

Borough of Clayton Zoning/Planning Board Meeting

April 26, 2021

Joseph Abate

I would like to call to order the combined Clayton Planning and Zoning Board Meeting of April 26, 2021.

Please let us have a moment of silence for Gene Costill. Clearly, the premier citizen of modern day Clayton history. Forever the Borough of Clayton shall be indebted to his service. Rest in peace. Please stand for the flag Salute.

I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, One Nation, under God, Indivisible, with liberty and justice for all.

Thank you.

The Sunshine Law. Public notice of this meeting pursuant to the Open Public Meaning Act of 1975 has been properly given in the following manner.

- A. Posting written notice on the official bulletin board in the municipal building,
- B. mailing written notice to the South Jersey Times and Franklinville Sentinel.
- C. Filing written notices with the clerk of the Borough Clayton.

Roll Call

Debbie Schlosser

Abate	Here
Bianco	Absent
Branco	Here
Culver	Here
Fox	Here
Miller	Here
B. Saban	Arrived late
T. Saban	Arrived late
Thomas	Absent
Vondran	Here

Thank you.

Joe Abate

A motion to approve the minutes of the regular meeting of the Clayton Planning Board held on March 22, 2021.

M/, Miller, S/ Fox

Joe Abate

Roll call.

Debbie Schlosser

Abate	Yes
Branco	Yes
Culver	Yes
Fox	Yes
Miller	Yes
Vondran	Yes

Joe Abate

Thank you. Under old business I see none. Under new business I see none. Under public portion I want a motion to open to the public.

M/ Vondran, S/ Miller

Joe Abate

All in Favor: Ayes

If there's anyone out in the public that wants to address the Clayton Planning and Zoning Board tonight please do so now.

Motion to Close

M/ Vondran, S/ Branco

Ayes: Unanimous

Joe Abate

Under correspondence, none. Under discussion, Ordinance #07-2021, Repealing and Replacing Chapter 88 Unified Development Article 12 - Stormwater Control Standards of the Code Book of Clayton. Stan, I'd like to address your expertise on this. Could you give us your opinion and maybe add cliff notes.

Stan Bitgood

Understood, thank you, Mr. Chair. The New Jersey Department of Environmental Protection has changed their rules and in so doing this is pertaining to stormwater land development issues pertaining to New Jersey initiative. When they did that,

they required that all municipalities adopt changes to their ordinances that correspond with the new rules that the State has. So that's the real reason why we're doing this now. The State Department of Environmental Protection believes that it will help it further improve our water quality.

I've made some changes to their Best Management Practices Manual, which of course, are referenced in these ordinances. I guess they were not having very much luck in getting people to comply with the point system for non- structural strategies. If you may recall, any major projects that came before the board where we had to review stormwater design, they had to demonstrate that they were not only attenuating and reducing the peak flows but also using non-structural strategies, minimizing distances, adding longer paths of travel for the water to soak in and filtered by vegetation.

Apparently, that wasn't being done enough to satisfy New Jersey DEP, so they changed it. Now they have green infrastructure rules. So the entire non-structural strategy scheme has been replaced with green infrastructure items. There's a number of green infrastructure items in the Best Management Practices, manual. All major stormwater permits are required to not only attenuate storms and recharge the equivalent of what the department believes is the annual groundwater recharge into the ground on site. They're also required to provide green infrastructure to the extent practicable. So these rules basically implement New Jersey Department of Environmental Protection rules at the local level. They require us, and you, as the board, too, uphold these projects in accordance with these rules. For myself I have to review them and advise you. They require maintenance guarantees on the water systems. They require language be recorded upon the deeds of the land in which there is a major stormwater design.

Notably, they've also made it a little more rational. Impervious areas into consideration of clean impervious areas. Clean and motor vehicle surfaces, motor vehicle impervious areas, have to be treated before they're discharged sites. Those areas have to go through vegetated filters before the discharge.

Clean impervious areas like pedestrian walks, roof's, clean roof runoff, those areas have to be treated, which is a good thing and reduces the amount of loss that we typically have to see treated before it leaves the site. it's more rational because there's very little phosphorus or other nutrients to come off a roof.

