

1st Vignola
 2nd Tyler
 Approved 3/17/16

Minutes of March 3, 2016

The Regular Meeting of the Hazlet Township **Land Use Board** scheduled for March 3, 2016 was called to order at 7:30 PM with a Salute to the Flag followed by a Moment of Silent Prayer and a Reading of the Letter of Compliance.

ROLL CALL:

Present: Mr. Byrne, Mr. Bace, Mr. Tyler, Mr. Solomeno, Mr. Vignola, Mr. Rooke, Mr. Lavan, Deputy Mayor Kiley, Mr. Grossman, Mr. Sanfilippo

Absent: Mayor Aagre, Mr. Mann, Mr. Moore

Professionals: Mr. Kittner PE, Mr. Vella Esq, Mrs. Keegan

MOTION: To approve the Minutes of the Regular Meeting of February 18, 2016

Offered by: Mr. Vignola

Second: Mr. Tyler

ROLL CALL

	<u>PRESENT</u>	<u>ABSENT</u>	<u>ABS</u>
Mr. Byrne	<u>X</u>	_____	
Mr. Bace	<u>X</u>	_____	
Mr. Lavan	_____	_____	<u>X</u>
Mr. Tyler	<u>X</u>	_____	
Mr. Solomeno	<u>X</u>	_____	
Mr. Vignola	<u>X</u>	_____	
Mr. David Rooke	<u>X</u>	_____	
Deputy Mayor Kiley	_____	_____	<u>X</u>
Mayor Aagre	_____	_____	
Alt #1 Mr. Mann	_____	_____	
Alt #2 Mr. Moore	_____	_____	
Alt #3 Mr. Grossman	_____	_____	<u>X</u>
Alt #4 Mr. Sanfilippo	_____	_____	<u>X</u>

Carry-Over : 15-11L; First Hartford Realty Corp/CVS; Highway 36 and Laurel Avenue; Block 134 Lot(s) 1, 15, 15.01 & 16, BH Zone and R-70 Zone. Applicant is seeking Preliminary and Final Site Plan & Subdivision approval, Use variance approval and several bulk variances to construct a new CVS store.

Chairman Tyler announced no testimony to be given tonight. Case is being carried to the next regularly scheduled meeting held on March 17, 2016 without further notice.

Carry Over: #15-17L; M&S Waste Disposal 10 Seventh St.; Block 24, Lots 3&5: R70 zone. Applicant is seeking Use variance approval to allow an expansion of an existing non-conforming use to permit 25 trucks to be stored on the site, along with site plan improvements - landscaping, fencing, parking etc.

7:40 pm Deputy Mayor Kiley recused herself from M&S hearing for use variance.

Mr. Thomas Hirsch:(attorney for applicant) addressed the site issues that had been raised by the board. Any use variance approvals would be conditional upon submitting a formal site plan. Architectural plan being looked at tonight shows the elements that directly affect the use variance, i.e. the new building where the trucks will park and the expanded landscaping which will be more fully developed on the site plan. These items can all be changed later on. Questioned number of board members eligible to vote on the use variance.

Mr. Tyler asked who was present at the December 3, 2015 meeting or read the minutes to certify eligibility to vote.

Mrs. Keegan confirmed seven board members are eligible if voting tonight.

Mr Hirsch Since it has been some time, summary of where the application stands. Mr. Schito had explained the operation of the business at the last meeting. He services Hazlet and many surrounding municipalities. His location is centralized to the area he services which is important considering the cost of diesel fuel. He had looked at other areas but was not economically feasible considering the distance. Many of his employees walk or bike to work. This business is a necessary service and is unique, therefore rising to the level of an inherently beneficial use. The general welfare is promoted because this site is particularly suited for this use. This site has always been used for garbage business or construction. Mario is third generation in this business and has built it up to the 25 trucks he presently has. There will only be 10 trucks parked outside and the rest inside the new building. All maintenance and repairs will be done inside. Mr. Kittner did a site inspection. Mr. Jim Higgins (planner) will testify. Traffic engineer's report has been filed and Mr. Schito will answer questions regarding the operation of the trucks.

Mr. Vella If the board approves the use variance, it is conditional upon site plan approval for the construction of the new building. The applicant must come back with the site plan.

Mr. Tyler It is conditional approval not final.

Mr. Vella I am marking the report of McDonough and Rae dated February 24, 2016 as Exhibit A-3. CME original report of November 30, 2015 marked as LUB-1 and the supplemental report of March 3, 2016 as LUB-2. Counsel, you're next witness.

Mr. Hirsch I will address a couple of the questions raised in Mr. Kittner's report so that Mr. Higgins can conclude the testimony. Our architect is here also for questions. I'm going to call Mr. Schito back to the stand.

Mr. Vella Mr. Schito you have been previously sworn in, you are still under oath.

Mr. Hirsch The report had outlined on page 3 how the trucks will back into the garage when they return to the yard. This will only require one movement backing up. The remaining trucks along the fence may take one or two movements. The afternoon would generate the most noise, in the morning the trucks pull straight out. What is the time frame that the trucks return?

Mr. Schito The return varies but generally between 11:30am and 4:30pm. The bulk of the trucks come in between 1:00pm and 2:30pm.

Mr. Hirsch You don't put all 25 trucks on the road everyday?

Mr. Schito No, some days are recycling days so less trucks go out. On average there are 4 or 5 trucks that are kept on the property, some for maintenance and some are spares.

Mr. Hirsch So on average around 18 trucks are going out each day?

Mr. Schito Yes

Mr. Hirsch So how many trucks are returning between 1:00 and 2:30 on average?

Mr. Schito I would say about 50%.

Mr. Hirsch So, maybe 8 or 9 trucks over that hour and a half time?

Mr. Schito Yes. The trucks usually come in one at a time as everyone is in a different town. There are variables like the landfill backup, weather and traffic.

Mr. Hirsch Do you agree with Mr. Rae's report about how many movements it would take to maneuver the trucks into place?

Mr. Schito Yes we currently don't have any issues parking the trucks and with the new building we will have more space. Trucks are fueled up and parked upon their return.

Mr. Kittner Given the L shape of the building, do you anticipate any problems backing the trucks up into the building.

Mr. Schito No, it's basically the same thing they are doing now. They would back in and then turn into the parking spot. Each can be accomplished with one k-turn maneuver.

Mr. Hirsch So when they are backing up, there would be a beeping sound. We will better define the site maneuverability when we come back. Moving the diesel tank is an option as well as removing the large tree. There has never been an accident involving the tree.

Mr. Tyler For the next time, we would like to see what the typical radius turn is for a truck.

Mr. Vella On the site plan, we would want to see some turning templates.

Mr. Tyler Is there some other way to arrange the parking of the cars?

Mr. Hirsch Based on this plan, we would have no other cars parking on the street.

Mr. Tyler Is there enough room for the trucks to come around the tree towards the parked cars and swing around so that you're pointing out then backing in?

Mr. Schito The tree is actually further down so the trucks wouldn't be turning around in that area. The tree doesn't come into play.

Mr. Kittner The question was is there enough room between the tree and garage to turn the truck around? A complete 180 turn.

Mr. Schito If these trucks weren't parked there and it was an MR truck then you could probably do that. We've never had to, we just do a k-turn.

Mr. Tyler This is important because reducing the beeping was something we heard from the public.

Mr. Schito The beeping would only be in the afternoon and in a k-turn its about 10 seconds of beeping. There is no beeping in the morning.

Mr. Hirsch That was the trade off so there would be no beeping in the early morning, the trucks will pull straight out.

Mr. Kittner Do the trucks get backed into the building in the order that they return regardless of where they are going the next day?

Mr. Schito Some towns allow you to start earlier than others so 90% of the trucks all leave at the same time in the morning. So the trucks that come back that are the ones that leave early, they will be parked along the fence area outside the garage. The majority of trucks leave around 5-5:30am.

