

**TOWNSHIP OF RIVER VALE
JOINT PLANNING BOARD
March 29, 2018
7:00 p.m.
SPECIAL MEETING
MINUTES**

Draft

ADEQUATE NOTICE STATEMENT:

In accordance with the provisions set forth in the Open Public Meetings Law, notification of this meeting has been sent to all officially appointed Township newspapers and notice is posted at the River Vale Municipal Office.

The Planning Board saluted the flag.

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ROLL CALL:

Members Present:

Scott Lippert	Chairman
Robert Fortsch	Secretary
John Donovan	Councilman
Michael Beukas	
Craig Plescia	
Peter Wayne	
Susan Vaccaro	(Alt. #1) (8:20 pm)

Also Present:

Marc E. Leibman, Esq.	Board Attorney
Christopher Statile	Board Engineer
Caroline Reiter	Board Planner
Joanne Allgor	Land Use Administrator

Absent:

Glen Jasionowski	Class I-Mayor
Robert Adamo	Vice-Chairman
John Puccio	
Dr. Kedar Gokhale	(Alt. #2)

REVIEW OF PROPOSED ORDINANCE FOR CONSISTENCY WITH MASTER PLAN: Review of proposed ***Ordinance 331-2018 - A1 Residence District*** for consistency with the Master Plan was taken first.

Marc Leibman, Esq. discussed procedures, advising prior to the adoption of a land use ordinance, the Municipal Land Use Law requires the Governing Body to

forward the proposed ordinance to the Planning Board for consistency review, after which the Board transmits a Memo to the Governing Body with its comments/recommendations within 35 days of the Governing Body referral. Mr. Leibman advised he prepared a Memo to the Governing Body regarding the adoption of the ordinance.

Mr. Leibman further advised we have a **Memo RE: Consistency Review dated 2/16/18 from Christopher Statile, PE, and Caroline Reiter, PP, AICP, Board Consultants, RE: Consistency Review for Proposed Ordinance 331-2018: A-1 Residence District**, offering comments for the proposed ordinance, that would add Residential/Golf Course development as a permitted use in the A-1 Residence District, which would include both attached residential housing and an 18-hole Regulation Golf Course, with an affordable housing component and help maintain the existing golf course in the Township.

Ms. Reiter reviewed the Memo with and outlined the reasons the ordinance is found to be consistent with the Township's 2005 Master Plan, specifically, the Goals and Objectives of #8, which supports the continuation of the Township's three golf courses, and #11, which promotes the compatibility of land development. She continued, and it is further consistent with the 2016 Master Plan Reexamination Report, which recommended inclusion of a Residential/Golf Course Development use in the A-1 Zone district. Certain sections depart from the 2016 Master Plan Reexamination Report, such as 142-224A2(a), which permits the golf course to be under separate ownership and subdivision from the residential; (c) and (d), which requires 10% of residential units be affordable in a separate building, where the Reexamination report recommended 20% and no separate building; and 145-224A4(i), which permits building heights of 45' for market rate units and 50' for affordable units, neither anticipated in the 2016 Reexamination Report. The proposed ordinance should recognize and help maintain the Township's character. A brief discussion followed.

A motion to forward the Memo by Mr. Leibman to the Governing Body to recommend adoption of the ordinance was made by Scott Lippert, seconded by Michael Buekas and carried unanimously on roll call vote.

APPLICATIONS:

1. **Hopper234 LLC - 234 Rivervale Road, Block 1801, Lot 8 - Use - (Councilman Donovan recused)** Robert J.

Mancinelli, Esq. represented the applicant, by Steven Hopper. Brigette Bogart, PP, applicant's planner, was present. Board Attorney Leibman advised that based on the circumstances, he recommends that Mayor Jasionowski and Councilman John Donovan not participate in the vote for the subject application, since a use variance may become a component. Mr. Lippert commented he thought who better to vote, than the persons that adopt the ordinances, but was persuaded by the fact that they cannot vote on "D" variances. He agreed with Mr. Leibman. Mr. Donovan commented he would heed their advice and had no issues. He would recuse himself and not participate.

Currently five members were eligible to vote. It was stated if Ms. Vaccaro arrives, she can vote, but she would have to listen to the tape for the time not present. Mr. Mancinelli commented at the last hearing they left off with questions of the applicant's planner.

Christopher Statile, Board Engineer, was sworn in by the Board Attorney. Mr. Statile gave his interpretations of the ordinances and uses noted to be violated.

Interpretation issues:

- Industrial uses;
- Residential use in commercial zone;
- Parking commercial vehicles & equipment constitutes outdoor storage;
- Use of property noxious or offensive;
- Idling or standing of vehicles 11:00 pm - 6:00 am;

1. The first use discussed was the Industrial Uses - Zoning Officer's opinion that this is in violation of Section 142-227A. Mr. Mancinelli advised they take the position that they are in conformance and have a C/O from 2002 when Mr. Hopper purchased the property from Mr. Collignon. He had been operating there as a tenant since 1999. In addition, several other uses were in existence at the time the property was acquired by applicant.

(a) Mr. Hopper's plumbing business (Pratt) - Mr. Leibman requested to question Mr. Hopper, previously sworn. Mr. Hopper testified he maintains his plumbing business office at the premises. He does not meet clients there. He does not have fixtures there, and meets clients at their homes. He does not stock supplies. It is an administrative business office. Mr. Hopper stated he has two plumbing trucks. The interior space is approximately 800sf. Mr.

Leibman advised no further evidence or testimony is needed to determine whether this use is permitted in the zone. Mr. Lippert said this is more of a benign use than a sales use and having a showroom. This is an office which is permitted. Mr. Statile commented the reason was the CBD is supposed to attract people. Mr. Lippert stated it also permits interior decorators that go to the clients' houses. He could think of many types of business that go to the clients' houses. Mr. Fortsch commented we gave this man a C/O in 2002, and it has been many years since then. Mr. Leibman recommended the Board vote on this issue. Mr. Beukas asked if any other tenants were affected. Mr. Mancinelli advised they are similar businesses and offices, and numerous summonses were issued. If the Board agrees Mr. Hopper is a permitted use, the other three tenants are as well. There were no further questions or comments on the plumbing use.

Vote on the applicant's plumbing use (Pratt): A motion for approval of the plumbing use as a permitted use was made by Scott Lippert, seconded by Robert Fortsch and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

(b) P&D Environmental - Mr. Hopper was questioned on the environmental business, P&D Environmental, at the premises and described their business operations. There is no tainted solid or gravel on the premises. Any leftover gravel that is clean is brought to the lower area. They are a service business and do service at the locations as needed. There are computers, and a couple of desks. They have a trailer and a bobcat, used for jobs. Mr. Beukas commented he was trying to see how this is an executive function. Ms. Bogart stated there is a professional and business office and service business as permitted in Section 142-227A. Mr. Mancinelli advised they are required to be licensed in the State of NJ and are licensed. Ms. Bogart commented a key component is these uses have been on premises since as far back as the 1800's.

Mr. Leibman advised he wants to proceed first with the interpretation issue on each use and go on from there, starting with the inside of the building. Mr. Mancinelli stated it is clear. They use the inside of the building for professional offices.

Vote on P&D Environmental Business Office Use - A motion for approval for P&D business office use as a

permitted use was made by Scott Lippert, seconded by Peter Wayne and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

(c) Stump Removal Company Business Office Use - The building and shed in back has desks, computers and chairs -

Vote on Stump Removal Company Business Office as permitted use - A motion for approval that use is permitted, and only referring to the inside office, was made by Chairman Lippert, seconded by Robert Fortsch, and carried unanimously on roll call vote Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

Mr. Hopper commented Mr. Greenhalgh has an office within his office. Mr. Mancinelli asked if they could agree that the 40 summonses issued to applicant he has are not industrial. Attorney Leibman and Chairman Lippert stated they should first discuss the outdoor uses.

2. Residential Use in Commercial Zone - Zoning Officer's Opinion it was not permitted in the C-commercial Zone, and relief sought is pursuant to *NJSA 40:55D-70a*. The existing apartment has been on the property since 1985 and is a pre-existing, non-conforming use was found to be a legal use under Section 142-228E (1). Mr. Leibman called for a vote in agreement that the residential use is permitted.

Vote on Residential Apartment Use - A motion for approval for the residential apartment as a permitted use on the premises was made by Robert Fortsch, seconded by Peter Wayne and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

3. Parking of Vehicles and Equipment Constituting Outdoor Storage (Section 142-227B): Ms. Reiter commented Buldo Sanitation is gone, Urban Tree only has parking, and Pratt is the applicant. Applicant agreed. Mr. Lippert asked why there was no site plan and was troubled by it. Mr. Mancinelli advised there was no site plan required when Mr. Hopper took possession of the property, and there was none disclosed after his OPRA request. A site plan is not required for the purposes of this hearing. (Ms. Vaccaro

arrived at approximately 8:20 pm. It was stated she would not be eligible to vote unless she listens to the tape.)

