

**MINUTES  
BYRAM TOWNSHIP PLANNING BOARD  
May 6, 2010**

**SPECIAL MEETING:**

**CALL TO ORDER**

Chairman Shivas called the special meeting to order at 7:38 p.m.

**ROLL CALL**

|           |                    |                     |                    |                    |                   |                  |                      |                  |                     |                      |                   |
|-----------|--------------------|---------------------|--------------------|--------------------|-------------------|------------------|----------------------|------------------|---------------------|----------------------|-------------------|
|           | <i>Mr. Chozick</i> | <i>Mr. Kaufhold</i> | <i>Mr. McElroy</i> | <i>Mrs. Raffay</i> | <i>Mrs. Segal</i> | <i>Mr. Steyh</i> | <i>Mr. Valentine</i> | <i>Mr. Walsh</i> | <i>Mr. Gonzalez</i> | <i>Ms. Shimamoto</i> | <i>Mr. Shivas</i> |
| Roll Call | P                  | P                   | P                  | P                  | P                 | Excused          | Excused              | P                | P                   | P                    | P                 |

|                           |              |
|---------------------------|--------------|
| Attorney                  | Kurt Senesky |
| Engineer                  | Lou Slaby    |
| Planner:                  | Paul Gleitz  |
| Interim Planning Director | Doris Flynn  |
| Interim Secretary         | John Gutwerk |

**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 Meeting Act.

**Planner Paul Gleitz** updated the Board on the Housing Element and Fair Share Plan. He explained the difference between the original plan filed with COAH last year and the revised plan. He also explained the Highlands Center plan and the positive feedback received from the Highlands Council. He answered questions from the Board members in preparation for the May 17<sup>th</sup> public hearing.

A motion was made by Mr. Kaufhold and seconded by Mr. McElroy to adjourn the special meeting. All were in favor and the special meeting was adjourned at 8:09 p.m.

**REGULAR MEETING:**

**CALL TO ORDER**

Chairman Shivas called the meeting to order at 8:10 p.m.

**ROLL CALL**

|           |                    |                     |                    |                    |                   |                  |                      |                  |                     |                      |                   |
|-----------|--------------------|---------------------|--------------------|--------------------|-------------------|------------------|----------------------|------------------|---------------------|----------------------|-------------------|
|           | <i>Mr. Chozick</i> | <i>Mr. Kaufhold</i> | <i>Mr. McElroy</i> | <i>Mrs. Raffay</i> | <i>Mrs. Segal</i> | <i>Mr. Steyh</i> | <i>Mr. Valentine</i> | <i>Mr. Walsh</i> | <i>Mr. Gonzalez</i> | <i>Ms. Shimamoto</i> | <i>Mr. Shivas</i> |
| Roll Call | P                  | P                   | P                  | P                  | P                 | Excused          | Excused              | P                | P                   | P                    | P                 |

|                           |              |
|---------------------------|--------------|
| Attorney                  | Kurt Senesky |
| Engineer                  | Lou Slaby    |
| Planner:                  | Paul Gleitz  |
| Interim Planning Director | Doris Flynn  |
| Interim Secretary         | John Gutwerk |

**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 Meeting Act.

**FLAG SALUTE**

**MINUTES:**

**April 1, 2010:**

A motion was made by Mr. Kaufhold and seconded by Mrs. Segal to approve the minutes. The following vote was taken:

| Planning Board Member | Mr. Chozick | Mr. Kaufhold | Mr. McElroy | Mrs. Raffay | Mrs. Segal | Mr. Steyh | Mr. Valentine | Mr. Walsh | Mr. Gonzalez | Ms. Shimamoto | Mr. Shivas |
|-----------------------|-------------|--------------|-------------|-------------|------------|-----------|---------------|-----------|--------------|---------------|------------|
| Motion                |             | X            |             |             |            |           |               |           |              |               |            |
| Second                |             |              |             |             | X          |           |               |           |              |               |            |
| Aye                   | X           | X            | X           |             | X          |           |               |           | X            | X             | X          |
| Nay                   |             |              |             |             |            |           |               |           |              |               |            |
| Abstain               |             |              |             | X           |            |           |               | X         |              |               |            |
| Absent                |             |              |             |             |            | X         | X             |           |              |               |            |

Motion carried.

