

**MAYWOOD PLANNING BOARD
MINUTES
May 4, 2017 Closed Session #2017-06**

Vice Chairman Paul Kuhn made a motion to go into Closed Session. Councilman Rick DeHeer seconded the motion. All members present voted in favor of the motion.

**BOROUGH OF MAYWOOD PLANNING BOARD
Closed Session Resolution # 2017-06**

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: 5/4/17 Time: 8:30pm

Board Attorney Kara Kaczynski summarized the litigation filed by Maywood Joint Venture against the Borough of Maywood. While the Maywood Planning Board voted to grant the Appeal and Request for Interpretation at the 2/2/17 hearing, Maywood Joint Venture took issue with four (4) conditions of the resolution:

1. The Applicant will apply to the Board for site plan approval and any and all other variances deemed necessary
2. The Applicant will utilize only diesel vehicles
3. The Applicant will ensure that a Knox Box system is incorporated into the site plan for approval
4. The Applicant will provide the weight of an armored car at the Board hearing for the site plan/variance approval

Board Attorney Kaczynski believes that their litigation is premature as the plaintiff has not filed for construction permits yet. She added that site plan approval is required by ordinance. The Board may waive notice for minor site plan approval which may be a suitable compromise. She will consult with the Borough Attorney as the Borough has 35 days in which to respond. She provided various options:

- Negotiation by offering to proceed as a minor site plan application without notice as mentioned earlier
- Proceed with litigation

Chairman Frank Lichtenberger believes that the plaintiff agreed to diesel only vehicles in their testimony. Councilman Rick DeHeer suspects that the plaintiff has remorse for agreeing to that condition. Board Attorney Kaczynski replied that the plaintiff's second attorney, Allyson M. Kasetta, alluded to the fact the plaintiff's first attorney, Meghan Barrett Burke, is no longer with the firm. Chairman Lichtenberger believes that if the plaintiff uses gas vehicles, the 2006 IFC which specifies that vehicles parked inside a building cannot have more than 5 gallons of gas in the tank would apply. He added that the Knox Box system benefits the plaintiff. Board Attorney Kaczynski and Ken Terzo discussed that the plaintiff testified that the business is a 24-hour operation. The weight of the armored vehicle was a question of a nearby property owner. Board Attorney Kaczynski added that the use was approved and minor site plan approval is simple by comparison. Board Engineer Lemanowicz added that the site plan may have intense conditions.

Board Attorney Kaczynski suggested that the plans could be not made public if the applicant was concerned with safety due to its operations.

The feedback of the Board is that Board Attorney Kaczynski should negotiate with the plaintiff by offering the minor site plan option. Board Chairman Lichtenberger pointed out that Zoning Officer James Mazzer denied the CO and contended once the use was granted, the CO could be issued. Zoning Officer Mazzer issued a CO in June 2016 for a medical manufacturing tenant at the same location without requiring site plan approval in error. The tenant did not take occupancy. Vice Chairman Paul Kuhn asked that Board Attorney Kaczynski include in her negotiations that the plaintiff pay for the Borough's attorney fees. Chairman Lichtenberger believes that Maywood Joint Venture is not acting as a good neighbor.

Vice Chairman Paul Kuhn made a motion to return to the regular order of business. Councilman Rick DeHeer seconded the motion. All members present voted in favor of the motion.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary