

## **Hawthorne Planning Board Minutes of May, 2017 Regular Meeting**

The May, 2017 regular meeting of the Hawthorne Planning Board was called to order on May 16, 2017 at 7:40 P.M. by Chairman Garner. After recital of the Pledge of Allegiance, Chairman Garner called the roll. All members and alternates except Ms. DiMattia were present as well as Board engineer Michael J. Kelly, P.E. and Board attorney/secretary William A. Monaghan, III, Esq. Chairman Garner announced that notice of the meeting had been published and posted in accordance with the Open Public Meetings Act.

### **MINUTES**

1. On a motion made by Vice Chairman Lucibello and seconded by Mr. DeAugustines, the Board approved the minutes of the April regular meeting.
2. On a motion made by Mayor Goldberg and seconded by Mr. Kowalski, the Board approved the minutes of the May work session.

**CORRESPONDENCE** – None

### **BILLS**

1. A motion was made by Mr. Ruta, seconded by Mr. Matthews, and approved by a vote of 7-0 to approve payment of a bill of the Hawthorne Press for Invoice No. 990698 in the amount of \$27.30.

### **RESOLUTIONS**

1. With regard to the application of **John Hryncewich**, a motion was made by Mrs. Zakur, seconded by Mr. Ruta and approved by a vote of 7-0 to approve a resolution memorializing the action taken by the Board at its April 18, 2017 meeting.
2. With regard to the applications of **The Game Cave, Garden State Recovery LLC** and **The Knead U Need**, a motion was made by Mayor Goldberg, seconded by Vice Chairman Lucibello and approved by a vote of 7-0 to approve resolutions memorializing the actions taken by the Board at its May 2, 2017 meeting.

**CERTIFICATE OF COMPLIANCE PLAN REVIEW** – None

### **OLD BUSINESS**

1. With regard to the application of **Royal Realty LLC**, Jerome Vogel, Esq. appeared as attorney for the applicant. Vice Chairman Lucibello recused himself with regard to this application and Mayor Goldberg excused himself to attend another meeting.

Mr. Vogel made a brief opening statement. He stated that he was prepared to present his client's application. He indicated, however, that although his client had attempted to address the concerns of the neighbors and had made significant revisions to the plans in response to the concerns, he had been advised immediately prior to the meeting that counsel for the Concerned Citizens of Hawthorne group intended to object to the application.

Anthony Rainone, Esq. then entered his appearance on behalf of the objectors. He stated that he was appearing in place of Susan Rubright, Esq., one of his partners in his firm, who was unable to be present for the hearing. He raised two threshold jurisdictional issues. First, he argued that the applicant's notice was defective based on omission of a height variance for the number of stories in the proposed structure. Second, he argued that the application required a use variance based on density due to the number of two bedroom units proposed by the applicant. He therefore stated that the application should be heard by the Zoning Board.

Mr. Monaghan advised Mr. Rainone that the density issue had been discussed with counsel for the Zoning Board at the time of the filing of the application and counsel for both boards concurred that jurisdiction was properly before the Planning Board.

Mr. Rainone stated his disagreement with Mr. Monaghan's opinion and indicated his intention to appeal any approval granted by the Planning Board. He also requested that the Planning Board rule on his jurisdictional objections before proceeding with the hearing.

Mr. Monaghan indicated that the Board was prepared to decide on the preliminary issues raised by Mr. Rainone and asked Mr. Vogel for his position.

Mr. Vogel expressed his adamant disagreement with Mr. Rainone's legal position, as well as his disappointment that he had not been given the courtesy of advance notification of the objectors' intentions. He then requested a brief recess to discuss the ramifications of the objectors' position with his clients. The Board then took a brief recess.

The hearing then resumed. Mr. Vogel advised the Board that, although in his opinion the objectors' position was legally incorrect, in order to avoid the possibility of lengthy court proceedings which could result from a legal challenge by the objectors, his clients authorized him to request the transfer of the application to the Zoning Board. After brief discussion among Board members, a motion was made, seconded and approved to grant the applicant's request.

**NEW BUSINESS** – None

**PUBLIC**

The meeting was then opened for public comment without response.

The meeting was then adjourned at 8:30 P.M.

Respectfully submitted,

William A. Monaghan, III, Esq.  
Board Attorney/Secretary