The two main issues, they separated the impervious areas in the motor vehicle and now they require the green infrastructure instead of the points for non structural strategies. This will require attenuation for the 2 to 10 and 100 year storms. They did not change the way any of this is to be defined or to be calculated. That's basically it. So the first part of the elements is catching other sections. Section 86:24,26,28 where stormwater management is referenced. Though I've tried to

make the distinction slightly different than what DEP did to use the term major stormwater development as opposed to major development. But you know, you have major subdivisions, you have major site plans, etc... Those are also major developments.

So by inserting the word stormwater throughout, that makes it a little more clear to the inexperienced developer that even a minor project, like a large house with a very extended driveway or a couple of tennis courts or something could end up being a major stormwater project even though its not even a site plan really. So, these are companion rules to the Municipal Land Use Law on site improvement standards, but they are also stand alone. If a farmer comes in and wants to build certain types of buildings that are exempt, they may well have to get approval of their stormwater management system but not need a subdivision or subdivision plan. So that's the gist of it.

In order to preserve DEP model ordinance structure, I basically take your 88-95 section and just add dashes one through four. So that the order internally stays the same. The Borough, does not and I don't think any of the towns in Gloucester County, have an adopted regional stormwater management plan. Because of that the county doesn't have one and the towns don't have one. A few of the provisions that are built into the model ordinance are not applicable, which is why you see, if you go to page 13, Table three is basically blank, because we don't have the authority to grant the waiver, because there is no regional stormwater management plan in place. There really are no waivers and there's no exceptions for variances from the stormwater rules. Either they comply, and I can tell you that they do, or they don't get approved.

Also note, there are penalties. There's a panel section, and guarantees are something that the Borough can adjust from what the DEP has proposed. You could require a flat fee for every stormwater BMP, or every basin. You could require, if you wanted to, and the Council, could develop a Stormwater Permit Program to help enforce stormwater provisions going forward, and charge a fee for those. Some towns have done that. One good thing is that the major developers pay for the inspections and the maintenance and the troublesome of their operation and maintenance instead of the entire town through taxes. Right now, the fees are not large because there's not many more major projects that require follow up and inspections. As development grows that may be something to consider. Right now, the guarantees are basically along the lines and together with your Municipal Land Use Law guarantees. So it's Performance Guarantee and then when it's finished it's a two year Maintenance Guarantee at 15%. When the borough engineer finds everything's working after the two years that can be released. That's the clip notes. If you have questions, I'll try to answer them.

Joe Abate

So, it looks like the State is trying to improve water quality, which, obviously, I think everyone would be in favor of improving the water quality. Do you think this would be, in any way, a detriment to development in the Borough of Clayton.

stan bitgood

I would say not relatively because all of your surrounding communities have to do exactly the same thing.

Joe Abate

Right. So, do you think the County is going to pass this.

stan bitgood

It doesn't change competitive advantage at all. Everyone has to do it. It has added significant costs to development. It probably does dissuade developers from going the next route. If they're thinking about an office and a warehouse, or an office and a support building, they might well hold off to avoid that quarter acre of new impervious threshold. So in that way as it does stifle some development. Also the quarter acre of impervious used to be the threshold for major projects. The borough or the towns had adopted it and it is now mandatory for everybody. So other towns now have to adopt that quarter acre threshold of new impervious as well. So that somewhat levels the playing field a little too because other towns locally did not have that. They did not adopt it previously. You still have the one acre total disturbance threshold. So if you're disturbing an acre or creating a quarter acre impervious, it's a major stormwater project and these rules apply.

Joe Abate

What I'm concerned about is if you have a major development with a very expensive stormwater system installed. Who is responsible for that as time goes on? Is it the Borough or developer? I mean, how does that work?

stan bitgood

The developer, when he comes for approval has to submit an operations and maintenance plan and that has to identify who's going to maintain it or you're not going to approve on it if the Borough is going to maintain it. The operator is going to maintain it. That's recorded against the deed of the land and if the operator has to change or a lease change or whatever. If they put it on a different lessee, then that again, has to be recorded upon the deed. The Borough gets notified so that enforcement officers know who to go to, if it is not being maintained. The problem can arise if a business goes belly up and they tend to leave it unkempt and unmaintained. There are provisions for penalties and for compliance enforcement. That is something I think you all and council need to look at carefully because when it does happen, and it will, unless you have accumulated funds or permit fees and they can cover the Borough cost to maintain a basin that's abandoned or a green

infrastructure system that's abandoned, the Borough can get stuck with costs, if DEP wants to push you for it. Ultimately, the Borough's responsible to make sure that it gets maintained.

