

**HAMILTON TOWNSHIP PLANNING BOARD
RESOLUTION 2005-08**

**In the Matter of Agnes Skeba/CJS
Investments, Inc. for Preliminary Approval
Of a Major Subdivision to Create 27 Lots**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**Map 342, 301, Section 2730, Lot 9
Hamilton Township, Mercer County
Zone: R-120/80, Single Family
Residential**

**Application No. 04-04-038
Approval Date: February 10, 2005**

BE IT RESOLVED by the Planning Board of the Township of Hamilton (ATownship @) that the action of this Board on February 10, 2005 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board=s findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant requests preliminary approval of a major subdivision for the purpose of constructing 27 lots, upon which will be built 26 upscale homes.
2. The subject of this application is within the jurisdiction of this Board. The Board has acted within the time required by law.
3. The street address of the property is Sawmill Road, Hamilton Township, New Jersey.
4. Map 342, Section 2730, Lot 9 is located in the area designated on the Hamilton Township Zoning Map as R-120/80 Residential.

THE APPLICANT

5. The owner of the property is Agnes Skeba. The contract purchaser of the property is CJS Investments, Inc., who is also the applicant.
6. The applicant has certified that the owner has paid all property taxes for the property and the applicant has certified that it has paid all escrow fees required under ordinance for such an application. This certification includes agreement to pay all future

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monies due under the escrow ordinance for consultants and other professional work on the property.

7. The applicant has submitted an Affidavit of Proof of Service of Notice published in the Trenton Times. The Proof of service comports with the notice before the Board that this matter is of the character that the applicant has presented to the Board.

THE HEARINGS

8. One public hearing took place with regard to this application.:
- a. On February 10, 2005, a hearing took place before the Planning Board at the Township Municipal Building located on Greenwood Avenue.

PLANS PRESENTED

9. The Board reviewed the following plans and sketches:
- a. Tree Removal Plan dated March 24, 2004; Environmental Impact Statement prepared by Junetta E. Nowell Consulting, dated March 29, 2004;
 - b. Phase I Environmental Site Assessment, prepared by Brinkerhoff Environmental Services, dated October 27, 2003;
 - c. Phase II Site Investigation, prepared by Brinkerhoff Environmental Services, dated November 24, 2003;
 - d. Agricultural Impact Statement, prepared by Challoner & Magno, dated August, 2004;
 - e. Boundary and Topographic Survey, prepared by Challoner & Magno, dated August 4, 2004; and
 - f. Traffic Impact Statement prepared by McDonough & Rea Associates, dated April 7, 2004.

EXHIBITS PRESENTED

10. The following exhibits were presented:
- a. A-1, colored rendering of the major subdivision plan dated December 29, 2004;
 - b. A-2, correspondence enclosing hydrology report on behalf of Rocky Swingle/Save Hamilton Open Space, prepared by Dr. Stephen J. Souza.

The document itself was also marked as P-1 on behalf of Mr. Swingle in his public testimony.

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials:
- a. Memorandum from Division of Planning to Michael Guhanick, Land Use

Coordinator, dated May 4, 2004 (revised February 9, 2005).

b. Memorandum from Division of Engineering to Michael Guhanick, Land Use Coordinator, dated August 9, 2004 (revised September 15, 2004 and February 8, 2005).

TESTIMONY AND PUBLIC INPUT

12. The testimony presented by and on behalf the applicants and by Township officials was given by the following persons:

The applicant was represented by Dennis Collins, Esq., of Collins, Vella & Casello, LLC, of Farmingdale, New Jersey. Also testifying on applicant's behalf were Jonathan Szap, McDonough & Rea Associates, Inc., applicant's traffic consultant; Junetta Nowell Dix, project planner; Brian M. Ciampitti, P.E., applicant's engineer, and Stewart Challoner, project engineer.

13. The following Township staff gave advice to the Board:

a. Allen Schectel, Township Planner, Thomas E. Dunn, Township Engineer, and Michael W. Herbert, Esq.