Mr. Kittner My concern is if a certain truck needs to be in a specific spot, will there be additional jockeying once they arrive in a staggered fashion? Is it truck specific for the area?

Mr. Schito There is no certain truck for each area. Trucks are used on different routes each day and some stay in for maintenance.

Mr. Hirsch We will be happy to cooperate with any recommendations from the board.

Mr. Tyler There was a concern about cars waiting outside for the yard to open and truck idling in front of his house.

Mr. Schito I spoke to the men about it and one of the drivers said he would do his paperwork on the side of the road. I made the recommendation that it should be done when waiting at the landfill or before pulling out. The trucks will not be stopping any longer. Sometimes employees will be outside in their cars waiting for the gate to open.

Mr. Vella What can we do to address this so that they are in the yard and not idling on the street at 4:00am?

Mr. Schito Yes we could have a code to enter the gate or have it set back further so they could be in the yard without entering the building before anyone gets there. The supervisor is there on time 9 times out of 10.

Mr. Byrne The preference would be not to have any vehicles idling on the street, cars or trucks.

Mr. Hirsch We are going to move on to our planner, Mr. Higgins.

(Attorney Vella swearing in Mr. Higgins.)

Mr. Higgins I am a licensed planner in the state and have a bachelor of science in landscape architecture from Rutgers. I've been licensed for over thirty years. I have been qualified as an expert by over 200 boards throughout the state.

Mr. Tyler We accept the witness.

Mr. Higgins I reviewed the application, visited the site, reviewed the master plan, zoning ordinance, looked at the expert reports and met with the applicant. The applicant is proposing to construct a new building, new fencing, landscaping and rearranging the operation of the site to move the trucks away from the residences. The site is L-shaped, approximately 40,000 square feet in area. It is bordered to the east and north by single family residences mostly on Seventh Ave. To the north it is bordered by open space and Laurel Ave. to the west. It is a pre-existing non-conforming use approved by variance back in the 80's.

Mr. Hirsch This is really a question of expanding the use.

Mr. Higgins That's correct. The first way to look at this is as a D-2 variance which expands the use and what is proposed improves the function and aesthetics of the site so that it

brings the site more into harmony with the surrounding neighborhood. The second thing to look at is whether this can be considered an inherently beneficial use and the third would be to look at the fact that the use has already been approved so the question is whether the expansion of the use is a detriment or an improvement of the site. This use is a value to the community and fundamentally serves the public good and promotes the general welfare. It is an essential service and every municipality has this service. It clearly meets the definition of an inherently beneficial use as defined by municipal land use law. This is an essential service provided to thousands of residents. There will be significant aesthetic improvements to the site such as a new, modern building and substantial new landscaping and fencing around the perimeter of the property. The applicant will take steps to mitigate the noise by moving the trucks as far away from the residences as possible. The 25 trucks have been operating there for the last three years with little to no traffic issues. The trucks are brought back to the site empty so that the odors are minimal. The negative aspects have been identified and the steps proposed by the applicant will improve them.

Mr. Hirsch So you're talking about the balancing of the benefits of the use to any potential detriments. According to the municipal land use law the question is whether there is a substantial negative impact.

Mr. Higgins The statute says the benefits must substantially outweigh the detriments. The applicant has looked for other sites to no avail.

Mr. Hirsch So the board is clear, the obligation of the statute for positive criteria is to establish special reason. If a use is deemed inherently beneficial, then it is a special reason. If it was deemed not inherently beneficial by the board then we will provide how other special reasons could be established.

Mr. Vella If the applicant was solely a commercial hauler of trash would that change your opinion on whether this use was inherently beneficial?

Mr. Higgins I would have to look at who the clientele are but I would think not because someone has to pick up the trash from those businesses. That is a public service whether it's businesses or residences.

Mr. Vella What if they did not provide any service to any residents in Hazlet?

Mr. Tyler Hypothetically, if there were no commerce being done in Hazlet, is it still considered beneficial?