Joe Abate

Yeah, great. So what I'm concerned with and maybe this is a question for, Ms. Purvin, also. If a developer has a project in a town and from what I was told that that project itself is a separate entity from the developer and if that project goes belly up it has no bearing on the mother company that actually put it in. That that was a separate project, a separate entity and this is the way they get around the bankruptcy laws. So I was wondering if I can get an answer to that question?

stan bitgood

It's a legal question. I don't know the answer to it.

Susan Purvin, Esq.

So, let me make sure I understand your question. Are you saying one entity said they were going to be responsible for putting the system in and then another entity developed.

Joe Abate

No, what I'm saying is, and I'll give you an example. Let's say, Hovnanian puts a development in the Borough of Clayton and they have a major problem with their storm water system that they put in. They decide to declare bankruptcy for just for that project. Now, can they do that without touching the mother company of Hovnanian to be responsible for that?

Susan Purvin, Esq.

If only the corporate entity that was involved in building the project winds up going bankrupt, then another umbrella over them may not wind up being responsible.

Joe Abate

Right, so that's what I'm saying. This is the way they get around paying and a municipality winds up paying the difference, paying for the repairs to the problem.

Susan Purvin, Esq.

Unless you do some sort of guarantee from the overall corporate umbrella.

Joe Abate

Well, it seems like this system is always rigged. What can we do to change this system.

stan bitgood

In that regard, you can pass your own ordinance provisions that require a monetary guarantee, a bond or whatever, that extends essentially in perpetuity. Towns have

adopted an annual fee approach to cover that. You get enough major projects throughout paying an annual fee, there's only a small percentage that's actually going to fail and go bankrupt and walk away from it. If you only have one that fails.

Joe Abate

It will bankrupt the town.

stan bitgood

But if you have a lot of them the fees can be fairly reasonable and fairly small, because you can accumulate those from everybody, and have enough to cover the one that goes belly up. You can lien the land for all costs incurred toward enforced maintenance as far as I know. Yeah, it's a different process ordinance. It can become a lien on the land.

Joe Abate

I know but people are living on that land so we're liening on their property that they paid for. So that's a problem I would recommend to the Borough Council that they pass such an ordinance to protect the Borough of Clayton in the future. I've heard it's happened in other towns. That's all I'm saying. Anyone else have any questions for Mr. Bitgood?

Melissa Fox

It's not a question, I guess it's more of an observation, Mr. Chair. I support you with the statement that you just made, because if I heard Stan correctly, that any costs ultimately are the burden of the town. So, any costs that aren't anything that were taken care of, it's kind of just let go or whatever then ultimately, it's the responsibility of the town to carry. It sounds like to be able to address that issue would have to go to council to try to build in some sort of monetary relief. Is that the case? Even if we approve it today, which it sounds like we don't have a choice, because this is essentially what's required and will put us in line with the language from the State as a town put some sort of monetary relief in place. Is that fair to say?

stan bitgood

If you as town cannot compel compliance and maintenance needed, you have to notify the owner responsible. You will take action to correct it and incur those costs presumably will be a lien against the property. Ultimately, when the property sells, the new owner/purchaser comes in you can demand those costs be paid. I presume before you grant another site operation. One thing I don't know, it's more of a legal question, is can you condition operation of a major stormwater system and condition the use on proper maintenance of that system. If so, then the zoning officer has an idiot hammer not a big one but a hammer to tell people you know you're right you're no longer in conformance with your use and take whatever action the Municipal Land Use has.

Joe Abate

And I bring this up because of what is happening around the country with climate change around the world. This is a major problem in a lot of areas including New Jersey. I wouldn't say it's a tremendous problem in the Borough of Clayton but you never know. So I would like the Borough to protect itself best it could so we don't have this problem.