14. Several members of the public spoke.

- a. Rocky Swingle, 102 Armour Avenue. Mr. Swingle was concerned that this was one of the last remaining farms in the Township, that it didn't meet Phase II stormwater regulations, and he cited Dr. Souza's report memorialized as P-1, and that the approval of the application would have a negative impact upon the community. The applicant responded to the Mr. Swingle, stating that the hydrology report that he produced was for the wrong property and that it didn't matter anyway because the applicant was complying with all Phase II stormwater regulations.
- b. Laura Lynch of 11 Newman Road, Lawrenceville, New Jersey. Ms. Lynch is a member of the Sierra Club and believes that the property should remain in its current state.
- c. Ames Hoyt, 29 Country Lane, Hamilton. Mr. Hoyt was concerned with the impact of the application upon Doctor's Creek. Applicant agreed that there would be a conservation easement running along the creek so that the township can continue to construct its linear park and that this conservation easement would limit access to prevent dumping on the site.
- d. Daryl Barbalacci of 131 Sawmill Road. Ms. Barbalacci states that she lived next door to the property and was concerned about its traffic generation.

**FINDINGS AND CONCLUSIONS REGARDING PRELIMINARY
APPROVAL OF A MAJOR SUBDIVISION**

15. Nature of application
- a. The applicant is seeking preliminary approval of a major subdivision to subdivide ninety-three and two-tenths (93.2) acres to create twenty-seven (27) residential lots in the R 120/80 zone. Lots will have a minimum area of eighty thousand (80,000) sq. ft and will be served by individual well and septic systems. Access to the property will be from two (2) new access points, Kimberly Court and Catherine Drive.
 - b. In terms of bulk and yard requirements, the plan meets or exceeds ordinance requirements. Lot 9.04 and lot 9.09 (basin lot) now conform to the minimum lot frontage requirements. Variances are no longer needed.
 - c. The previously proposed extra wide right-of-way on the eastern edge of the cartway of Catherine Drive is now being subdivided from the tract and will be consolidated with Block 2730 Lot 10. This homeowner's existing shed and fence that are located on the applicant's property will remain. The consolidation of this sliver of land (5' by 200') addresses our previous comments.
 - d. A separate detention basin lot has now been created and is accessed via the Kimberly Court cul-de-sac. All outlet structures within the detention basin that are visible to the public should have a stone veneer facing to create a more natural appearance.
 - e. The applicant has provided locations of street lights and their footcandle values. The revised plan submitted now show that the lights are 175 feet on center as per our previous comments.

CONDITIONS REQUIRED

16. The Board finds that, in order to address the concerns expressed in the course of the hearing, and to limit the relief to that which is reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:
- a. The subdivision plans are not labeled correctly in terms of Block and Lot. The current designation is Block 2730 Lot 9. Some lots are labeled 9.01, 9.02, etc. and some are labeled 1, 2, 3 etc.
 - b. On sheet 4 of 33, a fifty (50) foot wetlands buffer line has been identified on proposed lots 2, 3 and 4. However, the rear yard usability of lot 4 is greatly compromised due to the transition area buffer line being twelve (12) feet off the rear of the house. The Board requires that buffer averaging or shifting the location of the house to get a more usable rear yard. As this area appears not to be wooded, a prospective homeowner would be unable to determine the limits of this constraint. The applicant has now planted trees along the boundary of the

transition line (on both lots) to provide a considerable visual limit.

- c. The applicant is subject to the tree replacement ordinance (Section 160-117). A separate plan has been provided that shows the areas to be removed (including utility clearing) and areas to remain. However, the Board is unable to read the sizes of species identified within the basin limits. The grades and shading should be turned off so that the text can be read.

The applicant has indicated that 2.59 acres of trees are to be removed. According to ordinance, for every one (1) acre of woodlands lost, twenty (20) deciduous trees should be planted, or four (4) trees per lot, whichever is greater. Therefore the applicant is responsible for a grand total of one hundred eight (108) trees, in addition to the landscape plan. As per ordinance requirements, the applicant **cannot** count the replacement trees as part of the site landscape package. The above formula represents requirements for plantings over and above required street tree plantings, basin plantings and landscape packages in residential developments.

