floor plans, showing proposed uses in the building. Mr. Picerno asked where did he get those plans and Mr. O'Brien said it was sent to him, he is not sure but he thinks they came from Mr. Goodman. Mr. Goodman said prior to his entry into the application, you were getting materials directly from Dr. Patel and you instructed us that nothing was to come to you directly, everything was to go to the Borough and they would then transmit it to you, he said if he delivered everything to the Borough and if it got to you then it should have gotten to the Borough. Kevin O'Brien said he has no response....he doesn't know.

Mr. Picerno said that Kevin O'Brien just said that he received those 5 sheets from you but not the Borough.....Kevin O'Brien said he is assuming they were from Mr. Goodman.

Mr. Goodman said as Mr. O'Brien had instructed him, nothing was to bypass the Kenilworth office so everthing was hand delivered to the Kenilworth office. Mr. Picerno asked if it was hand delivered by himself and Mr. Goodman said he believes so. Mr. Picerno said so that would be September 14<sup>th</sup>?? So that would mean you would have the same transmittal copy?? Mr. Goodman said he thinks that was delivered by Dr. Patel? Mr. Goodman said he does not have anything...other than he came over and dropped off documents. Mr. Picerno said when documents are dropped off at the Borough Hall we always have a transmittal sheet documenting that it was dropped off.....not to say that it could have been misplaced but 18 copies? Mr. Picerno said as of right now the entire Board does not have anything to go on and he does not see how we can go much further without the documentation. Somewhere along the lines plans are either floating around or were not delivered. Mr. Goodman said that when he met with Mr. O'Brien for the development review committee they had everything at the time that we needed to deem the application complete.....because we would not be here if we were not complete. Mr. O'Brien said we met on October 2<sup>nd</sup> in which Mr. Goodman and his client and Mr. Dec agreed to provide certain information so that we could declare the application complete which we did in the middle of December. Mr. Picerno said we are at an impasse because we do not have anything. Mr. O'Brien said all the stuff he reviewed should be in the Borough files and however we go from here, Mrs. Moschitta or Ms. Johns should look at the file against what he has reviewed.

Mr. Good asked the Chairman if they could get a continuance as opposed to having to re-notice. Mr. Picerno said we don't have a problem with that....but he would like to iron out where the plans are .....he thinks the Board would agree that we can have a continuance, we don't need to cause anymore hardship then you already have but you need to come up here with the proper plans so we can all have the time to look at them. Mr. Goodman said he understands he obviously would not be standing here if he did not think you had the plans. Mr. Rago said for clarity ....we have the engineering but we need the architecture? He said the documents that were submitted on August 22<sup>nd</sup> .....do we need those? Mr. O'Brien said no those are the constructions plans and we have no business looking at them.....Mr. Rago said we are looking for architectural. Mr. O'Brien said he would like to make a few sugesstions. Mr. Picerno said he wants to be careful about what we talk about here because if this is going to be a continuance he does not want to say at the last meeting we talked about X. Mr. Picerno said the Board does not have the documents and the Board cannot proceed.

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Mr. O'Brien said he would like to make some suggestions since they are coming back on what they could bring us to improve what we are looking at..... Mr. Rago said anything new would have to be here 10 days ahead of time in case the public wants to look at it.

Mr. Grimaldi said we just have to come to an understanding that this is not going to be complete tonight.....we will bring it to the next meeting so we should probably limit our scope in what we hear now.

Mr. Picerno said he does not want to hear anything tonight.....we are going to come back and do this the right way. He said we need to look at the civil, we need to look at the architectural .....they usually tie into one another, we will have comments going back and forth and then we will be saying he said, she said.....lets conduct the meeting the proper way. Mr. Picerno asked Mr. O'Brien if he had a list of things that maybe you want to discuss with Mr. Goodman and then we could put it on the record and that's where we will go from here.

Mr. O'Brien said in his January 7<sup>th</sup> report pages 2, 3, 4 and 5 have a series of 20 comments, most of those comments revolve around the use of the space, inconsistencies in the drawings, things that should be provided that have not been provided and rather than do this at this particular moment, what he can do between now and sometime tomorrow is to highlight what he thinks should be revised for the Board. For instance the architectural that only he has do not show entrances to the building, they don't show how the uses flow together, they don't show where the new proposed use is and tie into the building. He said very simple things can be done to make it more clear to this Board, in his opinion.

