

MEETING MINUTES
BYRAM TOWNSHIP PLANNING BOARD MEETING
FEBRUARY 15, 2018

CALL TO ORDER

Chairman Shivas called the meeting to order at 7:30 p.m.

ROLL CALL

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Ms. Raffay	Ms. Kash	Mr. Kaufhold	Mr. Morytko	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
HERE	H	H		H	H	H	H		H	H	H
ABSENT											
EXCUSED			EA					EA			
LATE											

Also, present: Attorney Alyse Hubbard
 Attorney Megan Ward
 Engineer Cory Stoner
 Planner Paul Gleitz
 Secretary Cheryl White

STATEMENT BY CLERK

Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.

FLAG SALUTE led by Chairman Shivas

MINUTES

Approval of the February 1, 2018 Meeting Minutes

A motion was made by Mr. Kaufhold. The motion was seconded by Mr. Morytko. The following vote was taken:

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Ms. Raffay	Ms. Kash	Mr. Kaufhold	Mr. Morytko	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
Motion						√					
Seconded							√				
Aye	√	√				√	√		√	√	√
Nay											
Abstain				√	√						
Absent			√					√			

Motion carried.

NEW BUSINESS

Z21-2017, Harry Bouquet, 18 Fieldstone Trail, Block 337.08 Lot 38.45, R-3 Zone

Variance for a front yard setback and critical lot disturbance to construct a two-story single-family dwelling.

Mr. Bouquet requested this application be carried to May 3, 2018.

A motion was made by Mr. Morytko to carry this application to May 3, 2018 without further notice. The motion was seconded by Mr. Walsh. The following vote was taken:

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Ms. Raffay	Ms. Kash	Mr. Kaufhold	Mr. Morytko	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
Motion							√				
Seconded										√	
Aye	√	√		√	√	√	√		√	√	√
Nay											
Abstain											
Absent			√					√			

Motion carried.

The attorney for Byram Land Development was late due to an accident on Route 80 so Chairman Shivas changed the order of the agenda.

REPORTS FROM COMMITTEES

- Township Council - Ms. Kash had nothing to report.
- Environmental Commission - Ms. Shimamoto said the EC is meeting February 22.
- Architectural Review Committee - No meeting was held.
- Open Space - Mr. Morytko said the committee made a request for open space funding to pave Tamarack Park and install an irrigation system. Mr. Morytko said the paving would protect the parking area from potential plowing and vehicle damage, and would be easier to maintain. Mr. Stoner added that the project came in under budget. Mr. Stoner said paving will help because before a portion of C.O. Johnson Field was paved vehicles drove over the grass causing damage. He said paving the parking area will yield many benefits.

Mr. Gleitz said he recently attended a State Planning Conference and there is a push to pass a bill before legislature to legalize marijuana. He said Township's will be given limited time to "opt in" or "opt out". He said if a town chooses to "opt out", no action is required. If the town chooses to "opt in" they can decide if they want to regulate manufacturing, production or distribution. He said they can choose one, two, or all three. He added that townships that "opt in" will receive 3% of the States revenue. He said the Township should begin discussions on this issue and if they opt in how would the township would regulate it. He added that the Township should consider the economic development impact. He said, "Right to Farm" properties, which are handled at the County level and would not need municipal approval, has not been addressed yet.

Mr. Gleitz said they also talked about how some towns are looking at taking a new approach towards parking requirements whereas they let the applicant determine the required number of parking spaces they need based on their use, verses town requirements. He said the parking data that is used from the I.T.E. handbook is old and outdated and with on-line shopping, alternative transportation services, (uber) and other economic changes, parking requirements have been impacted. George believed the way it is handled today works, why change it.

Mr. Stoner said he recently attended a meeting and new stormwater regulations were discussed. He said that all Township Officials, including Planning Board Members will be required to take this mandatory training before the end of this year. He believes the training will be provided by webinar.

APPEAL OF THE ZONING OFFICERS NOTICE OF VIOLATION (Carried from Jan. 18, 2018)

Ms. Kash and Mr. Dixon stepped down for this application.

Byram Land Development, 9 Lackawanna Drive, Block 226 Lot 16, IPR Zone

Prohibited use of outdoor storage.

Mr. Michael Lavigne, attorney representing Byram Land Development said on Jan. 18, 2018 he presented all exhibits and concluded his testimony, and he has nothing more to add.

Mr. Gleitz provided comment saying that a quarry operation is an outdoor operation that requires materials to be processed and moved so a certain amount of equipment and vehicles associated with this use is expected, however it does not require road building equipment, or equipment not associated with mining. He said just because some of the equipment has been there since the 70's or 80's does not mean it is allowed, and any equipment/vehicles not associated with the operation of the quarry is prohibited and would require a use variance to remain.

Mr. Gleitz added that the photos presented are not clear enough to establish anything, "you can't even tell if the photos show vehicles, equipment, piles of stone or debris". Mr. Gleitz said that the outdoor storage is customarily accessory to the principal use and the principal use is mining, not storage. Mr. Lavigne said the photos were presented to establish that since 1966 there has been outdoor storage on the lower portion of the property. Mr. Lavigne spoke of Byram's ordinance saying that outdoor storage is not defined and he believes Byram treats outdoor storage as a separate use. Mr. Lavigne added that there is nothing that would have prohibited the quarry from storing trucks and equipment in buildings when not in use, or by screening behind fencing or landscaping that was the subject of Planning Board approval, but said that never happened from the operative date of 1966 to present. To supplement that BLD provided testimony from Mr. Carton both from his personal experience saying that back to the mid 80's, before BLD owned the property, he was a construction equipment sales person and he observed construction related equipment on the property. He said at that time the equipment was surrounded by weeds and undergrowth and that gave Mr. Carton the impression it had been there for quite some time and allowed to be there. He added that it was never BLD's intent to abandon the outdoor storage use. In response to Mr. Lavigne Mr. Gleitz said he never heard of an indoor quarry and to say that Byram's ordinance was deficient or unclear because it didn't articulate outdoor storage as part of the quarry use does not make sense. He said quarry operations are an outdoor operation and any equipment stored must be directly linked to a principal use. He said outdoor storage is an accessory to a principal use and has limitations depending on the type of use. Mr. Gleitz added that he is not aware of any approved site plan for outdoor storage on this site that is not associated with the principal use of mining and BLD is trying to conflate the concept of outdoor storage with its principal use.

Chairman Shivas talked about the lower quarry scale house being relocated to the upper quarry and said approval was received to move the scale house and for a period, no longer than five years, BLD was permitted to sell product from the lower quarry. Ms. Ward said a use variance was approved in 1998 to move the quarry operation to the upper quarry and that in the resolution it states that prior to the relocation of the scale house to the upper quarry a site plan must be submitted. She said the owners at that time was Byram Aggregate, aka Byram Land Development. She added that in 2008 a site plan was submitted and the scale house was finally relocated. The 1998 resolution was not part of the package and there was Board discussion about whether this resolution is relevant. The consensus was it is not relevant.

Mr. Stoner reiterated that the storage of equipment not associated with mining was never discussed, approved or grandfathered. Mr. Lavigne brought up the minutes from April 18, 2013 saying that the minutes are an official municipal record and when JTK filed for an extension of approval, as noted in the minutes Mr. Senesky said that BLD has a pre-existing use for equipment storage on the site, however if JTK equipment is stored on the site that would be an intensification of a pre-existing, non-conforming use and would require a variance. Mr. Lavigne said that this acknowledges pre-existing storage on the site. Mr. Lavigne believes as long as there is not an appreciable intensification in the nature, type or geographic reach of that use, that the identity of the user should not be dispositive. Mr. Gleitz said that specifically speaks of accessories to the operation of the quarry. Mr. Stoner said his inspection reports note equipment related to BLD and material related to Nordic, which started appearing in 2009 and is still there today. Mr. Stoner added that some time ago an auction was held on the site and some of the equipment brought to the site for the auction was never removed. He said when he performs inspections it is always noted in this report that no more auctions are permitted on the property. Mr. Lavigne asked if the lower quarry was part of the lease agreement and quarry license. Mr. Stoner said yes, but later corrected himself and said he looked at 2017 agreement and the lower tract was not included in the quarry lease agreement.

Ms. Ward, Esq. talked about past approvals on the upper and lower tract. Ms. Ward said nothing before this Board is challenging the right to quarry the site, the issue before this Board is whether the storage of equipment/vehicles by a separate entity is permissible, and the other issue is the continuation of the storage of derelict equipment that the Township has been requesting to be removed since 2004.

There was discussion about Ms. Ward's role and Ms. Hubbard believed that some of her testimony was guiding the Board. Ms. Ward said she is here on behalf of Byram Township and to represent the Zoning Officer with regards to his violation. She added that everything she is saying is part of the record. Mr. Walsh said he did not hear Ms. Ward making recommendations to the Board but rather stating facts. Chairman Shivas said he believes the Board understands the issues before them.

Chairman Shivas talked about the scale house on the lower quarry and how long it took to relocate the scale house, which spurred a lengthy discussion. Chairman Shivas added that he believed that once the lower quarry operation ceased, it was to be restored to a natural state. Chairman Shivas has concerns that if the property is sold who is going to be responsible to restore the property. Mr. Lavigne said he believes that the quarry ordinance talks about the reclamation. Mr. Stoner said that in section 189-6 of Byram's code it states that within two years of the closing of a mining operation that the land shall be mitigated. Mr. Lavigne said he believes it is unclear if it was supposed to be done. Mr. Gleitz said there is a redevelopment reclamation plan that is filed every year and the plan is a very basic concept plan to show future use on the site. Mr. Stoner said there is a reclamation bond in place for the upper quarry only. Mr. Lavigne said that he is representing an applicant to develop this site that proposes a similar use and has a public hearing of April 2018 and that these issues can be address at that time.

Mr. Morytko asked for evidence to support the approval of outdoor storage not associated with quarrying on this site. Mr. Lavigne said he understands there is no formal resolution or site plan to substantiate this use however he recited some of the previous zoning officer reports and in many instances the zoning officer concludes that the matter is considered closed. Mr. Gleitz said that in 2011 there was a finding of facts recognizing that this site is a quarry site and that JTK received approval for a D1 use variance that included the storage of construction material on the site. Mr. Gleitz said the approval stays with the land and if an applicant wanted to use the land in the exact manor, with no expansion proposed, that right would be protected as a pre-existing, non-conforming use. Ms. Hubbard added that the resolution also states that any subleasing of this property would require Board approval. Mr. Gleitz said even though that approval has expired it sets the example for the uses allowed on the site.

Mr. Kaufhold reiterated that the equipment/vehicles on the site has grown over the years. Mr. Stoner believes that equipment/vehicles not associated with quarrying, stored outside the fenced area, is the area of the

violation. Mr. Stoner did not believe the fenced area was in question. Mr. Stoner said between 2008- 2010 other equipment started to appear. Mr. Stoner corrected himself and said the violation letter includes the entire property which includes the quarry piece and the triangular piece in the front, it covers all of Lot 16.

Mr. Lavigne concluded his testimony and in summary said that Byram Land Development never intended abandonment of the use on the site, there has always been outdoor storage and he believes history and prior use support this. Mr. Lavigne reiterated that a purchaser is under contract and proposes similar development on this site that would contain and screen any outdoor storage. He added it is not the intent of BLD to ignore the Township's concerns and hopes that the Board would take this into consideration when rendering a decision.

Mr. Walsh asked if the Board can hear the zoning officer's position. Ms. Hubbard said if the BLD has concluded their case then the Board can ask questions of the zoning officer. Mr. Lavigne said they have concluded their testimony but reserves the right to follow up questions.

Mr. Dixon, Byram Township's Zoning Officer was sworn in.

Ms. Ward said she has a copy of the August 28, 2017 Notice of Violation and asked the following questions.

Ms. Ward: Mr. Dixon, why did you send a violation to BLD with regards to the Nordic equipment.
 Mr. Dixon: There was a discussion in the office about the non-conforming use on the site and after a consult with legal counsel a letter of violation was sent to BLD.
 Ms. Ward: Prior to issuing a violation did you review the township records regarding 9 Lackawanna Drive.
 Mr. Dixon: Yes.
 Ms. Ward: Did that include 2011 resolution of approval for JTK.
 Mr. Dixon: Yes
 Ms. Ward: Did you have the opportunity to review the extension of that approval.
 Mr. Dixon: Yes
 Ms. Ward: Did that play a part in the issuance of the violation.
 Mr. Dixon: Yes
 Ms. Ward: How.
 Mr Dixon: It was my determination that resolution was for JTK/Nordic and there was an understanding that the equipment they had would be on the site because they received approval, however since that project never came to fruition, and after three extensions, the equipment was no longer allowed, not to say that it should have been there but believes leeway was given knowing that JTK received approval.
 Ms. Ward: As a zoning officer have you had the opportunity to conduct inspections of 9 Lackawanna Drive.
 Mr. Dixon: Yes, from the road.
 Ms. Ward: Did those observations play a part in your issuance of the Notice of Violation.
 Mr. Dixon: Yes, the presence of Nordic construction equipment on the property.
 Ms. Ward: Is there related storage that's not Nordic equipment.
 Mr. Dixon: I do not recall, I did not go on the site.
 Ms. Ward: As part of your observations from Lackawanna Drive did you note in your Notice of Violation the derelict equipment and were you specifically attending to address that in your violation.
 Mr. Dixon: That was essentially taking the letter from Counsel and including that in the NOV.
 Ms. Ward: Did you have an opportunity to review the prior license
 Mr. Dixon: No
 Ms. Ward: Since the violation was issued in August 2017 has there continued to be the storage of construction equipment on the site.
 Mr. Dixon: Yes
 Ms. Ward had no further questions.

Mr. Lavigne: Who was your Legal Counsel
 Mr. Dixon: Ms. Ward
 Mr. Lavigne: How did you obtain the prior resolution, the court order and background information that you used to help determine there was a violation.
 Mr. Dixon: The township's public file.
 Mr. Lavigne: How long have you been in the position as a zoning officer.
 Mr. Dixon: Since 2015
 Mr. Lavigne: The NOV was issued August 28, 2017 and you said part of the reason for the issuance of the NOV was your view into the property from Lackawanna Drive. How long were your observations prior to the issuance of the NOV.
 Mr. Dixon: A few days.
 Mr. Lavigne had no further questions.
 The Board had no questions.

Ms. Hubbard read from the MLUL saying that the Board must determine if the zoning officer was in error in issuing a violation to BLD. Ms. Hubbard talked about the violation letter sent to Byram Land and that there was an error in the zoning officer's letter because he referenced the old code §240-60.C (7), which refers to outdoor retail sales. Mr. Dixon said his intent was to reference §240-60. D (1) Prohibited uses.

Chairman Shivas opened to the public. No one from the public came forward. Chairman Shivas closed to the public.

A motion was made by Mr. Walsh finding that the zoning officer was not in error issuing a violation letter to BLD. The motion was seconded by Ms. Shimamoto. The Board set a date that all equipment and vehicles not associated with quarrying be removed no later than twenty days after the date of publication of the passing of the resolution. The following vote was taken:

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Ms. Raffay	Ms. Kash	Mr. Kaufhold	Mr. Morytko	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
Motion										√	
Seconded									√		
Aye	√					√	√		√	√	√
Nay											
Abstain				√							
Absent			√					√			

Motion carried.

Chairman Shivas reviewed the subcommittees and assigned the following:

Site plan subcommittee:

Mr. Walsh, Chairman
Ms. Shimamoto
Mr. Gonzalez
Mr. Dixon

Master Plan Committee:

Mr. Morytko
Mr. Rubenstein
Chairman Shivas
Mr. Gonzalez

Ordinance Committee:

Mr. Kaufhold
Ms. Shimamoto
Mr. Chozick
Ms. Raffay

PUBLIC COMMENT

Chairman Shivas opened to the public. No one from the public came forward. Chairman Shivas closed to the public.

BILLS

Schenck, Price, Smith & King, LLP (6 bills) \$1,597.50

A motion was made by Mr. Walsh, the motion was seconded by Mr. Kaufhold to approve Mr. Senesky's bills. All were in favor. Motion carried.

EXECUTIVE SESSION – Contract negotiations - Professional Services

A motion to go into closed session was made by Mr. Walsh, the motion was seconded by Mr. Kaufhold. All were in favor. Motion carried.

A motion to return to open session was made by Mr. Walsh, the motion was seconded by Mr. Chozick. All were in favor. Motion carried.

ADJOURNMENT

A motion to adjourn the meeting was made at 10:15 p.m. by Mr. Walsh, and seconded by Mr. Kaufhold. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted: *Cheryl White*