

**MAYWOOD PLANNING BOARD  
MINUTES  
March 1, 2018 Closed Session #2018-02**

Chairman Frank Lichtenberger made a motion to go into Closed Session. Harry Hillenius seconded the motion. All eligible members present voted in favor of the motion.

**BOROUGH OF MAYWOOD PLANNING BOARD  
Closed Session Resolution # 2018-02**

BE IT RESOLVED by the Planning Board of the Borough of Maywood, pursuant to the provisions of the Open Public Meetings Act, that the Maywood Planning Board met in closed session to discuss the following subject matter(s): Pending litigation

which subject matter(s) is (are) permitted to be discussed in closed session pursuant to the following designated sub-section(s) of Section 7 of the Open Public Meetings Act:

- Sub-section 1 dealing with material rendered confidential by express provision of Federal or State law
- Sub-section 2 covering a matter in which release of information would impair a right to receive federal funds
- Sub-section 3 involving disclosure of material that would constitute an unwarranted invasion of privacy, including material related to an individual's personal and family circumstances, without the express written consent of the individual involved
- Sub-section 4 pertaining to collective bargaining agreements and the terms, conditions and negotiations thereof
- Sub-section 5 dealing with the acquisition of real property, the setting of bank rates, or the investment of public funds where discussion thereof would adversely affect the public interest
- Sub-section 6 dealing with tactics and techniques used in protecting the safety and property of the public where disclosure could impair such protection or investigation of violation of the law
- Sub-section 7 dealing with pending or anticipated litigation, contract negotiations, or matters falling within the attorney-client privilege
- Sub-section 8 concerning personnel matters dealing with employment, appointment, termination, or terms and conditions of employment of any person or persons, or the evaluation, promotion or disciplining of employees unless all employees involved consent to disclosure thereof

( ) Sub-section 9 involving deliberations after public hearing on a matter which may result in the imposition of a civil penalty or the suspension or loss of a license

AND BE IT FURTHER RESOLVED that, as precisely as can be determined at this time, the discussion conducted in the said closed session can be disclosed to the public upon taking final action thereon, provided disclosure shall not violate the attorney-client privilege or constitute an undue invasion of privacy; and

BE IT FURTHER RESOLVED that the Planning Board of the Borough of Maywood  
(X) Will return to open session after this meeting.

( ) Do not envision that they will return to open session after this meeting but reserves the right to do so.

Date of Passage: 3/1/18 Time: 8:07pm

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Board Attorney Kara Kaczynski informed the Planning Board that the Borough and Planning Board have been served with a tort claim notice from Empire Real Estate Holdings, Inc. The tort claim alleges collusion in relation to the purchase of Block 122, Lot 16.01 from the Borough. Chairman Lichtenberger did not believe that granting a D(1) use variance was warranted since the applicant could not show that that the use was beneficial. Board Attorney Kaczynski explained that Board is required to consider the proofs that are presented but must uphold the Borough zoning and master plans goals. Chairman Lichtenberger considers the Metro Ambulance use as a detrimental use to the neighborhood considering the adjacency to the busy roadway and the stream. Gary Neumann asked if the applicant would return to the Board. Board Attorney Kaczynski replied that it is her understanding at this time that the Borough's Joint Insurance Fund (JIF) counsel will file an answer. A case management schedule will be determined. At the hearing, the court can decide one of three courses of action:

1. Court can agree with the Board's decision and deny the appeal
2. Court can remand the application back to the Board and the application process would restart so that the Board could revisit the application under certain conditions
3. Court could grant the appeal outright and overturn the Board's decision which is a very rare occurrence

Chairman Lichtenberger reminded the Board of a past litigation case where the application was remanded back to the Board. He explained that the entire application was then presented all over again. Board Attorney Kaczynski informed the Board that Zoning Officer James Mazzer issued a certificate of continued occupancy (CCO) violation starting today but she expects that the attorney for Empire Real Estate Holdings, Inc. will file a stay.

Gary Neumann drove past the location recently and observed cars parked all over the parking area with some stacked two cars to a space. Harry Hillenius recommended that Zoning Officer Mazzer take pictures of the current conditions and bring the pictures to Municipal Court for the CCO summons. Secretary Charlotte Panny visited the property yesterday and counted eighteen vehicles parked on the property. Of the eighteen vehicles, five were ambulances/ambulettes. She noted that the applicant agreed to park fourteen vehicles maximum on the property and they are not complying with the conditions that they proposed. Harry Hillenius believes that Zoning Officer Mazzer should take pictures on a daily basis. John McManus asked if Board members

could be deposed. Board Attorney Kaczynski answered that there are currently two legal actions being taken by the applicant:

1. Tort Claim Action: Board members can be deposed
2. Prerogative Writ Action: Board members cannot be deposed

With that discussed, Chairman Lichtenberger wanted to update the Board on the status of the COAH project. He spoke with Mayor Febre and Borough Administrator recently. They indicated that they were close to a settlement since Special Master Mary Beth Lonergan was agreeable to the Borough proposal.

Councilman Michael Gervino notified the Board that the ordinance revisions were introduced at the Mayor and Council meeting on 2/27/18. Board Attorney Kaczynski explained that the ordinance will now go to the Board for review and recommendation.

Chairman Lichtenberger made a motion to return to the regular order of business. Secretary Panny seconded the motion. All eligible members present voted in favor of the motion.

Respectfully submitted,

Tara Grunstra  
Planning Board Recording Secretary