

**MEETING MINUTES
BYRAM TOWNSHIP PLANNING BOARD
SEPTEMBER 5, 2019**

CALL TO ORDER

Chairman Shivas called the meeting to order at 7:00 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	H	H	H	H
ABSENT											
EXCUSED											
LATE											

Also present: Attorney, Kurt Senesky
Engineer, Cory Stoner
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.

PLANNING SESSION

Review of the draft L.E.D./Message Board Ordinance

This discussion was tabled to the September 19 meeting.

Master Plan Consistency Review of the Stormwater Control Ordinance.

Mr. Stoner said this proposed ordinance is an update to Byram Township Code Chapter 211 and is part of compliance with the Highlands Regional Master Plan (RMP) and reflect resource protection standards which will be applied in all Highlands Preservation and Planning areas. Mr. Stoner added that the ordinance increases recharge requirements for non-exempt, major development projects proposed in water deficit areas and places restrictions on disturbance within "Municipality Important Ground Water Recharge Areas" for non-exempt major development projects. It also provides mitigation measures that can be implemented in situations where an applicant demonstrates the inability to strictly comply with any standard of the Municipal Stormwater Control Ordinance.

Referring to the maps presented; Exhibit A: **Net Water Availability**, and Exhibit B: **Byram Township Groundwater Recharge Areas**. Ms. Raffay asked if changes in land development could change deficit areas. Mr. Stoner said Section 3 A. (3). indicates "As modified by the D.E.P." and said if the maps changes, the ordinance will have to be amended.

A motion to find that the proposed ordinance is not inconsistent with Byram Township's Master Plan was made by Mr. Chozick. The motion was seconded by Mr. Morytko. 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.

ADJOURNMENT OF THE SPECIAL MEETING

A motion to adjourn the special meeting was made by Mr. Olson. The motion was seconded by Mr. Chozick. All were in favor. Motion carried.

7:32 p.m. CALL TO ORDER

Regular Meeting of the Byram Township Planning Board

FLAG SALUTE led by Chairman Shivas

MINUTES

Approval of the August 15, 2019 Meeting Minutes.

A motion to approve the minutes as written was made by Mr. Kaufhold. The motion was seconded by Mr. Morytko. 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.

RESOLUTIONS

Z14-2019, Mark Rooney & Colleen Table, 10 Ka-Ton-Nah Trail, Block 144 Lot 130.01, R-5 Zone

6ft. Fence in the Front Yard.

A motion to approve the resolution as written was made by Mr. Olson. The motion was seconded by Mr. Morytko.

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.

Z15-2019, James Nasi, 158 Glenside Trail, Block 304 Lot 2227, R-5 Zone

10' X 15' Size Shed in the front yard.

A motion to approve the resolution as written was made by Mr. Kaufhold. The motion was seconded by Mr. Olson.

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.

Z05-2019, Matthew Ackerman, 34 US Highway 206, Block 40 Lot 15, R-5 Zone

Variance relief to keep a pre-existing above ground pool that does not meet the setback to a principal structure and to keep an already erected shed in the front yard.

A motion to approve the resolution as written was made by Mr. Kaufhold. The motion was seconded by Mr. Olson.

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.

SP7-2019, Elite Automotive, 254 Route 206, Block 216 Lot 3.04, N-C Zone (Available on August 15)

Amended Site Plan to relocate the main entrance, architectural improvements to the building height and façade, and the addition and rearrangement of on-site parking.

A motion to approve the resolution as written was made by Mr. Olson. The motion was seconded by Mr. Gonzalez.

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.

SP4-2018, Tomahawk Lake Inc., Tomahawk Trail, Block 343 Lots 1, 2 and 3, C-R Zone (Carried from March 7, 2019)

Amended site plan with variances to construct a 36' X 40' concession stand, to add overflow parking areas on the grass, and to install two new waterslides.

Mr. William Askin Esq., representing Tomahawk Lake, and Mr. Roger Thomas Esq., representing objectors from Seneca Lake were present.

Chairman Shivas instructed the Board that their task is to determine if this application should be handled as a use not permitted in the zone and require a use variance, or if the use is permitted requiring bulk variances. In addition the Board must determine if parking on Lot 3, which has no principal use, can be considered an accessory to the use, or does parking on this Lot require a use variance.

Mr. Thomas introduced Mr. Kenneth Nelson, Planner and he was sworn in and he provided his education and experience to the Board and the Board accepted him as an expert in his field. Mr. Askin accepted him as an expert in his field.