- d. A thirty (30') foot landscape easement is now shown along the width of the five (5) lots having frontage on Sawmill Road. However, an earthen berm (of meandering shape and at least 3' in height) has not been shown on the Grading and Utility Plan (sheet 8 of 33) to be constructed within this area but has been shown as a note on the Landscape and Lighting plan (sheet 16 of 33). This berm must be shown on the Grading and Utility Plan to comply with our previous comments.
- e. In terms of landscaping, the Board requires the following:
 - i. All street trees must be within a tree conservation easement that reads as follows: "The Tree Planting Easement prohibits land owners from removing or pruning trees without permission from the Township. Property owners are responsible for the routine maintenance of all trees within the easement area." This easement must be at least fifteen (15') feet in width. The easement has been shown and labeled on the plans (see comment #12 below).
 - ii. Kimberly Drive (north to south orientation) should include for a 4th species of street trees. The Linden is appropriate for Kimberly Drive (east to west orientation).
- f. All utilities (electric, cable, phone, etc.) servicing the new dwellings must be routed underground. This easement has now been shown on the plans, however, the shade tree easement is within the same fifteen (15) foot easement area. These two (2) items must be in separate easements as it is not customary or appropriate to have these two (2) items share a common easement.
- g. The plan notes that all curbing on site will be Belgian block.
- h. The applicant has revised the subdivision plans to now a six (6) foot wide bike path across the entire frontage of the property. This will be consistent with other residential developments in the area.
- i. For the purpose of giving due notice of nearby farming uses to proposed new residential areas adjacent to unimproved land then being commercially farmed or

suitable therefore, the applicant is required to include as a provision in each and every contract for and deed conveying all or any portion of the lands thereby subdivided, as well as on filed final subdivision maps, the following record notice to and waiver by guaranties [grantees] of such present or future proximate farming uses, which provision shall be made to run with the land: "Grantee hereby acknowledges notice that there are presently or may in the future be farm uses adjacent to or in close proximity to the above-described premises from which may emanate noise, odors, dust and fumes associated with lawful agricultural practices permitted under applicable right to farm laws, regulations and ordinances, and, by acceptance of this conveyance, grantee does hereby waive objection to such activities." This shall be a condition of approval. This statement has now been added to each sheet of the subdivision plat.

- j. The applicant proposes to install solid fencing (6' board on board) between adjacent Lot 8 and proposed lots 9.01 and 9.02. This will promote public safety by discouraging trespass on to agricultural land and also help mitigate nuisances such as dust and noise from the agriculture operations.
- k. The applicant is subject to the fees established in the Affordable Housing ordinance.
- l. The applicant should provide a pedestrian corridor along the Crosswick's Creek from ten (10) feet above the top of the bank down to the creek. In areas where slopes may prohibit pedestrian traffic (proposed Lot 9.05), the corridor should be widened beyond top of bank to allow for unobstructed and safe pedestrian access. This will help implement the lineal park concept shown in the Recreation Master Plan along Crosswick's Creek and as set forth in Hamilton's Open Space and Recreation Plan. This land should be placed in a Conservation Easement which would allow for pedestrian access and earthen walking trails. This property may be deeded to the Township. The applicant has not addressed this concern.
- m. In reviewing the grading plans for the proposed dwellings, we have noticed that several homes have walkout basements. To be in conformance with ordinance requirements, no dwelling shall have more than fifty (50) percent of the basement walls exposed above the average finished contact grade. This item will be enforced once the applicant makes application for final subdivision and the house elevations can be reviewed accordingly.
- n. As a condition of final subdivision approval, a second (or reserve) septic field is required for each building lot. The septic fields should not be mounded but must blend in to the grading of each lot.
- o. The applicant is subject to Section 160-112 (b) governing the appearance of all the residential units upon receipt of a final subdivision/site plan application.
- p. When revised site plans or subdivision plans are submitted to the Township for review, a letter describing all revisions made to the plans as they correspond to the numbered comments in the Township reviews is required. This letter should include references to each page of the plans revised and all revisions should be bolded or highlighted on the corresponding plan sheet.
- q. The applicant is requested to provide the Township with a list of proposed street

names for consideration by the Township. The list shall include one alternate name for each name provided. The Township will provide the applicant with a current street map, with the street names if so requested.

The Township in turn will advise the applicant of the selected street names in writing. The street names along with the lot and block must be on the mylars to be filed at the Mercer County Clerk's Office.