**RESOLUTIONS:**

**Gordon Byram Associates, LLC, 90 Route 206, Block 226 Lot 14, SP94-07 - Byram Plaza Improvements:**

A motion was made by Mr. Kaufhold and seconded by Mr. McElroy to approve the resolution. Mr. McElroy asked about the window signs and if they needed a variance or a waiver. Mr. Senesky stated he would contact Mr. Litwin the attorney for Gordon Byram and advise him to review the ordinance for the distinction between a variance and a waiver.

The following vote was taken:

| Planning Board Member | Mr. Chozick | Mr. Kaufhold | Mr. McElroy | Mrs. Raffay | Mrs. Segal | Mr. Steyh | Mr. Valentine | Mr. Walsh | Mr. Gonzalez | Ms. Shimamoto | Mr. Shivas |
|-----------------------|-------------|--------------|-------------|-------------|------------|-----------|---------------|-----------|--------------|---------------|------------|
| Motion                |             | X            |             |             |            |           |               |           |              |               |            |
| Second                |             |              | X           |             |            |           |               |           |              |               |            |
| Aye                   | X           | X            | X           |             | X          |           |               |           | X            | X             | X          |
| Nay                   |             |              |             |             |            |           |               |           |              |               |            |
| Abstain               |             |              |             |             |            |           |               |           |              |               |            |
| Absent                |             |              |             |             |            | X         | X             |           |              |               |            |

Motion carried.

**OLD BUSINESS:**

**Trac Contracting, Inc., Waterloo Rd. (Cranberry Ledge), Block 91 Lot 286, Z11-08:**

Attorney Barry Levine introduced himself as well as Roy Emr, V.P. of Trac Contracting and Jeff Careaga of Careaga Engineering. When asked by Mr. Senesky, Mr. Levine stated the original application was heard in March or April of 2009 and it was an isolated lot case. Mr. Senesky asked if notices were sent to neighboring property owners to purchase or sell land. He stated it would be up to the board to decide to move forward or re-notice due to the passage of time and real estate values changing. Mr. Levine stated Mr. Granahan offered to sell land for \$70,000 and they had it appraised for \$25,000. Mr. Senesky stated Mr. Gonzalez and Ms. Shimamoto did not hear original testimony. Therefore they cannot vote but they can participate. Mr. Careaga and Mr. Emr were sworn in by Mr. Senesky. Mr. Careaga explained that he prepared the plans. He re-graded the property per Mr. Slaby's comments (sheet 1 of 2) and added a driveway turnaround. He stated the lot is undersized at 9227 square feet where 40000 square feet is required and he explained the variances requested. He then explained the items on Mr. Slaby's report of March 5, 2010. Mr. Senesky stated a variance would be required for a non-approved road. Mr. Careaga stated he felt this was the best layout for the property and there would be a 30' front yard setback.

Mr. Kaufhold asked about steep slopes, specifically a description and amount of steep slopes disturbed.

Mr. Careaga explained steep slopes are in the area in the rear. He stated a wetlands L.O.I. was applied for from the D.E.P. as well as a Highlands Exemption. He stated they need the Highlands approval before the DEP will approve the L.O.I. He stated Wander Ecological Consultants confirmed his measurements that the spring is 150' from the property line. He stated the DEP will flag the 150' buffer and he explained the process of how it is done when the wetlands are on neighboring property. The Highlands Exemption was submitted in March and takes at least six months.

Mr. Careaga stated the applicant is willing to improve the road to 18.5' road width from where it narrows and for the length of his property. He stated the septic approval was revoked until wetlands and Highlands are approved.

Mr. Careaga stated there were questions about the house being too big for the lot. He produced exhibit A-1, an aerial view of this property and surrounding properties. He stated the neighbor's house has a 1272 sq. ft. footprint on a 17000 sq. ft. lot. He stated this lot is smaller than surrounding lots.

Mr. Walsh stated several nearby homes are similar in size; however the closest lot size to this one is almost double.

Mr. Gleitz stated he is looking at the building to lot size as it compares to others in the neighborhood.

Mr. Careaga stated they are building a house that is keeping with other houses in the neighborhood.