Mr. Higgins It's whether it benefits the residents of the state. I would look at where the use is and who does it serve. It still would not change my opinion on it's beneficial use.

Mr. Solomeno Does M&S do recycling as well as trash pick up?

Mr. Hirsch Yes. From my legal opinion, the case law is clear that it is fact sensitive and all facts have to be considered. If this were a municipality picking up the trash, there would

have to be a facility without question . Instead of the municipality doing it, this is just a private hauler who is doing the exact same thing.

Mr. Higgins Alternatively, you could look at whether or not the general welfare is advanced due to the particular suitability of the site for the use. The site is ideally located for the communities he serves.

Mr. Byrne To be clear, the proposal is not to change the business model. It is to improve the site itself.

Mr. Vella The reason they are back is an expansion. They have previous approval to store 5 trucks on site. They have been operating with 25 trucks without approval. They are back to ask to expand their use from 5 trucks to 25 trucks. They want to do it legally and also improve the site to reduce the negative impact.

Mr. Higgins There is one distinction. The current approval says you cannot store more than 5 trucks on the site, not that you cannot have more than 5 trucks on the site at any one time. He could still have 25 trucks and bring them on and off the property during the day.

Mr. Hirsch There have been varying numbers of trucks on the site over the years sometimes as few as 2, sometimes 17. This business has gone up and down without issue for decades.

Mr. Higgins The location for employees is also ideal, many of them live close by and walk or bike to work. The county has grown tremendously in past years and the business has grown to accommodate that need. I think what is proposed here is an improvement to the aesthetics of the site and the impact to surrounding properties is reduced. I think there are substantial special reasons for granting the variance. The use is already permitted on the site and there is no negative impact to the expansion but rather an improvement to the site.

Mr. Solomeno Did you say the use began in 1970?

Mr. Higgins Yes it goes back as far as 1970. In 1980, the board found that it was a pre-existing non-conforming use and granted a variance for the expansion.

Mr. Hirsch That is all the witnesses I have. Other than my summation, we would be done with our case.

Chairman Tyler called for 5 minute break before public comments.

Mr. Tyler called meeting to order.

Mr. Byrne left meeting at 9:10pm.

Mr. Tyler opened up the floor for public comments.

Attorney Vella swearing in Richard Krajunus, 190 Laurel Avenue, Hazlet

Mr. Krajunus I think the business belongs in a commercial area not a residential area. I've lived there 30 years and I wouldn't have bought my house then if the area was in the condition it's in now. They only had five trucks then, it was more reasonable. The stench that comes off the trucks is unbelievable. Some people can't open their windows. These guys start at 4:30 in the morning and the noise wakes you up. The old building burned down so fire is a concern of mine. There are all those trucks full of diesel fuel. (Asked Mr. Kittner what he thought when he was there at 4:30am)

Mr. Kittner I thought that they did take care to minimize the noise. I think it's what you would expect from that type of operation.

Mr. Krajunus There is a lot of commercial property in Hazlet that I think would better suit their needs and not destroy the neighborhood.

Mr. Hirsch Has your house been listed for sale with a realtor? You've lived there 30 years, do you recall when there were substantially more trucks on site?

Mr. Krajunus I don't really recall. I don't remember them leaving at 4:30 in the morning either. If Hazlet is such an important part of the business, why do all the trucks say Middletown?

Mr. Schito The post office box in Middletown is the one that we've used forever and I was living in Middletown when I started it so that's the one I used.

Mrs. Keegan For the record, the township ordinances do not regulate a starting time frame for a public utility.

(Mr. Vella swearing in William McCarron, 46 7th Street, Hazlet)

Mr. McCarron My question is if we lose oversight on the growth of Mr. Schito's business, what's going to happen if he decides to continue to expand?

Mr. Vella The answer to that is code enforcement. The board is not an enforcement body and we do not inspect properties. As residents of the area, we rely on you to make a call to code enforcement to come and take a look.