Mr. Hopper provided the following information as to vehicles parked on premises:

a. Urban Tree - Mr. Hopper stated there is a box truck there to receive chips and stump removal equipment. There is an orange tree truck, a chipper. It dumps the chips in Orangeburg, NY.

b. P&D Environmental - Has a one-ton truck and a dump truck.

c. Residential tenant - Has an early to mid-1990's thunderbird automobile.

Those are the motor vehicles normally parked there.

Chairman Lippert stated he does not view this as outdoor storage for motor vehicles for an extended period. These vehicles are moved. The ordinance says no outdoor storage activity. This is not viewed as such. Mr. Beukas commented storage means long term. Mr. Mancinelli advised their planner testified there is conflicting wording in the ordinances about storage and parking of vehicles being excluded in a commercial zone. See Ordinance 149-259. There is a conflict. Ms. Bogart's opinion is that it is an accessory to a commercial use.

Board discussion followed. Mr. Wayne asked if we are okay on the equipment that is there now. Mr. Mancinelli advised they would agree to allow anything they have there at present and if anyone wanted to bring anything larger onto the property, they'd have to come to the Zoning Officer and/or Joint Planning Board. He would like to get a specific list of items and stipulate to that being the maximum size, since this decision is going to run with the land. Mr. Leibman asked the Board should we come to a decision on the parking and outdoor storage or wait for a list. Mr. Lippert would like to pursue that approach of getting a list. Mr. Mancinelli would agree on no garbage trucks or 18 wheelers. All agreed. They would wait for a list and carry this, since it would not be finished tonight.

A list of outdoor vehicles was being formulated:

- a. **P&D Environmental** - trailer with mini excavator and trailer with bobcat;
- b. **Stump Removal Company** - one trailer with stump removal tool, and a chipper on wheels with license that goes with the truck. No chipping is done on site.
- c. **Pratt Plumbing** - truck;
- d. **No snow plows** are to be stored on the property.
- e. All containers and other **equipment by Buldo were removed.**

Mr. Leibman and Mr. Lippert referred to the ordinance regarding restriction on the uses and what was described falls within the ordinance prohibitions. Mr. Mancinelli stated when the truck goes out, so does the equipment. Mr. Lippert stated equipment storage is prohibited. Mr. Mancinelli advised they will argue they are parking it when it is not used. It is used in the same frequency as the trucks. It is not stored. They would also stipulate there would be no on-site chipping.

Bridgette Bogart, previously sworn, reiterated her previous testimony on outdoor storage. They are not storing it there or leaving it 24/7, and they are parking it until it is utilized to service their customers. It would be completely different if it were a chipper taking over a parking stall 24/7. Town ordinance requires commercial equipment to be maintained on site and parking spaces be made available to employees and customers. They comply with this. The code requires parking for the commercial use vehicles. Section 142-273 gives minimum requirements for parking for a retail store. Mr. Plescia commented the look pushes it over the line to light industrial. Mr. Leibman advised the 227D language has an explicitly restrictive section and read from same. The Board has to interpret it. Those uses may convince you that they have been there over an extended period of time or ask for relief.

The Board took a recess at 9:05 pm to 9:15 pm and reconvened with a new roll call. All remained present. Mr. Donovan remained recused and in the audience.

Applicant's Witnesses on outdoor vehicles and equipment:

First Witness: James Hanna, 381 Sunset Road, River Vale, came forward and stated he resided there since 1950. Mr. Mancinelli questioned the witness. He was a former councilman, member of the Planning Board on two occasions, a member of the Fire Prevention Bureau for 17 years, nine of which he served as Fire official, Fireman and former Fire Chief, totaling over 50 years of services. Mr. Hanna stated he was familiar with applicant's site and has personal knowledge of the businesses there. Art Geraldson was one—he installed sewers in town and had two trucks and backhoes stored on the property. He used them during day and returned them to the property at night. He did not have offices on the site. He stored this equipment and machinery without having an office on site.

Also on site was Collignon Insurance Agency, an antique store, and a camping/RV dealership known as North Jersey Campers for sales and services of mostly trailers, and trailers were stored there for sale, for probably over ten years. They also sold propane, with tanks stored on the property. Mr. Hanna said he was in his 20's at the time and 70 years old now. He said the Fire Prevention Bureau was the first department in town to have a computer. The Bureau computerized all the businesses in town and gave the list to the Construction Department. He was not charged with giving CO's to the businesses. He is familiar with the activity at the site, and he testified it is pretty much the same.

