

**MEETING MINTUES
BYRAM TOWNSHIP PLANNING BOARD
MEETING, June 3rd, 2021**

CALL TO ORDER

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

ROLL CALL

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
HERE	H	H		H	H	H	H		H	H	H
ABSENT			A					A			
EXCUSED											
LATE											

Also present: Attorney Alyse Hubbard, Esq.
 Engineer Cory Stoner, P.E. C.M.E.
 Planner Paul Gleitz, P.P. AICP
 Secretary Caitlin Phillips

STATEMENT BY CLERK

Both the Federal and State governments have declared a state of emergency in response to the outbreak of the Covid-19 Virus, that limits the number of people allowed to gather, and requires social distancing. To continue Planning Board business, this regularly scheduled meeting for June 3, 2021 is being held by remote video or audio connection only. This service allows the Board, its professionals, applicants, and members of the public to participate.

Adequate notice of this meeting has been published specifying the time and access information in compliance with the provisions of the Open Public Meetings Act. Notice of this meeting is on file in the office of the Planning Board Secretary, posted on the main door, and on the bulletin board in the Municipal Building, and on the Township website at: https://www.byrantwp.org/index.php/meetings/committees/planning_board and has been forwarded to those persons requesting notice.

FLAG SALUTE led by Chairman Shivas

MINUTES

Approval of the May 20, 2021 Meeting Minutes

Mr. Morytko motioned to approve the minutes from May 20, 2021, seconded by Mr. Chozick. The following vote was taken:

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
MOTION				√							
SECONDED	√										
AYE	√	√		√	√	√	√			√	√
NAY											
ABSTAIN									√		
ABSENT			√					√			

Motion carried.

CONSISTENCY REVIEW- A discussion from the Board is needed to determine if the Town Council’s Ordinance No. 006-2021 is consistent with the Master Plan.

Ms. Raffay recused from this discussion. Mr. Morytko noted his concern that the Board can’t say that it complies or not with the Master Plan, because he doesn’t feel there’s been a review from a Land Use or Zoning perspective. He thinks there’s time to review this closely, and hopes the town makes an objective decision. He also said the Board could make a decision now based on the information they have. Mr. Gleitz noted that the finding would be that it’s “not inconsistent.” This is to ensure the Council doesn’t adopt anything that is in direct contrast to the Master Plan. There was a focus in the Economic Development and Re-exam on economic development and on businesses directly related to tourism, eco-toursim, hiking, biking, etc., and the Board added distilleries and microbreweries that have been authorized by the state. The Board doesn’t need the Master Plan to explicitly mention cannabis use to consider it consistent. They could say it’s not inconsistent simply because the Master Plan is silent on the issue, or they could find it not consistent because the Master Plan encourages economic development and new ideas. Mr. Smith agreed with Mr. Morytko, saying he feels the Council decision didn’t come from a discussion but was instead a blanket prohibition. He’d also like

to see a deeper discussion showing particular uses. Ms. Hubbard asked Mayor Rubenstein that on page 2 of the ordinance it mentions officials from two non-profit organizations, and if they have reports from them submitted to the Council. Mayor Rubenstein said he doesn't know. Mr. Smith said he thinks the ordinance is inconsistent because the Master Plan doesn't discuss this. Ms. Hubbard reminded the Board about Mr. Gleitz's point, where the last Master Plan discussed similar industries like microbreweries that are accepted in Byram. If they feel it's inconsistent they can tie it to those uses being accepted, and the benefits of what permitting each class of this would be. Mr. Gleitz noted that if they Board finds this inconsistent, the Council, if they decide to move forward with a supermajority, will need a written statement explaining why they decided to ignore the advice of the Planning Board.

Ms. Franco said the ordinance is written as it is because there's no direction from the State regarding rules. The State said if cannabis is allowed in a town, the decision cannot be reversed for 5 years. The Council could determine if a related plan is consistent and allowed if someone comes to them. The town needs parameters, including how to collect revenue from dispensaries, but Ms. Franco doesn't think this is laid out. Mayor Rubenstein said the Board is not deciding on the policy; they're just reviewing if the ordinance is consistent or inconsistent with the Master Plan. Chairman Shivas said he didn't see anything in the ordinance that's inconsistent; you'd need to find something that contradicts to say it's inconsistent. Mr. Walsh said farming is a large part of the Master Plan and cultivation is part of the cannabis process. Mr. Gleitz noted there's no farmland preservation element, and Byram is rock and lakes so there's not a lot of active agriculture. Mayor Rubenstein said he feels strongly that this is inconsistent with the Master Plan.