Mr. Picerno asked Mr. O'Brien if he had the opportunity to look at the architectural and Mr. O'Brien said yes. He asked if he already advised Mr. Goodman and his team about those things? Mr. O'Brien said he did point out the inconsistencies and in particular we worked on the parking. Parking has been provided but he still believes it is not exactly clear. Mr. Picerno said from September 14<sup>th</sup> to present if they still have not been address???.....what are the chances of them being address and being implemented on the new architectural and/or an amended architectural in 30 days or 45 days. Mr. Goodman said the comments were from January 7<sup>th</sup>. Mr. Picerno said January 7<sup>th</sup> comments based on the September 14<sup>th</sup> architectural? Mr. O'Brien said October 2<sup>nd</sup> is when we met and went over the general concept and Mr. Goodman is right they have not had time to respond to the written comments of the 7<sup>th</sup> although those thoughts were out there. Mr. Picerno asked Mr. Goodman if he will have time to respond to the pages 2 thru 5 with respect to the things that Mr. O'Brien reported.

Mr. Goodman said he will be able to clarify Mr. O'Brien's comments with regard to the architectural questions and they will submit new architectural plans highlighting the corrections that Mr. O'Brien outlined. Mr. Grimaldi asked when Mr. Goodman re-presents to us to be careful and consistent with what we are calling ground floor, 1<sup>st</sup> floor does ground floor at the lowest level which is the parking garage, the ground floor at the main entrance first level and that's where the addition is ...it might be confusing between the parking spots and the patio that is there.....how the building is being added without going on top of parking. If you don't know the building it can be confusing.

Mr. O'Brien said he ran through his report and checked off the items that require addressing on the site plan and the architectural and if you like starting on page 2, item #2, #3, #4, #5, second half of #6, #8, #10, #11, #12, #13, #14, #15, #16, & #17, they should all be addressed on the site plan and/or the architectural.

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Mr. Picerno asked Mr. Goodman if he and his team will be ready by the next meeting or the meeting after? He said this Board is of a new era and we are looking at things quite closely and he does not want to come back and have the push and pull of how come.....why not.....if you need more time now is the time to ask for it and we would respectfully do what you asked us to do as long as you come back here prepared.

Mr. Rago said if you are in doubt what we could do would be to carry this to our February meeting if between now and then it's not going to happen you can't get all the stuff tied together then at the February meeting we can carry it to March. He said if you can get it done by February wonderful but if you can't then March. Mr. Goodman said we will give it our best shot and we will inform the Board as to how we are progressing as well as Mr. O'Brien.

Mr. Dec said he plans on making sure they meet all the conditions.

Mr. O'Brien asked if a decision could be made for the date which the plans should be in because we will have to review them and prepare reports for the Board. Mr. Goodman said by January 31<sup>st</sup> we will either have the plans to you or we will be carried to March.

Mr. Cueto said a lot of his comments in his letter are the same as Mr. O'Brien's. He said #4 and #6 thru #8 under site plan and under grading and storm water management #2 and under utilities #2 and landscaping and lighting #2.

Mr. Dec said on some of the comments we will be asking for waivers so they may not be on the plans when we resubmit them.....just so everyone knows it is not that we decided that we were not going to do it.....but we will ask for a waiver. Mr. Picerno said that is perfectly understandable if that is the way you are going to proceed, but here are the things they are asking for and if you are looking for waivers on those then that is how you are going to present your testimony on that evening. Mr. O'Brien said the applicant did request a number of waivers on page 8.

Motion was made by Mr. Laudati, seconded by Mr. David to continue Application#369 to the February 14, 2019 meeting and the go/no go date of January 31, 2019 for plans to be submitted and they are not in by that time we will not hear testimony on the February 14<sup>th</sup>, it will be carried to the March 14, 2019 meeting with no further notice.

Roll Call: Mr. Picerno voted yes, Mr. Schielke voted yes, Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello, Mr. Cuppari voted yes, Mr. Kenny voted yes and Mr. Ryan voted yes.

**Comments for the Good of the Board - None**

**Meeting Opened to the Public**

Motion was made by David, seconded by Schielke to open the meeting to the public.

No one wished to speak.



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Motion made by Mr. David, seconded by Mr. Grimaldi to close the meeting to the public. All in favor.

Adjournment

Motion to adjourn was made by Mr. David, seconded by Mr. Cuppari. All in favor.

Respectfully submitted by:  
Kathleen Moschitta  
Recording Secretary