Mr. Walsh stated that front and rear yard setbacks are needed. If the house size was reduced, then the setbacks would be increased and the variances reduced.

Mr. Careaga stated the setbacks would be increased minimally.

Mr. Emr stated he would put a trailer in and devalue the neighborhood.

Mr. Shivas stated the lot is much smaller than neighboring lots.

Mr. Careaga stated they do not want to adversely affect the neighborhood.

Mr. Senesky stated when negative criteria are discussed it includes a negative effect on the neighborhood and a negative effect on the zoning ordinance.

Mr. Careaga stated this is an isolated lot.

Mr. Gleitz spoke about the setbacks and if the property can be developed without affecting the neighbors.

Mr. Careaga stated there are no rear yard neighbors, the front yard setback is similar to the house next door and the side yards have plenty of room to the neighboring houses. He stated there is a wetlands buffer to the rear and maybe the lot across the street could be developed. He stated there is 90' building to building to Coles and 180' building to building to Lehr.

Ms. Shimamoto stated the house that is close to the road just before this property (Coles) was built under a different set of zoning laws.

Mr. Careaga stated it is a valid argument to use the neighbors.

Mr. Senesky stated maybe a house that would better fit the lot should be considered.

Mr. Gleitz asked Mr. Careaga if he has tax records with house square footage/lot size on the neighboring properties.

Mr. Careaga stated he does not.

Mrs. Raffay asked what about the definition of a neighborhood.

Mr. Senesky stated that your own judgment is used in determining a neighborhood.

Mr. Gleitz stated the sharpest focus on a neighborhood is the adjacent properties and then the next outer ring.

**The meeting was then opened to the public by Chairman Shivas.**

Charles Lehr of 1 Ridge Trail, Block 85 Lot 204 stated John Coles house was built 50-60 years ago. He stated he plows and maintains the paved driveway in the right-of-way and he was given that approval by resolution when he built his house. He stated the spring is on his property.

**The meeting was then closed to the public by Chairman Shivas.**

Mr. Shivas stated the road is not abandoned.

Mr. Levine stated his client is under contract to buy the lot for \$3000.

Mr. Senesky stated the positive criteria are viewed differently between an owner and a purchaser of a property. He stated the Board may want to consider if a neighboring property owner wants to buy the property.

Ms. Shimamoto asked about buying the neighboring lot to increase the lot size.

Mr. Kaufhold asked if the location of the house was because of steep slopes.

Mr. Careaga stated the location of the house was driven by the location of the septic. He stated he would have the same layout on a flat lot. He stated the house is in the middle of the lot, front to back, and the side to side is driven by the septic system

Mrs. Segal asked about building smaller house with a single car garage.

Mr. Careaga stated he is hesitant to make the house any smaller.  
 Mr. Senesky asked about making a higher house with a smaller footprint.  
 Mr. Careaga stated a height variance would then be required.  
 Mr. Shivas asked about eliminating the rear patio and having steps coming down.  
 Mr. Careaga they would remove the patio and he would like to have an 8' deck. He also discussed building the deck on the side of the house.  
 Mr. Walsh stated that is a front yard due to Wild Cherry Trail.  
 Mr. Gleitz asked if a bi-level is the only house to build on this property.  
 Mr. Careaga stated yes and it is only 44' feet wide.  
 Mr. Shivas stated this is the type of house to build on this property.  
 Mr. Gleitz stated the alternate plan for the house is more favorable.  
 Mr. Careaga stated they would agree to the alternate plan.  
 Mr. McElroy asked Mr. Senesky if the negative criteria would not substantially impair the zone plan.  
 Mr. Senesky stated the negative criteria are relative to other properties in the neighborhood.  
 Mr. Gleitz stated the zone plan is the Master Plan. He stated the actual and the effective setbacks are looked at as well as the potential for future development.  
 Mr. Walsh stated the applicant is not going to reach an agreement with the neighboring property owners. What does the applicant have to do to demonstrate neighbors will not buy this lot or sell the applicant property?  
 Mr. Senesky stated if the neighbors do not respond then that has a negative inference.  
 Mr. Levine stated Mr. Coles has no interest in selling and Mr. Granahan wanted \$70,000 on March 19, 2009. He stated on March 25, 2009, Mr. Granahan was offered \$24,260 to purchase this lot and he wanted \$70,000 to purchase his lot.  
 Mr. Kaufhold asked about the maximum area of steep slopes.  
 Mr. Careaga stated there were 800 sq. ft. of slopes in excess of 25% and one small area of approximately 35%.  
 Mr. Gleitz asked about the retention of trees on the property.  
 Mr. Careaga stated they would retain three or four trees in the rear.  
 Mr. Shivas stated the application is subject to other approvals: Board of Health, Highlands and DEP.  
 Mr. Careaga stated they would eliminate the patio and add a 8'x12' deck and they would go with the alternate building plan (1770 sq. ft. living space).  
 Mr. Walsh asked what the rear yard setback would be.  
 Mr. Careaga stated it would be 22' with the proposed deck.  
 Mr. Shivas stated he would entertain a motion and to remember this is an isolated lot.  
 Mrs. Raffay stated there are a lot of smaller homes in Cranberry Lake.