Mr. Smith motioned to deem this ordinance inconsistent with the Master Plan. On page 54 it looks to encourage the provision of a balanced variety of land uses to promote adequate housing and economic opportunities to support development. He feels this ordinance limits economic opportunities. This motion was seconded by Mr. Walsh. Mayor Rubenstein clarified that a "yes" vote indicates that it's not consistent with the Master Plan. The following vote was taken:

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
MOTION									√		
SECONDED										√	
AYE				√		√	√		√	√	
NAY	√	√									√
ABSTAIN					√						
ABSENT			√					√			

Motion carried.

OLD BUSINESS

SP2-2019, Anty Trucking, 9 Lackawanna Drive, Block 226 Lot 16, IPR Zone

Amended site plan approval for an office trailer, two pole barns, reconfigured trailer parking, and outdoor storage.

Ms. Franco and Mayor Rubenstein recused from this application. The attorney Michael Lavigne joined the call with applicant Dominick Antonucci and engineer Patrick McClellan. Mr. Lavigne noted that they received a lot of suggestions, including moving the pole barn away from Lackawanna to screen any storage and provide an opportunity for trailer use. They also pulled the activity and storage away from any riparian buffers and found ways to detail and mark any buffers and storage areas, preventing any intensifying of storage over time.

Mr. McClellan acknowledged that he is under oath, his credentials haven't changed, and his license is in good standing. He showed the exhibit of the colorized site rendering. They've relocated Building 2 further back from the berm, allowing for an area used for container and trailer parking. They've also identified a proposed loading area. Mr. Lavigne confirmed there is circulation on the east side of the building. Mr. McClellan referred to sheet 2 of the site plan, with the red turning movements to show trucks can maneuver in that area. The circulation area is used for staging, and not dedicated to long-term storage since it's used for daily operations. Mr. Lavigne confirmed that the overhead doors for vehicle access are at the short ends. They're using an area on the east side for trailer parking, and proposed a series of monuments so there is a physical marker to stop the storage. They'll have numbers on each so that it's easy to see where you're standing on the map and in the physical spot. Mr. Lavigne confirmed regarding the west and south berms that they're installed currently. Chairman Shivas asked if there's a way to line the inside lines to avoid that growing too. Mr. McClellan said they wanted to delineate the perimeter because of the environmental constraints and adjacent properties, and there are markers that can be used inside. He doesn't know if there's a need for flexibility inside on a daily basis or if the applicant can commit to the inside lines too. Mr. Lavigne said it can be done, and asked Mr. McClellan if he has any alternatives to the utility pole for the outside, to avoid a truck hitting it. Mr. McClellan said the pole could work, and to have it flush with

the surface to withstand heavier traffic. There's no vegetation so it won't get lost, and it can be painted to be more visible. They've also relocated the trailer parking and put screening along the property line. He noted there's a heavy line on the plan from Lackawanna towards the building to show the sightline, indicating that the building covers the storage behind it. Mr. Lavigne asked why the building profile looks tall and skinny. Mr. McClellan explained that engineers exaggerate the vertical scale for profiles because otherwise it appears flat. Mr. Lavigne noted on the legend there were various land areas, and the discrepancy on that has been corrected.

Mr. Lavigne noted they received reviews from various departments and commissions. The Environmental Commission asked about truck maintenance, and Mr. Lavigne confirmed with Mr. Antonucci that no maintenance is done outdoors on site. He also confirmed that they used native species for planting, and that there isn't any gasoline or diesel dispensed on site or tankard trucks. Mr. Lavigne confirmed regarding the Fire Department review, that the access drive will be cleared of snow, and that there will be no heat in the building and no fire protection systems are required. He noted there are no new gates; Mr. Antonucci said the gates will normally be closed around 5 pm. Normal work hours are 6:30 to 5:00 but at times they work overtime. Chairman Shivas said the Fire Department will want access to get in if needed. He confirmed with Mr. Antonucci that they know how to get in.

