February 23, 2012

Mr. Kirkpatrick called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Hirt, Mr. Walchuk, Mr. Nace, Mrs. Corcoran (7:05 p.m.), Mr. Ryland, Mrs. Dziubek, Mr. Ford, Mr. Kirkpatrick

Members Absent: Mr. Bischoff, Mr. Badenhausen, Mr. Kastrud

Others Present: Atty. Mark Anderson, Robert Clerico, Atty. Joseph Novak, Brian Plushanski, Mike Cole

Approval of Minutes: Mrs. Dziubek made a motion to approve the minutes of the January 12, 2012 Reorganization and Executive Session meetings and the January 26, 2012 regular meeting. Mr. Hirt seconded the motion.
Vote: Ayes: Mrs. Dziubek, Mr. Hirt, Mr. Walchuk (Abstain January 12), Mr. Nace (Abstain January 26), Mr. Ryland, Mr. Ford (Abstain January 26) Mr. Kirkpatrick
Motion Carried

Green Rock Recycling, LLC: Block 22, Lots 15 and 15.01, Frontage Road – Quarry License Renewal – 2012: Atty. Joseph Novak was present on behalf of applicant. Brian and Michelle Plushanski are the owners of the property known as Green Rock Recycling. Engineer Clerico had issued a letter dated February 23, 2012. He gave an overview of the letter. A motion to approve the quarry license application was made by Mr. Ford. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Ford, Mr. Walchuk, Mr. Hirt, Mr. Nace, Mr. Ryland, Mr. Kirkpatrick
Abstain: Mrs. Corcoran, Mrs. Dziubek

Atty. Anderson said he had spoken with Municipal Attorney Jost and Mr. Clerico regarding bonding. Mr. Anderson advised Atty. Novak to contact Atty. Jost about the form of the bond.

Perryville Centre LLC: Block 12, Lot 9, 78 Route 173 West: Issue of Completeness: Atty. Novak was present on behalf of applicant. Mr. Novak gave an overview of the application. He said the Manager Member of Perryville Centre is Brian Plushanski. Atty. Novak said he and Mr. Plushanski were present to review the developed site that has been occupied for approximately five years. Mr. Plushanski had purchased the property from E.J. Foley. Preliminary approval and Extensions had been granted to E.J. Foley. Building permits and Certificates of Occupancy had been issued. Final Site Plan approval had not been granted. Atty. Novak said a decision was made that applicant should apply for amended preliminary and final site plan approval.

Applicant was told to show improvements on the site and to the extent that the improvements do or do not comply with the current Ordinance. Appropriate variances and application waivers could be requested. Mr. Clerico had prepared a letter, dated February 22, 2012, describing additional items required for completeness. Atty. Novak said he and his client had reviewed the list. Mr. Novak said applicant received unconditional approval of the project from the Hunterdon County Planning Board. He asked that become a part of the record. Atty. Novak said he had reviewed notes from the March 29, 2011 Board meeting, at which time he understood the Board wanted a Plan showing what exists at the site. Mr. Plushanski's Engineer prepared and submitted a four-page Plan with that information. Mr. Novak said reference was made to a seven-page Plan. Mr. Plushanski, after being sworn by Atty. Anderson, said the missing three pages referred to soil erosion, lighting/landscaping and site details and he did not think they related to what was requested. The three-page document was submitted tonight. Mr. Kirkpatrick said that document would be marked Exhibit A-1. Mr. Kirkpatrick asked Mr. Clerico if variances required to implement the Plan under the existing zoning had been provided. Mr. Clerico responded. He said the Plan was a variation of a Plan submitted several years ago, and then resubmitted last year.

Mr. Clerico said he had reviewed files and developed a chronology of the history of the site. He said E.J. Foley had started construction. Mr. Plushanski purchased the property and came before the Board in 2003 indicating he wanted to make modifications. The Board said he should file an amended site plan application. In the interim, Mr. Plushanski was granted permission by then Board Engineer Robert Bogart to begin improvements, following the E.J. Foley Site Plan. A request for a Letter of Interpretation (LOI) was filed with NJDEP. Mr. Plushanski began site improvements and returned to the Board in June 2005 to discuss potential changes, most notably to change some of the approved parking to office space (approximately 8,500 s.f.). E.J. Foley proposed 2,500 s.f. of office space. Mr. Plushanski filed an amended plan in July 2005. In August 2005, Mr. Plushanski appeared before the Board asking for relief, specifically from submitting an Environmental Impact Statement (EIS). The Board did not grant his request. Mr. Clerico said C.O.'s for the structure were obtained later in 2005. Mr. Plushanski was told to file for a Highlands Determination. That request was made in January 2006 and the Exemption was received in July 2007.

