

**MEETING MINUTES
BYRAM TOWNSHIP PLANNING BOARD
MARCH 7, 2019**

CALL TO ORDER

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

ROLL CALL

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

Also present: Attorney, Kurt Senesky
 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 21, 2019 Meeting Minutes.

A motion was made by Mr. Kaufhold to approve the minutes as written. The motion was seconded by Ms. Shimamoto. The following vote was taken:

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Mr. Kaufhold	Mr. Morytko	Mr. Olson	Ms. Raffay	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
MOTION				√							
SECONDED									√		
AYE		√		√					√		√
NAY											
ABSTAIN			√			√	√	√			
ABSENT	√				√					√	

Motion carried.

RESOLUTION

Samuel and Rebecca Pruitt, 10 Rosemarie Lane, Block 360 Lot 17, R-4 Zone

To re-build a single-family dwelling requiring variances.

A motion was made by Ms. Shimamoto to approve the resolution as presented. Chairman Shivas said that the height calculation on page one should read 27.6'. Ms. Shimamoto amended to her motion to accept this correction. The motion was seconded by Mr. Dixon. The following vote was taken:

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Mr. Kaufhold	Mr. Morytko	Mr. Olson	Ms. Raffay	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
MOTION									√		
SECONDED		√									
AYE		√		√					√		√
NAY											
ABSTAIN											
ABSENT					√					√	

Motion carried.

OLD BUSINESS

SP4-2018, Tomahawk Lake Inc., Tomahawk Trail, Block 343 Lots 1, 2 and 3, C-R Zone

Amended site plan to construct a 36' X 40' concession stand, to add overflow parking areas on the grass, and to install two new waterslides (carried from Jan. 3, 2019).

Mr. Roger Thomas, the Attorney representing Seneca Lake, objectors to this application, began by saying he sent a letter on March 4, 2019 on behalf of his client requesting an adjournment so that their recently retained planner had adequate time to review this application and prepare his arguments. He said that request was denied by the applicant. Mr. Thomas maintains that this application should be considered a use variance and they should be afforded the opportunity to prove his case and asked that this matter not be heard this evening.

Mr. William Askin, Attorney for the applicant said that Mr. Thomas has had adequate time to retain a planner and he objects to the postponement. He said his clients engineer resides in Florida and purchased airline tickets to be present this evening and it would not be fair to his client.

Mr. Senesky said Mr. Askin has the right to continue this evening, however he recommended to the Board that Mr. Thomas be afforded the opportunity to rebut any testimony provided tonight and provide planning testimony to substantiate their case. Mr. Askin said he is fully prepared to move forward tonight and believes this matter can be concluded this evening.

Mr. Thomas said he would appeal if interested parties are not given the opportunity to express their concerns and provide planning testimony. After a lengthy Board discussion, it was decided to move forward with this application. Chairman Shivas said the first order of business is to determine if this application is to be considered a site plan with bulk variances or use variance. This will determine who can vote on this application.

Mr. Askin provided a brief history of this property saying that since 1997 the applicant has used all three lots for park activities. He said all activities that occur on the site are associated with waterparks such as; swimming, picnicking, slides, etc. He said in 2009 the applicant received approval from this Board to erect a fence on Lot 3 and the fence was to encompass the entire park for safety and security purposes. He said the driveways in the park interconnect and the parking on Lot 3 is an accessory to the parks principal use and the use extends to all three lots. He said the site plan can address traffic issues saying Mr. Wallace is sensitive to the residents needs and is here to address any concerns. He concluded by saying that since 1952 this

property has operated as a waterpark and has not changed and added that the ownership of these lots is insignificant.

Mr. Askin introduced one of the owners of the park, Mr. Mark Wallace, and his engineer and planner, Mr. Michael Kolody. Both were sworn in. Mr. Kolody has provided testimony before this Board previously and the Board accepts him as an expert in his field. Mr. Thomas requested that Mr. Kolody provide his credentials, and Mr. Thomas accepted him as an expert in his field.