Questions by the Board followed. Mr. Leibman asked what was there before Jersey Campers. The response by Mr. Hanna was construction trucks. Mostly for sewers in the early 1970's. Sewer installation equipment was there prior and during their occupancy. Prior to the camping company, there was a shooting club called River Vale Sportsman's Club. Mr. Fortsch asked about Bogart Welding from the 1970's to 1980's on the sketch. Mr. Hanna said they have trucks and welding products which could be dangerous if not locked up. Mr. Statile asked if they did repair work and the response was yes. The trailers were recreational vehicles.

Second Witness: Leonard Scott, 702 Westwood Avenue, River Vale - Mr. Scott stated he lived there since 1943. He is 82 years old. Official positions he held were: Member of the Fire Prevention Bureau, Fire Official, Fire Chief, Supervisor of Road Department and Planning Board Member. Based on the history he is familiar with the subject site for 60 years. He shared what he knew about outdoor storage

of vehicles. Like Mr. Hanna, he said there was the North Jersey Campers and Trailers. He bought two trailers from them. They stored and repaired the trailers on premises. He thinks they left in the mid 1970's. Mr. Scott was asked if there was any storage of any type of equipment. Mr. Scott replied Art Geraldson worked out of his own home and stored equipment and back hoes on the premises, and when not used, he left them there. He was busy with installation of sewers. His equipment remained there through the later 1970's.

What other businesses or vehicles were there, he was asked. Mr. Scott explained that Mr. Bogert, his stepson, has a thriving welding business, Bogert Welding. He started right out of high school. There it was storage and welding from about 44 years ago. Mr. Bogert had a big welding truck and a pickup truck. No office was there. He operated out of Mr. Scott's house. The equipment and vehicles were stored overnight at the subject premises. There were other contractors that also stored their equipment on the premises. The businesses changed after a while, and he doesn't remember names. There were dump trucks and backhoes. It was definitely after North Jersey Campers went out. To this date, there are vehicles parked there. The uses have been consistent from what he observed over the last 50 years. Mr. Statile questioned the applicant.

Third Witness - Stephen Wiezik - 233 River Vale Road, River Vale, NJ - across from the subject site. Mr. Wiezik stated he has lived there since 1983 and lived in River Vale since 1979. Collignon was his stepfather. North Jersey Campers was there from the 1960's to late 1970's. His parents purchased a camper and motor home off that property. He gave his knowledge as to storage of vehicles and equipment. Campers, trailers and wheels were stored. Art Geraldson stored his equipment there in the mid 1970's. He worked for Ellis Insurance in the office where Mr. Greenhalgh had an office. There were other commercial activities. Mr. Bogert parked his truck there over night. His business was welding. Since 1983 he had observed the site. It was quiet until Buldo Sanitation arrived. With respect to what is remaining on site do you have opinion of the use, if same or different he was asked. Mr. Wiezik stated when Steve Hopper bought the property he did not even see him. The stump company came in with no problems at all. He can see only the tenants parking. The stump company vehicles are behind the building. There were no further questions of Mr. Wiezik.

There were no further witnesses or questions.

Mr. Statile stated the 1967 ordinance prohibited outdoor storage.

Mr. Mancinelli advised his Exhibit A3, a chart of uses from 1868 to 2017, dated 12/4/17 was provided and referred to. Ms. Bogart would testify off that chart. Hearing the last three witnesses, she put together this time line of uses. A third column titled Zoning describes the Zoning that came into place, the years and ordinances. The C district was reaffirmed in 1990 with all the storage of vehicles, trucks and propane on site. This site was not a particulate concern to anyone. Offices, professional offices, and landscaping, all remain in the C district. From 1965 to 2017, while the uses varied, they are very similar throughout those years and there are no changes in the Master Plan documents that this site should be changed to a different district. Mr. Mancinelli noted that a construction use by Art Geraldson was testified to by the three witnesses. Mr. Mancinelli asked her, now that she has that knowledge does her opinion change as to the pre-existing non-conforming use of the prior uses. Ms. Bogart responded everything stored on site shows it is more in consistent with the ordinance today than previously.

Mr. Leibman discussed abandonment. The mere non-use does not constitute abandonment, he read from the law and cited case law. It is not just the cessation of the activity; you need an affirmative step. Discussion ensued regarding testimony. Mr. Mancinelli stated there is unrequited testimony with 40-60 years knowledge of this site.