Mr. Clerico understood the Board was looking for more than an As-Built Plan. Mr. Kirkpatrick recalled the Board was also asking for a complete application for that Plan, as well as variances required to implement the Plan. He said waivers could be requested. Mr. Kirkpatrick thought the Board was flexible about submission of a minimum amount of information, i.e. a new Natural Resource Inventory (NRI), E.I.S. or Wetlands Delineation would not be required. He said, however, documentation would be required that all permits for the construction had been obtained and that variances had been requested for the building. Mr. Kirkpatrick indicated the Schedule on Page 1 of the Site Plan must show how applicant is or is not complying with the Ordinance.

Mr. Clerico said he looked at the E.J. Foley Plan, which he considers to be the only one that has legitimacy. He understood Mr. Plushanski was appearing before the Board to identify deviations from the E.J. Foley Plan. Mr. Clerico said the Plan before the Board depicts paved areas beyond the limits of that proposed in 1989 or assessed in the 2005 storm water report. He had a question about proposed underground detention improvements. Mr. Clerico said an amended storm water assessment is necessary to determine the implication of additional paving. Further information is needed regarding the general floor plan layout, especially the two-story office portion of the structure, since the office use affects sewer flows, water consumption and parking.

Mr. Kirkpatrick said Mr. Plushanski should submit the As-Built Plan to the Board and ask for Final Site Plan approval of what currently exists. He said Mr. Plushanski should ask for waivers from any of the Checklist Items that he believes are not required. Mr. Plushanski asked if he could get the list of required items from Mr. Clerico. Mr. Kirkpatrick indicated that would be fine. Atty. Novak said he had talked with Mr. Clerico about a meeting at the site. Mr. Novak said he would like to move forward from the perspective that this is not the Foley Site or building. He agreed with Mr. Kirkpatrick about presenting a Plan showing what presently exists at the Site and how it does or does not comply with the Ordinance. Variances may be required and it would be necessary to show whether drainage calculations are sufficient. Mr. Plushanski said he would provide those calculations.

Mr. Clerico noted there have been major changes in storm water regulations. Mr. Kirkpatrick said applicant should be able to make the argument that the storm water management plan was consistent with what was required at the time improvements were made. Mr. Clerico said he looked at the Plan using the Foley Plan as the foundation. If Mr. Plushanski had built it exactly to the Foley Plan, the only thing required would be a Final Site Plan application. Mr. Kirkpatrick believes it only needs to be documented to the extent necessary to demonstrate that the infrastructure is adequate to support what was built differently from what was on the Foley Plan. Atty. Anderson said Mr. Kirkpatrick indicated the adequacy at the time of construction, not necessarily, what was adequate at the time the Foley Plan was submitted. Mr. Plushanski would have to indicate deviations from the Foley Plan and when they were made. Mr. Clerico would review the deviations and determine what standards those deviations would be considered. Mr. Clerico said that would be complicated. Mr. Kirkpatrick said it would probably be less complicated than complying with current storm water management regulations. Atty. Novak emphasized that it should be reviewed from the standpoint that the building is there, the site has been developed and in place for five years. Mr. Novak said applicant is seeking to amend the previous approval, showing what is there today and request amended and final site plan approval. He said applicant would have to show there is sufficient drainage for improvements on the site. Atty. Novak felt Mr. Clerico and Atty. Anderson could determine what Standards apply. Mr. Plushanski said all storm water has been draining into the detention basin for the past five years.

Atty. Anderson said he does not believe the Board has the jurisdiction to approve something because it is claimed to have worked. The Board can only approve a Plan that meets required Standards. Mr. Clerico referenced dramatic changes in storm water regulations. He had reviewed the Foley Plan and Plans provided by applicant. Mr. Clerico said that between 2005 and 2011 the westerly parking lot had been paved. He was going to review the 2005 storm water report prepared by Engineer Jess Symonds and compare it with what exists today. Mr. Plushanski said Foley had installed the underground storm water system. Mr. Kirkpatrick said Foley had designed a storm water management facility for say two acres of impervious surface. He said if there is say two acres of impervious surface, it could be assumed that the storm water management plan would be appropriate. However, if there were three acres of impervious surface, the Board would need to know that the existing system is adequate for the additional impervious cover. Mr. Kirkpatrick emphasized that the site is upstream of the Mulhockaway Creek, which is a Category 1 Trout Production Water that provides habitat for Federally Endangered Species. The Site is also upstream from a reservoir that is part of a potable water system. Mr. Kirkpatrick told applicant to compare what exists with what the Ordinance currently requires and ask for variances for anything that does not comply with the Ordinance. Atty. Anderson described his understanding of the situation. He said the Board could assume that the Foley Site had Final approval and been constructed as approved. After construction, changes were requested. Mr. Anderson said changes have been made. He said to make those changes an application would have been required. Atty. Anderson said he understood that Mr. Kirkpatrick indicated the Board would consider that applicant would have to meet the same Standards required at the time of application. Mr. Anderson understood that would require applicant to demonstrate that deviations had been made to the Foley Plan whenever construction occurred. Mr. Kirkpatrick said he wanted to simplify the matter even more. He told Mr. Plushanski to apply for what exists. Mr. Kirkpatrick did not want to reconstruct the Foley approval. He said the focus is on storm water management and deviations from the Foley Plan. Applicant should comply with the storm water regulations that were in effect at the time changes were made. The Board would rely upon applicant's testimony regarding the time.