Mr. Kolody began by saying that the park meets the intent of Byram's Ordinance 240-58, "Commercial Recreation" and this parks use is consistent with Sections 1 thru 6. He said the lots are all contiguous and on Lot 1 no physical changes have occurred since 1986. Chairman Shivas disagreed with that statement. Mr. Kolody said perhaps a tent was erected but no major improvements have occurred. He said Lot 3 once had a ballfield, but because of wetland constraints that area had to be restored. He said the lot does have a dilapidated residential structure that has not been used in years, and a fishing pond, walking trails, and a lawn area for picnickers, all of which are used by patrons of the park. He said Lot 3 is an integral part of the park, and the fence surrounding all lots solidifies one use. He added that in the past, and only on high attendance days Lot 3 is also used for overflow parking. He said this application includes approval for parking overflow parking on Lot 3 to allow that use.

Mr. Kolody's responded to Mr. Thomas's claim that the park has expanded and "morphed" into a different use noting that the park attendance has not increased over the years. He said septic needs have not change and confirmed this by saying they have an active Treatment Works Permit which is inspected regularly. Mr. Kolody finished by saying the new slides are modern and will offer a better variety of slides for their patrons.

Mr. Walsh asked if Mr. Kolody has any data to substantiate his claim that there has been no increase in attendance. Mr. Kolody said it is based upon his personal observations of the site. He said since septic needs have not changed, or the number of picnic tables needed, would indicator of that. Mr. Kauffhold asked what is the need for an overflow parking if attendance has not increased? Mr. Kolody said Mr. Wallace can best answer that directly but did add that previous parking arrangements were haphazard and not organized. He said this application provides solutions to correct any parking/traffic issues. Mr. Kolody said reading previous resolutions and other documents there are up to 1,000 parking spaces available on the site and that would be a site plan issue vs. a use issue.

Mr. Gonzalez asked what activities were provided at the park when it opened. Mr. Kolody said deeds and other documents referenced a "waterpark", however the deeds did not include the activities that occurred on the site.

It is Mr. Kolody's opinion that the parking on Lot 3 is an accessory to the primary use on Lots 1, 2, a "Waterpark", and that parking on Lot 3 does not trigger a use variance. He emphasized that the addition of the proposed slides and concession stand does not trigger a use variance because they were always a part of this park and that has not changed since its existence beginning in 1952.

Mr. Thomas said that Ordinance 240-58, Commercial Recreation, has language, "limited to" and asked Mr. Kolody from a planner's perspective if he agrees that language in an ordinance "limited to" means if the use is not enumerated, it is prohibited. Mr. Thomas went to say that Mr. Kolody and the applicant refer to the term "Waterpark" for Tomahawk Lake which is not an activity listed as a permitted use.

Mr. Thomas discussed activities associated with amusement parks saying that Mountain Creek, Six Flags, and the like have water slides and are considered amusement parks, so why should Tomahawk Lake be considered anything other than an amusement park. Mr. Kolody said he has never visited those sites and believes a waterpark may be an aspect of an amusement park, but Byram's ordinance refers to amusement parks as having "moving rides such as trains, cars and wagons, none of which are associated with Tomahawk Lake. Mr. Kolody underlined that waterslides are an accessory use to a lake.

Mr. Thomas mentioned the 1985 resolution which stated that the Waterpark was at its capacity and any future expansion could present a problem and not meet the intent of the zone. Mr. Kolody did not agree that the resolution was referring to the expansion of waterslides.

Mr. Thomas talked about Lot 3 and overflow parking in the lot saying that Mr. Kolody stated earlier that overflow parking on Lot 3 was never formalized with the Board and therefor in violation of the site plan, and a use permitted not permitted. Mr. Thomas had no further questions. Mr. Askin had no further questions.

Mr. Senesky stated that Lot 3 is in separate ownership and that no improvements are proposed for Lot 3 and asked Mr. Kolody if he believes parking is a permitted principal use in the zone. Mr. Senesky read the definition of "accessory use". Mr. Senesky said since Lot 3 has no principal use, and under separate ownership it can be sold off independently creating a site plan issue with insufficient parking. Mr. Kolody believes if that were to happen there are alternatives that the applicant can explore and if no alternative were available, then Mr. Wallace would be operating in violation of his site plan. Mr. Senesky asked if the applicant would object to merging the properties since the Board has concerns that they are in different ownership. Mr. Askin believes Mr. Wallace would not have a problem with a deed restriction that the lots could not be sold separately.