Chairman Shivas asked that they'll come up with a solution for the lines of the inner storage. Mr. Antonucci said it's fluid, so he'd need to think about it. There may be more storage months from now but not so much at the moment. Chairman Shivas said it's important because if it becomes consistent with the growth of storage, they need a way to indicate where to limit it. Mr. Morytko confirmed that the sightline is to the back of the outdoor storage. Mr. Stoner asked if they've changed the doors to the short ends instead of long; Mr. Antonucci said there will be a door on the long end and one on the short end. Mr. Gleitz added that there is no issue with the lighting since it's not an open site. Mr. Stoner asked what kind of lighting will be used and Mr. Antonucci said it'll be a man-door light. Chairman Shivas asked about lighting for security purposes and Mr. Antonucci said he'll install cameras for that and has some now that work well in the dark.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Serrilli motioned to approve this application, seconded by Mr. Morytko, who clarified the interior markers will be installed. Mr. Morytko appreciates them considering the feedback. The following vote was taken:

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
MOTION							√				
SECONDED				√							
AYE	√			√	√		√		√	√	√
NAY											
ABSTAIN		√				√					
ABSENT			√					√			

Motion carried.

NEW BUSINESS

Z04-2021 Robert Lovenberg, 285 Lackawanna Drive, Block 344 Lot 33.05 , R-1 Zone

Expansion of a previously approved roll-off dumpster and portable toilet business.

The attorney Michael Selvaggi joined the call along with the Planner Aaron Kardon (145 Spring Street Suite E in Newton), the engineer James Glasson (1 Cole Street in Budd Lake), and the applicant Robert Lovenberg Jr. (285 Lackawanna Drive) and were sworn in.

Mr. Selvaggi mentioned a resolution in 2000 allowing the roll-off service, portable toilet business, and Mr. Lovenberg's home. The relief requested is for changes to the property that increase the impervious surface, additional buildings, the roll-off service's increase in intensity, and he noted the portable toilet business is decreasing. Chairman Shivas said that Mr. Glasson is an expert and has been here many times. Ms. Hubbard confirmed he's still in good standing. Mr. Kardon achieved his planning license in 2015 and worked for a Planning Board for 12 years, and has worked at the state level for the EPA and on the Highlands Council. He's worked in Newton and Warton, and was deemed an expert.

Mr. Selvaggi spoke with Mr. Lovenberg, who has owned the property for 21 years. He was the applicant in 2000 and continues to reside there and operate the roll-off container and portable toilet businesses. He was allowed to have 24 containers for the roll-off business in 2000 and is proposing 70 with 9 closed containers. The containers are used to pick up construction materials and homeowner cleanup. Mr. Selvaggi confirmed the containers are not used to store hazardous waste,

and that mostly they're off site. The containers are emptied at dumping facilities, and could be on site overnight. There are 3 roll-off trucks for this business. In 2000 he was allowed 150 toilets and is looking to reduce that to 50. The toilets are cleaned on the job site and returned. There are two septic trucks for this business. They are open from 6-4 Monday through Friday, and he has 5 employees. Mr. Selvaggi confirmed that 8 parking spaces are enough, and that there aren't any customers that visit the site. Mr. Lovenberg has 2 personal vehicles that aren't parked in the business spaces. He only has personal deliveries to the site, and no trailers or box trucks visiting so he doesn't need a designated loading area. The DEP issued violations relating to pervious coverage, so Mr. Lovenberg brought in soil and trees to satisfy the DEP, and the restoration was approved.

Mr. Lovenberg is looking to have the area needed for the containers, to keep them organized and safe. The proposal shows the designated spots for all the containers, and will be on impervious surface along with the toilets. The maintenance area is for oil changes and repairs on his trucks, as well as maintenance on the containers and toilets. He needs a new septic system for the business. The storage building is for the driveways in the winter, and was part of the approval in 2000. The shed is for Mr. Lovenberg's landscape equipment for the home, and the water tank is to water the trees put in for the state or if he has a fire. The fuel shed is for diesel fuel used for the businesses' trucks, and someone delivers the fuel to the property. He got a permit from the state to do maintenance in the garage. The fuel tanks are in a 3,000 gallon dike. Mr. Lovenberg put the lighting in on the property for security, and needs approval for the lights. He has no signage and is not proposing any. The two hazardous materials on site would be the diesel and 55 gallon drum of sanitary cleaning chemical for the toilets, kept in the garage. The chemical is put in a smaller container to clean the toilets off site.