Steve Branco

So can we ask that the Ordinance be worded correctly that it protects the Borough? Maybe add verbiage to it and the fines that come with it so we have both. So they can't back out. So it's in the ordinance along with the penalties that come with it. I don't think we can move forward on it until we see an Ordinance so can we table this tonight?

Sue Miller

Can we table this tonight? No, I will tell you why. We're already behind the eight ball. This was supposed to be adopted by the beginning of March. So, what we could do down the road is maybe modify it Stan? I would say we get at least get something on the books so we don't miss a DEP timeline.

stan bitgood

Yeah and I would suggest that we look at the last page or two.

Darlene Vondran

Can you adopt it with conditions?

stan bitgood

Well, actually, doesn't the board recommend adoption to the council? Surely, you actually have to adopt this tonight.

Joe Abate

We're recommending to adopt it.

stan bitgood

Correct me if I'm wrong, Susan they can recommend council to enhance or beef up the penalty provisions.

Susan Purvin, Esq.

They could yeah.

Steve Branco

The language in the Ordinance.

Sue Miller

I take Joe's point and Melissa's and everybody's. I think it's a really valid and necessary, but the only thing I'll throw out there just playing devil's advocate what we're talking about as companies going under. So typically if they're going under they're going to be under some type of bankruptcy protection and we're going to be low on the list.

Steve

Ok, but we're on the list.

Sue Miller

Yeah.

stan bitgood

I don't believe you're bond or your performance guarantee for stormwater has to be a finite period, I don't think it has to expire. Other towns have adopted only two years, but I believe you can acquire under ordinance. If you would put in the ordinance, council adopts it, it's basically a permanent performance guarantee. Really, any form you want, I don't even think it has to be a bond, I think, could be cash or a letter of credit. Susan will be able to weigh in on that. Penalty provisions right now are it at 88-95-12, and it say any person violating that shall be subject to one of the following:

imprisonment in the county jail not to exceed 90 days;
a minimum fine of \$100.00 but not exceeding \$2000.00; or
community service not exceeding 90 days.

such violation shall be deemed guilty of violation thereof for each and every day during which such violation shall continue and is given and provided by the chapter.

So, now how that gets enforced, I guess that has to go to what superior court? I think so. You might end up collecting if they have any money available. But like you say, you may be bumped down on the list. Then there's an additional provision that amps up those penalties for multiple offenses. The form of those came from another Township actually.

Joe Abate

Well, I, I just think that the Borough needs to put something in place to protect the taxpayers of the Borough of Clayton in the future from anything like this taking place and it's going to happen. I predict with climate change it's going to happen. So hopefully not in the Borough of Clayton, but in any case, when it happens in the State of New Jersey, all the people of New Jersey pay for it. So we need to protect ourselves when we have the opportunity to do so.

Does anyone else have anything to add to our discussion tonight?

Melissa Fox

Nothing for me.

Joe Abate

Anyone else have anything to say? Well, then I would make a motion to recommend this ordinance to the Borough council for approval through the DEP and also ask council to look into passing an ordinance to protect the Borough of Clayton from any problems in the future.

M/ Fox, S/ Vondran

Joe Abate

Ok, roll call.

Debbie Schlosser

Abate	Yes
Branco	Yes
Culver	Yes
Fox	Yes
Miller	Yes
B. Saban	Yes
T. Saban	Yes
Vondran	Yes

Joe Abate

Thank you. Under Resolutions, we have Resolution #06-2021 granting bulk variance relief to Rite Aid of New Jersey Inc./ Realmarq Development, LLC, 236 South Delsea Drive, a/k/a, Block 903, Lot 8, motion to approve that resolution.

M/ Vondran, S/ B. Saban

Joe Abate

Roll call.

Debbie Schlosser

Abate	Yes
Branco	Yes
Culver	Yes
Fox	Yes
Miller	Yes
B. Saban	Yes
T. Saban	Yes

Vondran Yes

Adjournment

M/ Vondran, S/ Fox

Joe Abate

All approve - Ayes

Joe Abate

Next meeting is May 24th. Everybody stay safe.

Submitted,

A handwritten signature in cursive script, appearing to read "Debbie Schlosser".

Debbie Schlosser

Zoning/Planning Board Secretary