Atty. Anderson asked to review technicalities with Atty. Novak. Mr. Anderson wanted clarification as to name of the applicant. Atty. Novak said it was Perryville Centre LLC. Atty. Anderson said he understood applicant was requesting amended Preliminary and Final Site Plan approval. Atty. Novak concurred. Atty. Anderson understood there might be requirements for variances. Mr. Kirkpatrick, Atty. Novak and Mr. Clerico agreed there is insufficient information to make that determination. Atty. Anderson said if variances are required, the application should include that information. Atty. Novak asked for clarification as to the Ordinance, the current or an earlier version? Atty. Anderson deferred that question to Mr. Kirkpatrick. Mr. Kirkpatrick said his preference would be the current Ordinance. He did not think there were significant changes that would relate to this application. Atty. Anderson asked Atty. Novak if there would be a request to make changes that are not currently constructed on the site.

Mr. Novak thought there is a possible request for a change. Mr. Plushanski said he had appeared before the Board inquiring about a 2,000-s.f. addition on the back of the building. Mr. Kirkpatrick said Mr. Plushanski was given the option of including that request in his overall Final Site Plan application, or applying after the matter being discussed tonight was resolved. Atty. Novak said he would review the matter regarding changes. Atty. Anderson said if additional changes are proposed a letter from Atty. Novak might suffice. Mr. Anderson said that was up to the Board. Mr. Clerico asked what information the Board wanted regarding floor plans. Mr. Kirkpatrick said the record should show the total office space area. He said it could be a written description or an actual floor plan. Mr. Kirkpatrick said if it is determined that the impervious surface coverage is the same as that which was approved on the Foley Plan the only outstanding issue would be storm water. Atty. Novak said he understood there is a pending application and applicant will decide if there will be a new addition. Mr. Novak said if there are variances required, a letter would be submitted amending the application. Mr. Kirkpatrick asked applicant if outstanding items could be submitted fifteen days prior to the Board's next meeting. Mr. Plushanski indicated it would take more time to obtain required storm water information.

Mr. Kirkpatrick asked for a motion to deem the application incomplete. Mr. Ford made the motion. Mr. Walchuk seconded the motion.
Vote: Ayes: Mr. Ford, Mr, Walchuk, Mr. Hirt, Mr. Nace, Mrs. Corcoran, Mr. Ryland, Mrs. Dziubek, Mr. Kirkpatrick

Mr. Clerico asked about a target date, such as three months. Atty. Novak and Mr. Plushanski said they would like to have the required information sooner. Mr. Plushanski asked if he was free to occupy the building. Atty. Anderson said the Board could not grant that approval. Atty. Novak said applicant would continue occupying the building and paying taxes.

Correspondence: Mr. Kirkpatrick mentioned a letter dated February 16, 2012 from Transcontinental Gas Re: Individual Freshwater Wetlands/Transition Area/Waiver Application for the Stanton Loop. Mr. Kirkpatrick said the letter would be on file at the Board office and if any Member wanted to discuss the matter if could be brought up at the March 8, 2012 Workshop.

Comments from the Public: Mike Cole, Block 27, Lot 8, 10 Finn Road, appeared at the request of Robert Clerico. Mr. Cole wants to install a gas line to the barn and, perhaps, the house. Mr. Clerico said as Township Engineer, he reviews road-opening permits for Elizabethtown Gas and noted there is an agricultural easement on Mr. Cole's property. Mr. Clerico asked for clarification of what was permissible or not permissible in an agricultural easement. The previous owner of the property had received approval to construct a barn and driveways from Cooks Cross Road. Electrical service was also installed. Mr. Cole plans to utilize the barn for horses. He would also like to run a water line to the barn for the horses.

Lines would be underground and not interfere with pasturing the horses. Mr. Cole's deed references the agricultural easement; however, there is no explanatory language regarding the easement. Mr. Kirkpatrick said his initial impression was that the underground gas line would not interfere with agricultural purposes. He said the easement would have been executed with the Township and the Committee would make the decision. Atty. Anderson said the Township would normally have been considered the holder of the easement. He agreed with Mr. Kirkpatrick that it would be up to the Township Committee to decide any impact on the easement. Committeeman Hirt opined that the underground installation would not have a negative impact on the agricultural easement. Mr. Cole was advised to contact the Township Clerk regarding placement on the March 7, 2012 Committee agenda.

Motion to Adjourn: Mr. Ford made a motion to adjourn. The motion was seconded by Mr. Kirkpatrick. (8:25 p.m.)
Vote: All Ayes

Grace A. Kocher, Secretary