Mr. Nelson said he reviewed the application and materials submitted and is familiar with the site but was refused access, and only visited the site from the exterior of the property. He said he believes this facility began as a low intensity swim club but over the years activities on the site have evolved and the use is more like a water park, not a swim club. He said the fact that Byram’s Commercial Recreation Ordinance contains language “uses limited to” underlines what uses are permitted, and anything not listed would be prohibited. He said a water park is not a use listed and would not meet the intent of Byram’s ordinance. He said Tomahawk Lake by their own definition on their website is a “Waterpark” and provides “Action Type Rides” which he believes are activities not normally associated with a swim

club. Mr. Nelson said based on his experience most swim clubs are membership basis only and the number of attendees is predictable by membership and not open to the general public. Most swim clubs have pools, picnic area, maybe tennis court but generally swim clubs do not offer aquatic type rides. Mr. Nelson said Byram ordinance states the uses commonly associated with amusement parks, such as Ferris wheels or other moving rides are prohibited, and he considers the slides at Tomahawk Lake as moving rides and that the ordinance does not state that the ride must be mechanical. He added this facility is in a residential neighborhood and the residents are entitled to quiet and enjoyment of a residential area, and to encourage expansion of this facility is in direct contrast to that goal. He believes that this facility is no longer compatible with the surrounding area.

Mr. Thomas asked Mr. Nelson's if under Section 240-58 Subsection E. Off-street parking, and after reading previous minutes, heard testimony of residents and Sparta Police and in his opinion this facility does not meet the standards of subsection E. Mr. Nelson said no, he doesn't believe the traffic/parking problems are not continuous it affects the public health and safety.

Mr. Walsh asked if traffic/parking should impact the Board's decision on the type of application? Mr. Thomas believes to satisfy the requirements of the ordinance he believes parking does affect the use. Mr. Senesky said if the Governing Body considers the use permitted in the zone traffic is taken into consideration, therefore an application taken in as a permitted use, does not involve traffic concerns. However, if the use is not permitted, then traffic does become a concern but that is after a determination of the type of application is made.

In summation Mr. Nelson believes this use does not meet the requirement of the ordinance and the Board should determine this is not a permitted use and require a D1 use variance.

Mr. Thomas asked Mr. Nelson with regards to parking on Lot 3, which has not been approved and since Lot 3 is a separate lot, with no cross easements, and testimony from the applicant that it is an integral part of the park does he believe that parking on Lot 3 is a principal use or an accessory use which is not permitted without a principal use and require a use variance. Mr. Nelson said yes, he agrees a use variance is required.

Mr. Olson asked if he would define "kiddy bumper boats" as a swim club activity or waterpark activity. Mr. Nelson not knowing the details he said they could be part of a swim club or a water park. Mr. Nelson if they were motorized would make a difference.

Mr. Senesky said that numerous times the Board has adopted several resolutions that have been approved as a permitted use and that there is case law that says the Board should be consistent. Mayor Rubenstein pointed out that Mr. Gleitz says in his report where the Board consistently finds this as a permitted use. Mr. Thomas disagrees and says that the Board is not bound by prior approvals. Mr. Nelson added that this facility can continue to operate as it is, however if this were vacant land and an application was presented with nine waterslides and other type activities, he does not believe the Board would consider it a permitted use.

Mr. Thomas believes Lot 3 is an integral part of Tomahawk Lake but is under separate ownership and since there are no existing cross easement and there is no intention to merge the lots therefore, the lot having no principal use would by law require a use variance. Mr. Roger's underlined Mr. Nelson's testimony that Tomahawk Lake activities are not like activities of a swim club and the language in Byram's ordinance "limited to" prohibits anything that is not listed. Mr. Thomas pointed out the strong language in a previous resolution that if the Board finds that Tomahawk Lake has reached its capacity, and if conditions are not met, the Board retains the right to remove this approval. It is the opinion of Mr. Thomas that the park has exceeded its capacity, and over time has morphed into a water park and is not consistent with the intent of Byram's ordinance. Mr. Thomas concluded his questioning.

Mr. Stoner talked about the name of the zone changing but he believes, as well as other Board members it was the intent of the Township that this use is a permitted in the zone and it was not the intent of the Board/Council to eliminate this use in the C-R Zone.

Mr. Askin talked about the evolution of Byram's zoning ordinance having this area zoned Commercial Recreation, then changed to Family Theme Park and now Commercial Recreation zone.