Mr. McCarron If the public doesn't know the rules, they can't complain. Mr. Schito has done a great job growing his business but I feel like it is time for him to move on to someplace more suitable.

Mr. Bace Can we put a limit on the amount of trucks that are there? If this was approved, can we say not to exceed 25 trucks?

Mr. Vella Yes, that's what they're asking for- a certain number of trucks. They'll always be able to come back to the board to ask for more but the approval would limit it to a certain number.

Mr. Bace So if they went more, it would be a code violation.

Mr. Schito We have probably six trucks right now that aren't being used. Even if we got more work, we have the trucks to do it.

Mr. Solomeno There must be a physical limitation to the site?

Mr. Vella If approved, they have to come back for site plan approval. We would determine how many fit inside and out. This is half of the approval because there is a physical limitation. Maybe the building would have to be smaller. We are only dealing with the use.

(Attorney Vella swearing in Barbara Madorma, 8A 7th Street, Hazlet)

Ms. Madorma I have my house on the market and I was told by two realtors that compared to prices in the area, I should lower the price by \$20,000 because of the M&S property. The proposed parking lot would be very close to my yard and bedroom window. Would the building eliminate the noise we have to deal with every morning?

Mr. Hirsch You are going to have 15 trucks stored inside a building. The building will be a fully insulated substantial structure that will be blocking that noise. They pull out straight and off the site within a half hour. When did you buy your house?

Ms. Madorma 1988

Mr. Vella The prior approval prohibited any access from 7th street. The proposed parking lot will be for office staff. All the parking issues will be addressed on site plan application.

Mr. Solomeno Mr. Kittner, when you observed the site did you note how long it took the trucks to exit the site?

Mr. Kittner I would say the trucks idled for approximately 15 minutes and then exited the property. The whole thing from start to finish was about half an hour.

Chairman Tyler closed citizen portion.

Mr. Tyler In summary, this is to get the use variance to expand from 5 trucks onsite to 25 trucks. That is all we are voting on tonight.

Mr. Vella In essence, the application is very simple. They have approval for this use on site. They are asking for conditional use variance approval for 25 vehicles subject to site plan approval for new structure to hold 15 vehicles plus substantial landscaping, buffering and

fencing and prohibiting parking trucks adjacent to residents. I would put a strict time frame for them to come back before the board.

Mr. Tyler One thing we could consider would be how many trucks, not necessarily 25. The proposed building holds 15 vehicles with 10 sitting outside. We could look at a lower number than 25 on the site.

Mr. Vella I would think that the actual number has a lot of variables- the size of the building, turning templates of the building and the final architectural drawings that we haven't seen yet. There are a lot of site plan questions as to whether 25 is the number or not that can be accommodated safely on the site.

Mr. Tyler I think we should discuss how many trucks because we are going to get something very similar to this plan. There are 30 employees and 16 spaces to park, so where are the other employees parking? If there were less trucks then maybe there would be more room for employees and maybe few or no trucks outside since the odor is one of the main complaints from neighbors. The noise is also an issue and 25 trucks is five times what the original approval was. Five times on the same piece of land, I'm kind of uncomfortable with this many trucks on this property.

Mr. Solomeno Is it 19 trucks that are operating on a daily basis and 6 more that are not in operation?

Mr. Hirsch Essentially, yes.

Mr. Solomeno How long have you had 25 trucks?

Mr. Schito 7 years

Mr. Solomeno So if the board were to reduce the number, what's the impact?

Mr. Vella The concern is whether the site is suitable for 25 trucks based on the information that's been provided to us. The board can ask for any information that they need to make an informed decision on the bifurcated application. We are not limited to what they want to produce. We did not hear from the traffic guy today, we have his report.

Mr. Tyler We have a plan that says 10 trucks will not be in the building and 16 parking spaces for employees. It seems to me there should be enough parking for the amount of drivers you have. At some point, you could have a bunch of people with no place to park. This location was approved for 5 trucks and has been operating now with 25, things change over time. That is a gigantic increase on the use of this site in a residential neighborhood. What we're trying to do is keep the business there and make a real improvement to the neighborhood.