A motion was made by Mr. McElroy and seconded by Mr. Kaufhold to approve the application subject to the conditions that not more than 800 square feet of steep slopes are disturbed with a maximum slope of 35%.

The following vote was taken:

| Planning Board Member | Mr. Chozick | Mr. Kaufhold | Mr. McElroy | Mrs. Raffay | Mrs. Segal | Mr. Steyh | Mr. Valentine | Mr. Walsh | Mr. Gonzalez | Ms. Shimamoto | Mr. Shivas |
|-----------------------|-------------|--------------|-------------|-------------|------------|-----------|---------------|-----------|--------------|---------------|------------|
| Motion                |             |              | X           |             |            |           |               |           |              |               |            |
| Second                |             | X            |             |             |            |           |               |           |              |               |            |
| Aye                   |             |              | X           |             |            |           |               |           |              |               | X          |
| Nay                   | X           | X            |             | X           | X          |           |               | X         |              |               |            |
| Abstain               |             |              |             |             |            |           |               |           |              |               |            |
| Absent                |             |              |             |             |            | X         | X             |           |              |               |            |

Motion carried.

A motion was made by Mr. Kaufhold and seconded by Mr. Chozick to pass a resolution denying the application. The following vote was taken:

| Planning Board Member | Mr. Chozick | Mr. Kaufhold | Mr. McElroy | Mrs. Raffay | Mrs. Segal | Mr. Steyh | Mr. Valentine | Mr. Walsh | Mr. Gonzalez | Ms. Shimamoto | Mr. Shivas |
|-----------------------|-------------|--------------|-------------|-------------|------------|-----------|---------------|-----------|--------------|---------------|------------|
| Motion                |             | X            |             |             |            |           |               |           |              |               |            |
| Second                | X           |              |             |             |            |           |               |           |              |               |            |
| Aye                   | X           | X            |             | X           | X          |           |               | X         |              |               |            |
| Nay                   |             |              | X           |             |            |           |               |           |              |               | X          |
| Abstain               |             |              |             |             |            |           |               |           |              |               |            |
| Absent                |             |              |             |             |            | X         | X             |           |              |               |            |

Motion carried.

**NEW BUSINESS:**

Mr. Senesky explained the Time of Decision Law signed by Governor Christie. He stated it goes into effect one year after signing and the Board should reexamine the ordinances during that time period. He stated the edge of zones should be examined.

Mr. Gleitz stated the Board should also look at use categories.

Mr. Shivas stated that under the new law when an application is filed, the ordinance that was in effect on the date of the filing is locked in.

**OPEN TO THE PUBLIC:** No one came forward to speak and the meeting was closed to the public.

**BILLS:**

Three bills totaling \$2227.70 were approved by all in attendance for Mr. Slaby.

Two bills totaling \$1492.50 were approved by all in attendance for Heyer Gruel.

Five bills totaling \$1393.75 were approved by all in attendance for Mr. Senesky.

**OTHER BUSINESS:**

None

**ADJOURNMENT:**

At 10:28 p.m. Mr. Kaufhold made a motion to adjourn, it was seconded by Mr. Chozick, all were in favor and Chairman Shivas adjourned the meeting.