Mr. Leibman asked what happened before 1967. He was thinking that is when the ordinance changed prohibiting uses. Maybe NJ Campers was operating without permission or maybe a pre-existing, non-conforming use, and Mr. Mancinelli said maybe not. Witnesses testified he bought a 1969 trailer in 1970. The gap between 1931 and 1967 is relevant, Mr. Leibman advised. The Collignon Chair Factory operated in 1931.

Mr. Mancinelli recalled Leonard Scott. He testified he bought a 1969 camper in 1970. They come out the year before. Mr. Mancinelli asked how many years prior to 1969 it was operating. He recalled early 1960's.

Mr. Beukas asked Ms. Bogart what she believes the definition of outdoor storage is under 227D. What is your understanding of the terms as contained in that section, he asked. She understands storage is something that remains on site for a long time. Here you have equipment on site parked in spaces per ordinance and the equipment is associated with businesses that have offices on site. There is testimony that everything on site is being utilized on a continued basis by the businesses that occupy the premises. What about a wood chipper sitting there for a week, he asked. Ms. Bogart replied no, No she would consider that parking.

Mr. Leibman suggested trying to obtain a document from the State for North Jersey Campers to see when their business was incorporated. Mr. Mancinelli stated he would rely on the unrequited testimony of the witnesses. He is trying not to come back here.

Mr. Lippert felt they should vote on the interpretation question of outdoor storage of vehicles and equipment. Mr. Lippert commented the heard testimony about equipment that is located on the site, and the question is, does that violate the ordinance that points to prohibit the outdoor storage of equipment. Does anyone have any thoughts, he asked. Mr. Wayne commented there was still some confusion, but he knows the property very well. There was testimony here tonight, and he has to lean to say it has been going on for many years. He has a problem denying it after the ordinance went in. Chairman Lippert suggested moving forward with the interpretation question.

(A) Vote on Interpretation of Parking of Vehicles Constituting Outdoor Storage - Chairman Lippert made a motion to approve that he believed the ordinance is not all that clear, but it was the intention to prohibit the outdoor storage of vehicles, and that is different from the parking of vehicles on the premises. **A yes vote agrees to the outdoor parking of vehicles.** The motion was seconded by Michael Buekas and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

(B) Vote on Interpretation of Storage of Equipment - Chairman Lippert stated next is whether the **storage of equipment is a continued pre-existing non-conforming use.** Mr. Plescia stated he would make the motion to approve the use.

Mr. Mancinelli would give a list. If anyone tries to increase it, they would come to the Zoning Officer or Board. Mr. Leibman stated they should state they would abandon any use beyond the list of equipment. Mr. Mancinelli felt they could not do that. He would rather agree to what is there and anything future would come to the Board. He would rather not use abandonment. It is a conversation to be had after the Board gives the Certificate of Occupancy for the non-conforming use. There was concern over the piece of equipment being replaced with a new one of the same type. They would agree to a list. The list was being formulated. Mr. Leibman read the proposed language. Mr. Mancinelli reserved the right to review the well-crafted Resolution. Also they would agree to no stock-piling of gravel would be permitted. Mr. Mancinelli stated he will carry the municipal court action scheduled in 8 days, and he is very pleased with the progress made tonight.

A motion of approval was made by Mr. Lippert and that applicant has established pre-existing nonconformity and a Certificate is granted subject to list by Mr. Leibman. The motion was seconded by Michael Buekas and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

4. Vote on Use of Property not Noxious or Offensive (Section 143-227C; D) - A motion for approval was made by Chairman Lippert that the use of the property is not noxious and offensive. The motion was seconded by Michael Buekas and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

5. Applicant agrees and stipulated there will be No Operating and Standing of Motor vehicles from 11:00 p.m. to 6:00 a.m. (Section 159-2K)

Vote on no industrial use overall is occurring at the premises - A motion for approval that no industrial use is occurring on site based on the evidence presented was made by Scott Lippert, seconded by Peter Wayne and carried unanimously on roll call vote by Craig Plescia, Michael Buekas, Robert Fortsch, Peter Wayne, and Chairman Lippert. Councilman Donovan was recused.

The matter was concluded. The applicant and his attorney thanked the Board and departed.

(RVPB 3/29/18 Special Meeting Minutes)

OPEN TO PUBLIC: NONE

DISCUSSION: None

MINUTES: 2/21/18 - Not reached;

PAYMENT OF INVOICES: None

NEXT MEETING: Wednesday, April 18, 2018 at 7:30 p.m.

ADJOURNMENT: On motion made, seconded and carried, the meeting was adjourned at approximately 10:45 p.m.

Respectfully submitted,

MARY R. VERDUCCI, PARALEGAL
Recording Secretary