Chairman Shivas confirmed that the diesel and chemical tanks are above ground, and the dumpsters are on millings. Mr. Morytko confirmed regarding the diesel tank that the dike is a secondary container if there's a leak. The delivery for that is via fuel truck.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Glasson shared a tax map revised August 2011, **Exhibit A1**, to orient the Board. Access to the property is through an easement, and Mr. Lovenberg maintains a portion of that driveway. He then went through the previous site plan, discussing the principal structures and businesses. Mr. Lovenberg was issued a Highlands violation and found not exempt. They worked with the DEP and needed to remove an acre of impervious coverage and do landscaping. In 2019 the DEP resolved that he complied. He then moved to the current conditions, showing the colorized sheet 5 of 11, **Exhibit A2**. The garage and home are still existing, and the second floor of the garage is office space and storage on the first floor with a bathroom. There was a septic tank installed without County approval. They're proposing to keep items D, J, and I which are in the front yard. Items H, F, G, and E are proposed to be removed. There are now 3 large gravel areas for the rollover containers, access to the grit building, and additional containers for maintenance. The impervious coverage has increased 8.02% and the total disturbance is 14%. Mr. Glasson then showed **Exhibit A3**, a colorized proposed site plan, that shows the restoration and compliance efforts. There are also designated areas for Mr. Lovenberg's camper, boat, and personal plow. They're proposing an area in the back for the extra portable toilets, and there are designated spaces for the businesses' vehicles. There are three dumpster areas. There is no erosion problem or negative impact to nearby properties. There are 5 lights proposed on the poles, and mounted at a non-compliant height. There are building-mounted lights, 4 of which are at a non-complaint height.

Mr. Stoner noted that his biggest item was the stormwater issues with expanded impervious coverage, and thinks they have addressed all his comments. Mr. Gleitz said he has no comments on landscaping or lighting, and there's no signage so he has no questions.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Kardon discussed the D2 relief, noting that Mr. Lovenberg meets the positive criteria. The 2000 resolution found this met a regional need for these services. The property is at a higher elevation than the street and neighboring areas, and showed **Exhibit A4**, noting the elevation of the property. The operations won't change much and has operated the same way for 21 years. Mr. Kardon showed **Exhibit A5**, regarding the zoning of the property. He isn't in an area with close-by neighbors that would be affected by the site improvements or lighting. Mr. Kardon also discussed the positive criteria for the C variance, in which Mr. Lovenberg has designed this in a way to have proper procedures for his businesses while limiting the negative effects by not developing much other land on the property. The area itself would be unsuitable for a residential zone. The operations of the business would remain unchanged other than having better organization of the site and enhanced safety. The site is naturally screened from the road as well. This site supports economic opportunities in Byram. Mr. Selvaggi noted that the property is landlocked, so there could be a hardship because of the unique features where there is limited access from the roadway. Mr. Gleitz said they did a good job highlighting the positive and negative.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Morytko motioned to approve this application, seconded by Mr. Smith. The following vote was taken:

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
MOTION				√							
SECONDED									√		
AYE	√			√	√				√	√	√
NAY											
ABSTAIN		√				√	√				
ABSENT			√					√			

Motion carried.

Z07-2021 Kevin Lukich, 27 Deer Run, Block 284 Lot 211, R-5 Zone
Addition of a third story for a master bedroom.

Mr. Smith recused from this application. Kevin and Britney Lukich (27 Deer Run) were sworn in. Mr. Lukich explained that they applied for a previous variance for a garage and master bedroom that was denied. If they built to the left there wouldn't be access to the back yard, and going back would be near the septic, so they're proposing another level. Their basement is about 80% underground, and the Zoning Officer said the basement is considered a story, so that's over the maximum of 2.5 stories for a house. Mr. Lukich noted the bulk of the addition would be on the left side. The right side would have a raised pitch in the roof for aesthetics and attic space. The property line is a good distance away from the neighbors. Mayor Rubenstein confirmed the footprint isn't increasing, just the height and an added front porch. Chairman Shivas confirmed there was a tree that was in question last time that will not be removed.