Mr. Gleitz asked if any cross-access easements existed. Mr. Askin said no. Mr. Gleitz talked about the resolution for the 2010 fence approval and talked about the applicant's named on the application and the uses listed within the resolution and it does not mention that Lot 3 has picnic areas, a pond, or trails. He added that the approval only references Lot 3. Mr. Olson asked why the fence was erected and Mr. Kolody said the fence was erected for security and closure for the entire property.

Mr. Gleitz asked Mr. Kolody in his opinion as a professional planner what would constitute a "tipping point" for the park, making it a use variance. Mr. Kolody said this park does not meet the definition of an amusement park and since there has been no increase in picnic tables, or the number of patrons visiting the site he believes that adding two waterslides would not be considered a "tipping point". Mr. Gleitz said you are relying on the number of available parking spaces but have no real count of patrons visiting the site and as Mr. Kolody's stated, this is based on observation, not real data. Mr. Kolody said that the older water slides are not used as much, and the addition of newer, more modern slides will not cause an increase in attendance or a change in the use of the property.

Mr. Akin introduced Mr. Wallace who said they started staging the cars and over the past few years him and his sister, along with other park employees arrive at the park extra early to collect money and allow patrons to enter the park which has helped alleviate traffic problems. Mr. Wallace said in response to Mr. Kauffhold's question; why the need for overflow parking. He said excessive heat on July 1st caught them off guard, and it presented a traffic gridlock, no one was expecting that. He said they usually only have problems one day a year, July 4th however they utilize Byram police to mitigate traffic which was agreed upon after a meeting with town officials.

Mr. Wallace said his goal is to keep the park modern and offer slides that attract people. He said they would like to enlarge the concession stand to offer t-shirts, water rafts, etc. Mr. Wallace said the park is only open eighty-seven days a year and last year, because of rain, was open less. He said he has never done anything without Board approval and believes Lot 3 is an integral park of the park. He said people picnic on the grass, they use the trails, they play games, etc. He said in response to the lots being under different ownership, he nor anyone in his family intends on selling any lots, they want to keep the park in the family. He said they keep a clean facility, they are considerate of neighbors, they don't allow radios playing in the cars or loud music and they had out a brochure with rules for park visitors. He said the overflow parking on Lot 3 is only used on July on 4th and on all other days the park has enough parking. Mr. Wallace said Tomahawk Lake incorporated owns the operating corporation and the principals are his sister Lynn and himself. He said the reason they call it a "waterpark" is because there is a lake and a park. Mr. Wallace said Lot 3 entails picnicking, parking, sunbathing, hiking, and has been a part of the lake since the lot was purchased in 1997, and no improvements are proposed on Lot 3.

Mr. Walsh asked other than tradition, and since the leases are renewed annually, is there anything that would prevent an owner from selling a lot. Mr. Wallace said it is not likely but legally nothing binds them together.

Mr. Wallace said with regards to parking on Tomahawk Trail he said the only time there is a problem is July 4th. He reiterated that the brochure they hand out about the rules of the park restricts parking on Tomahawk Trail and they do not allow walk-ins, or buses on weekends.

Chairman Shivas opened to the public and instructed the public that questions can only pertain to the type of variance being considered tonight, a bulk variance which relates to the attributes of the property, or a use variance which relates to the use on the property. Mr. Gleitz explained the difference.

Ilene McKenchnie, 30 Mt. Heights Drive was sworn in and asked if the Board considered the environmental impact of tree removal on the park, which in the past has buffered the noise and that to allow parking on the grass could present the possibility of oils and grease seeping into the grass. Chairman Shivas said answers to that question will be addressed during the hearing of the application.