- r. Sawmill Road is classified as secondary collector as per master plan. The secondary collector should have 60' RO.W. and 40' cartway. The travel lane should be 12' wide with 8' wide paved shoulder for each direction. The applicant shall widen the road in front of his entire property and construct curb. It is not clear from the plan what will be constructed by the applicant.
- s. It appears 6' wide bituminous bicycle path is too close to the proposed curb line. The front edge of the bike path shall be 3' off from the face of the curb. This must be corrected.
- t. The curb radii at the intersection of Kimberly Court and Sawmill Road and Catherine Drive and Sawmill Road shall be 35'. The applicant has proposed 20' only.
- u. Warning sign W1-7 must be constructed at proper locations at the intersection of Kimberly Court and Sawmill Road and at the intersection of Catherine Drive and Sawmill Road.
- v. Paving details shown on Sheet No. 26 shall be as per NJDOT S.S. 2001 edition. FABC-1 is no longer termed. Asphalt concrete base consists of what mix design gradation?
- w. Stop signs are shown on landscaping and lighting plans. (Sheet No. 16/33 to 20/33) However, on those sheets a note reads, "this plan to be used for landscape and lighting purposes only." This means these plans are not to be used for constructing stop signs. The location of stop signs and any other signs should be shown on "grading and utility plan."
- x. The applicant has submitted a stormwater management plan and report. The plan is satisfactory and addresses the Phase II stormwater regulations in the following respect:
 - i. Stormwater runoff and water quantity issues are addressed as per RSIS.
 - ii. Water quantity is addressed.
 - iii. The annual groundwater recharge analysis is listed in the table of contents but the analysis is not included in the report. The applicant must submit it. It was however, included in the March 2004 report and was reviewed and found to be satisfactory.

However, the applicant shall address long term maintenance issues for the stormwater management facilities, especially the detention basin and other BMF features, such as outfalls and scour holes, etc.

- y. This application is subject to NJDEP review for Phase II compliance. *P* manufactured device is employed in the Stormwater quality control. A brochure and/or

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manufacturers operations and maintenance manual must be submitted a part of the record for this application.

- z. **Applicant shall comply with all requirements of the State Phase II stormwater regulations. Applicant may not proceed with construction at the site until this requirement is met.**
 - aa. Any request for an exception must be based on a hardship and circumstances beyond the control of the owner/applicant/builder. Such request must be made to the administrative officer.
 - bb. Subject to compliance with all other applicable local, state and federal laws.
 - cc. All site work must be completed in accordance with the applicant's plan prior to occupancy.
 - dd. Applicant shall not apply for a building permit nor shall any applicants be accepted by the Township until all conditions are satisfied, including all environmental concerns.
 - ee. Subject to the conditions of the Division of Planning memorandum dated May 4, 2004 (revised February 9, 2005).
 - ff. Subject to the conditions of the Division of Engineering memorandum dated August 9, 2004 (revised September 15, 2004 and February 8, 2005).

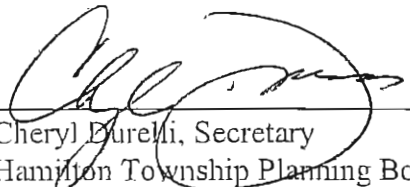
CONCLUSION

Based upon the foregoing, the Hamilton Township Planning Board, at its February 10, 2005, meeting, voted to approve the application.

This Resolution of Memorialization was adopted on February 24, 2005, by a vote of the majority of the members present, who voted to grant the relief sought by the applicant.

The date of decision shall be February 10, 2005, except that the date of the adoption of this memorializing resolution is the date of decision for the purpose of (1) mailing a copy of the decision to the applicant within ten (10) days of the date of this decision; (2) filing a copy of the decision with the administrative officer; and, (3) publication of a notice of decision. The date of the publication of the notice of decision shall be the date for the commencement of the vesting protection.

We do hereby certify that the foregoing resolution was adopted by the Hamilton Township Planning Board at its regular meeting held on March 10, 2005. This resolution memorializes formal action taken by the Board at its regular meeting held on February 10, 2005.


Cheryl Eurelli, Secretary
Hamilton Township Planning Board

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