Ms. Raffay confirmed most of the basement is underground. She noted this plan looks to have improved. Mr. Lukich said they like the way this proposal came out better and think it'll improve the value of the homes around them too. Chairman Shivas confirmed there are two peaks on the roof, and the first peak is proposed, not existing. Mr. Stoner agreed with the Zoning Officer about the building height and has no comments.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mayor Rubenstein motioned to approve this application, seconded by Mr. Walsh. The following vote was taken:

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
MOTION						√					
SECONDED										√	
AYE	√	√		√	√	√	√			√	√
NAY											
ABSTAIN									√		
ABSENT			√					√			

Motion carried.

REPORTS FROM COMMITTEES

Architectural Review Committee: Mr. Morytko said there has been no meeting.

Building Committee: Mr. Morytko said there has been no meeting. Mayor Rubenstein said the site plan was posted to the website and will be reviewed on 06/15.

Environmental Commission: Ms. Shimamoto was absent.

Open Space: Mr. Morytko said there's a meeting in one and half weeks.

Township Council: Mayor Rubenstein said his topics are part of the two following discussion items.

DISCUSSION ITEM: Return to live meetings

The Council decided to return to live meetings starting 07/01, and the executive order lifted capacity limits, distancing, and masks. They decided the four committees (Environmental, Recreation, Board of Health, and Open Space) will also return to live meetings starting 07/01. They didn't determine anything about the Board because they are autonomous and have other factors to consider. For the Board, the first meeting they could go live is 07/15. The Council is considering bringing in equipment to help the public participate via Zoom, but that won't be ready in July.

Ms. Hubbard noted the issues with using communication equipment for complex meetings like the Board has. They'd need multiple cameras and audio. With the equipment they have now, the exhibits can't be seen on the cameras, so it'll be challenging to allow participation with a hybrid component.

Mr. Smith likes the idea of hybrid meetings and wants to revisit it. Mr. Morytko would like to see the needs for hybrid meetings outlined. He questioned if they could post signs about masks from a public health perspective. Mayor Rubenstein said it's not a Council policy, and there is a sign at the municipal building about that. Ms. Phillips asked what the preference for in-person meetings is. Mayor Rubenstein said he likes virtual meetings but from a technology perspective in-person meetings are easier for some. Mr. Gleitz noted it's a different meeting when it's in-person, and provides opportunities for side-discussions for the applicants. Mayor Rubenstein asked if there will be distancing on the dais. Mr. Stoner said he prefers distancing and wants to be cautious. Chairman Shivas and Mayor Rubenstein said they could have tables on each side to spread everything out. Ms. Franco asked if there are other towns using hybrid meetings. Mr. Stoner said it hasn't seemed to work well so far, and Mayor Rubenstein emphasized that the audio has to work well, and public involvement has gone up and they want to continue that. Chairman Shivas disagreed, thinking participation has lessened and in-person meetings would increase participation. Mr. Smith said it goes both ways—some people don't want to leave the house and participate online, and others don't use technology and want to participate in person. He'd like to experience an in-person meeting before making a judgement, but thinks screensharing is helpful for more visibility. Mr. Morytko and Mayor Rubenstein said they'd like to continue using Sharepoint for the documents.

The following vote was taken to see if the Board is willing to change to in-person meetings starting 07/15:

	Mr. Chozick	Ms. Franco	Mr. McElroy	Mr. Morytko	Ms. Raffay	Mayor Rubenstein	Mr. Serrilli	Ms. Shimamoto	Mr. Smith	Mr. Walsh	Chairman Shivas
MOTION											
SECONDED											
AYE	√	√		√	√	√	√		√	√	√
NAY											
ABSTAIN											
ABSENT			√					√			

Motion carried.

DISCUSSION ITEM: CO Johnson Park Improvements

The Council wants to move ahead with the dog park near CO Johnson. They're going for a grant from the DEP to finance it, and the grant closes at the end of June. They need a consistency review from the Board about this. The Board needs to review the plans on the website and decide at the next meeting.

OPEN TO THE PUBLIC

Chairman Shivas opened to the public. No one spoke, so Chairman Shivas closed to the public.

ADJOURNMENT

A motion to adjourn the meeting was made at 10:45 pm by Mr. Morytko. The motion was seconded by Mr. Chozick. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted,
Caitlin Phillips