Mr. Askin questioned Mr. Nelson if he visited the site, Mr. Nelson said twice when the park was closed and only saw the site from the outside since access to the site was denied and while he was there, he did not observe any traffic issues. Mr. Askin asked if he has spoken with people familiar with the facility which helped him form his professional opinion. Mr. Nelson said yes, he spoke to several neighbors in the local area. Mr. Askin asked if he believes when the park was open was it a permitted use. Mr. Nelson said he believes it was and if it hadn't changed so radically it may still be. Mr. Askin asked Mr. Nelson what drastic changes occurred on the site that he believes would prohibit the use. Mr. Nelson said moving rides as described on the applicants' website. Mr. Askin asked if one waterslide was present, would that change the use. Mr. Nelson believes that activity attracts a larger, regional clientele and maybe one slide didn't create a "tipping point", but now has reached that point. Mr. Nelson could not answer when he believed that "tipping point" occurred, and what or how many slides would be allowed before the use would be prohibited.

Mr. Askin asked Mr. Nelson how long the applicant owned Lot 3 and what the principal use of Lot 3 is today. Mr. Nelson said parking and that an accessory use on a lot must occur on the same lot of the principal use which is not the case. Mr. Nelson said if the lots were merged it would simplify this issue. Mr. Askin had no more questions for Mr. Nelson.

Mr. Thomas summarized saying in previous testimony it was said that Lot 3 is an integral part of this facility which is not under common ownership, with no cross easement and with no intent to merge, therefore you have a lot with no principal use, is a separate and distinct lot, and by law requires a use variance. In addition, Mr. Thomas says it is clear in Byram's ordinance with the language "Limited to" and "moving rides" prohibits this use in the zone. It is not a swim club or picnic area, it is a waterpark and does not meet the intent of the zone and cannot be categorized as a swim club. Mr. Thomas concluded his summation.

Mr. Askin summarized by saying a waterpark may not be specifically listed as a permitted use in Byram's code however in his legal opinion elements of Tomahawk Lake such as swimming, fishing, hiking, picnicking is permitted and historically, as shown in previous resolutions, the Board has found the use to be permitted use in the zone. Mr. Askin said the activities on the site have not changed, it is family oriented and has been in existence for over 70 years. He said Mr. Wallace's goal is to update the slides to keep up with modernization. Mr. Askin added that Lot 3 has been a part of the park for years and the 1980 plan show interconnection of the three lots and are all an integral part of the park. Mr. Askin reviewed previous resolutions which talks about activities and uses on the site that were approved by this Board, all of which have not changed, and hopes that the Board continues to find this use permitted. Mr. Askin said with respect to Lot 3, he said Lots 1 and 3 are under the same ownership and have always been a part of the park. Mr. Askin referenced the application for a fence surrounding the entire property was for security of the entire park, all three lots.

Chairman Shivas explained that when Mr. Wallace was before the Board for the fence parking on that lot was not part of that application and parking on Lot 3 was never approved. There was a discussion about ownership of the lots and if one lot was sold how that would affect the approval. Mr. Askin believes that Tomahawk Lake operates on all three lots and even though there is no principal use on Lot 3 it is part of the waterpark, the principal use. Mr. Askin said that the applicant will agree to a deed restriction on Lot 3 that it cannot be sold separate and independent of Lot 1 and Lot 2, however for estate tax reasons, the lots cannot be merged. Mr. Askin concluded his testimony.

A motion that this application is a D1 variance was made by Mr. Morytko. 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.

A motion that parking on Lot 3 requires a use variance was made by Mr. Morytko. The motion was seconded by Mr. Walsh. 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.

A motion to carry this application to November 7, 2019 was made by Mr. Walsh. The motion was seconded by Mr. Morytko. All were in favor. Motion carried.

REPORTS FROM COMMITTEES

- Township Council – Mr. Olson said at the last meeting the Council introduced the Stormwater Control Ordinance.
- Environmental Commission – Ms. Shimamoto said no meeting was held.
- Architectural Review Committee – Mr. Morytko said the committee meets next week with a representative from Wawa.
- Open Space – Mr. Morytko said no meeting was held.
- Building Committee – Mr. Olson said they are exploring other options.
- Zoning Report - Mr. Dixon provided his August report:

- 6 zoning permits were issued.
- No permits were denied.
- No site plan waivers were issued.
- 16 Notice of Violations were issued.
- 22 Violations were cleared.
- 21 Summons were issued.
- 6 Signs were removed from the roadway.

BILLS

Harold Pellow Associates, Inc. (11 bills) \$1,802.90

A motion was made by Mr. Kaufhold to approve Mr. Stoner’s bills. The motion was seconded by Mr. Olson. 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.

OTHER BUSINESS

Mr. Stoner said that the application for Ramos of Stanhope should be submitted within the next few weeks.

Mayor Rubenstein said the closing for Quick Chek is happening and the demo of the existing buildings should occur soon.

Mr. Olson added that on September 10th at Town Hall Waterloo Village and Morris Canal will have a meeting.

ADJOURNMENT

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

Respectfully submitted, *Cheryl White*