Mr. Thomas asked Mr. Kolody for some data to substantiate his opinion that park patrons have not increased. Mr. Thomas asked Mr. Wallace about patrons parking on Tomahawk Trail and Mr. Wallace said Byram has an ordinance that parking is not permitted on the park side of Tomahawk Trail, which is enforced by the police. He added that he cannot speak for the other side of the road but said that since 2010 traffic problems have lessened.

Mr. Olson said in 2007 when he was elected his first call was from residents on Tomahawk Trail complaining about the traffic on Tomahawk Trail. He said regarding the removal of trees he said between 2007 and 2010 trees were removed. He asked if parking was not taking place in 2007 on Lot 3 where did the cars park? Mr. Wallace reiterated that parking on Lot 3 only happens on July 4th. He said a few years ago on July 1st the temperature was over 100 degrees which caused a traffic jam because they weren't expecting it. He said with regards to the removal of trees, Mr. Wallace said he has never cut down trees unless they are dead and said he is Farmland Qualified with a Woodland Management Plan that requires certain activities such as tree removal.

Mr. Walsh asked Mr. Kolody if parking along Tomahawk Trail is prohibited where do the cars that once parked along the fence now park? Mr. Kolody said at that time parking was uncontrolled and unorganized and now parking is organized and controlled, and this application will present some solutions to those concerns. There was Board discussion about parking on the street and the problems it created. Mr. Stoner asked when they started using Lot 3 and Mr. Wallace said after it was purchased in 1997 and again, is only used one day a year. Mr. Walsh asked Mr. Senesky if they only use Lot 3 one day a year for parking, does that make it okay? Mr. Senesky believes how many times the lot is used for parking is irrelevant.

Chairman Shivas said the time does not allow for further testimony tonight.

A motion to carry this application to April 18, 2019 was made by Mr. Walsh. The motion was seconded by Mayor Rubenstein. The following vote was taken:

	Mr. Chozick	Mr. Dixon	Mr. Gonzalez	Mr. Kaufhold	Mr. Morytko	Mr. Olson	Ms. Raffay	Mayor Rubenstein	Ms. Shimamoto	Mr. Walsh	Chairman Shivas
MOTION										√	
SECONDED								√			
AYE		√	√	√		√		√	√	√	√
NAY											
ABSTAIN											
ABSENT	√				√		√				

The motion was seconded by

REPORTS FROM COMMITTEES

Township Council – Mayor Rubenstein said that on March 12 the Township will have a public hearing with Greener by Design, the firm that preformed the study of Byram’s Open Space and Recreation. He said this meeting will provide the public the opportunity to ask questions or provide comment.

Environmental Commission – Ms. Shimamoto said the EC reviewed the Falleni and the 16 Rosemarie Lane application and provided comment to the Board Secretary.

Architectural Review Committee – No meeting was held.

Open Space – Mr. Olson said the next Open Space Meeting is April 8th.

Zoning Report - Mr. Dixon reviewed the February 2019 zoning report:

- 4 zoning permits were issued.
- 1 zoning permit was denied.
- No Site Plan Waivers were issued.
- 6 Notice of Violation were issued.
- 5 Notice of Violations were cleared.
- 12 Summons were issued.
- 0 signs were removed.

BILLS

Harold Pellow & Associates (6 bills) \$1,714.20

A motion was made by Mr. Walsh to approve Mr. Stoner’s bills. The motion was seconded by Mayor Rubenstein. All were in favor. Motion carried.

Lawrence Wiener, Esq. (1 bill) \$300.00

A motion was made by Mr. Walsh to approve Mr. Wiener’s bill. The motion was seconded by Mr. Kaufhold. All were in favor. Motion carried.

Latini & Gleitz (4 bills) \$1,260.00

A motion was made by Mr. Walsh to approve Mr. Gleitz bills. The motion was seconded by Mr. Kaufhold. All were in favor. Motion carried.

PUBLIC COMMENT

Chairman Shivas opened to the public.

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

ADJOURNMENT

A motion to adjourn the meeting was made at 10:40 p.m. by Mr. Kaufhold. The motion was seconded by Mayor Rubenstein. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted, *Cheryl White*