Mr. Vella How deep have you looked into the parking situation for your employees?

Mr. Hirsch We did look to make sure the truck circulation works with that many cars on site and added the parking for office staff to show we would have substantially more parking than we currently have. This has been operating for the last 10 years so we know what the impact is, the site is operating as it is. This is one of the improvements. There are ratios that have been used to determine the parking. The business has to function, this scenario works physically on the site.

Mrs. Keegan It's definitely an expansion- he's got about 25 trucks on site. The trucks are all over the site. I don't know if this plan will work circulation wise, he is only here asking for the use. Fifteen trucks will be inside the building which will cut down on the noise and smell. They are getting the trucks away from the residences so the impact should not be as great as what is currently existing.

Mr. Solomeno I agree. We are not at the site plan yet, I understand that it does smell in the summertime but this will mitigate that negative impact. It will be better than it is now.

Mr. Hirsch We are going to have to prove that the site works. When you see the site plan, that will make the final decision.

Mr. Vella This is a use variance, they require five positive votes. This is conditioned on the application coming back for site plan approval, including storm water management. The board reserves the right to reduce the number of vehicles if the site plan does not work.

Mr. Tyler If we determine that we need to reduce the number of trucks, that can be determined at the site plan hearing.

Mr. Bace What would be the time frame for the return?

Mr. Vella Counsel what do you believe the return would be for site plan approval?

Mr. Hirsch Just a moment. Thank you. I would say within 9 months?

Mrs. Keegan Six.

Mr. Vella Our zoning officer is suggesting 180 days.

Mr. Tyler What has to be done in this time frame since you already have the plans?

Mr. Hirsch That's not a site plan. You need to get topographic survey for the architect and a site engineer. It depends on how backed up they are. They have to do a fully engineered site plan.

Mr. Vella Is your parking area all dirt?

Mr. Schito It's dirt and stone.

Mr. Vella They are going to have to apply potentially to do drainage.

Mr. Tyler Mr. Schito, would it be a tremendous hardship to your business to reduce the total number to 20 and only have 5 trucks outside?

Mr. Schito Although there is 18 on average that go out, there are weeks that we do bulk pick up in towns and all trucks are needed those weeks. If there are break downs, we have to have replacements. So with less trucks, I wouldn't be able to function as a company.

Mr. Tyler How many are recycling as opposed to trash?

Mr. Schito They are all recycling trucks. It does both. Garbage runs are Monday through Friday, recycling mostly Wednesday or Saturday. The trucks are all the same.

Chairman Tyler asked for a motion.

Motion to approve:

Offered By: Bace Seconded By Grossman

ROLL CALL	YES	NO
Mr. Byrne	<u> </u>	<u> </u> Left early
Mr. Bace	<u> X </u>	<u> </u>
Mr. Lavan	<u> </u>	<u> </u> Not eligible
Mr. Tyler	<u> </u>	<u> X </u>
Mr. Solomeno	<u> X </u>	<u> </u>
Mr. Vignola	<u> </u>	<u> X </u>
Mr. David Rooke	<u> X </u>	<u> </u>
Deputy Mayor Kiley	<u> </u>	<u> </u> Recused
Mayor Aagre	<u> </u>	<u> </u> Recused
Alt #1 Mr. Mann	<u> </u>	<u> </u> Absent
Alt #2 Mr. Moore	<u> </u>	<u> </u> Absent
Alt #3 Mr. Grossman	<u> X </u>	<u> </u>
Alt #4 Mr. Sanfilippo	<u> X </u>	<u> </u>

Motion passes 5-2.

Citizen Hearing:

No one spoke.

Offered By: Vignola Seconded By: Tyler

VOICE VOTE: Yes

Motion to Adjourn:

Offered By: Vignola

Seconded By: Tyler

VOICE VOTE: Yes

Next Meeting: March 17, 2016

Respectfully submitted: Laura McPeck