

Borough of Hasbrouck Heights - 12/28/2010

BOROUGH OF HASBROUCK HEIGHTS

**SPECIAL MEETING
M I N U T E S**

December 28, 2010

A Regular Meeting of the Mayor and Council of the Borough of Hasbrouck Heights was held on Tuesday, December 28, 2010 at 7:19 p.m. at Borough Hall, 320 Boulevard, Hasbrouck Heights, New Jersey.

Borough Clerk Rose Marie Sees stated that the meeting complied with the Sunshine Law, adequate notice of this meeting having been made to all members of the Council by personal service on December 17, 2010 and transmitted to The Observer, The Record and The Herald News on December 17, 2010.

ROLL CALL: Present: Mayor Rose Heck, Councilman Justin A. DiPisa, Councilwoman Sonya Buckman, Councilman David Gonzalez (arrived late), Councilwoman Pamela J. Link, Councilman John Dingertopadre, Councilman Russell Lipari

Councilman Lipari, noted that due to the fact that he had a conflict of interest as, he asked to be excused.

SUBJECT: Berkshire Road Resident Complaints Re: 214 Terrace Avenue Medical Building/Surgery Center Alteration

Mayor Heck asked Interim Borough Attorney Steven Sinisi to speak.

He began by noting the citizens who were present was due to notices they received from the Borough and to Counsel, Mr. Toronto on behalf of certain residents of Berkshire Road and Mr. Epstein on behalf of the Center. Following the meeting of December 14, 2010, in light of comments and concerns expressed by residents, a meeting was proposed with the Center personnel in attendance also to address these complaints. Litigation has since been initiated addressing some of these comments and concerns. The mission of this meeting was to confine to the comments and concerns of the residents and provide if possible responses from the Center to better understand the situation and fashion remedies for it. He invited Mr. Toronto to give a brief statement and when done, invited Mr. Epstein to give his statement.

Philip Toronto, who is an attorney in Hasbrouck Heights, represented a group of citizens from Berkshire Road. He said he knew there were a number of issues brought before the council at the last meeting. Essentially, a litigation ensued. He said that particularly the concerns were that the Building Department erred in granting a building

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permit for this project without some sort of municipal review, namely a variance. Whether it required a D variance which would be a continuation of a nonconforming use, which the hospital is, or a C variance because it is an extension of the structure. That would be something he and Mr. Epstein could argue in court. He said the issue is the generator placed within 3 feet of the right of way and whether it encroaches into the buffer zone for that building. It is their position that the entire site should have been buffered where it protruded into the residential zone that is required in the Borough's zoning ordinance. In addition it was the citizens position that they expanded the use of that building by moving the generator three feet into the right of way, and venting pipes and new apparatus going down the back of the building with Berkshire Road looking what appears to be an industrial site. They were asking that the building permit be revoked. They apply immediately for variance relief to the Board of Adjustment and submit a site plan where the residents could have seen this before it occurred. On the original plans, the generator had a field change. All of this could have been avoided by sending it to the zoning board along with a landscaping scheme. They were looking for removal of that generator to a less-intrusive area and buffer across the entire back of the building.

Andrew Epstein, an attorney with Lampf, Lipkind, Prupis & Petigrow, 80 Main St., West Orange, NJ was representing the Hasbrouck Heights Surgery Center. He referred to the application made to the Building Inspector for permits. He said under the Boro's ordinance the Building Inspector has to confer with the Zoning Officer who did not think there was any problem with respect to the application, otherwise he would have told them to apply to the Board of Adjustment. He did not see a problem and did not think this was an expansion of a non conforming use, that there have been medical facilities at this site for at least 80 years. He said you have issues with respect to the generator and duct work and collateral issues with the buffer. He did not think the aspects of commercial and residential uses. He had with him an architect, facility manager, construction person, owner and they were prepared to tell why the generator was placed there, how it conforms to this particular type of use and what kind of buffering there would be, with substantial buffering around the generator in place. Plans for planting and fencing were in place for behind the building. He asked to have Craig Buermann answer why there were changes to the placement of the generator, the assorted buffers and landscaping.

Craig Buermann, OA Peterson Construction, 78 N. Willow St., Montclair, NJ answered that generally the generator is placed as close as possible to where the primary power enters the building. The electric room is probably 15 feet to the right. Originally it was placed in a slightly different position where the axis was rotated a little by PSEG as their gas lines come up the center of the roadway and veer toward the building to the left. PSEG does not allow concrete be placed over existing gas lines. When asked by Mr. Epstein, it was not cost feasible to move the generator at this time.

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Richard Burke, 244 Berkshire Road, asked what percentage is lost in efficiency by moving it 10 to 15 feet away. This question was referred to the engineer.

Susan Brown, Associate Principal at Nadafkey Kopelson Architects, 95 Washington St., Morristown, NJ.

Mr. Sinisi asked what were the capabilities of this generator and what was it designed to do.

Ms. Brown answered this generator is used in case of a loss of power when the surgery center is operational, to maintain a patient and the procedure. It is configured and fueled per State and Federal regulation.

Mr. Epstein said he could also have the facility manager testify to the length and continuance. Mr. Sinisi asked that she tell precisely the decibel levels taken into account.

Ms. Brown said that post 9-11 required you were not allowed to have an interruptible gas feed any more, you need to have a self-contained fuel source, diesel or propane. With regard to the size, she said the engineer goes into very complicated calculations based on the lodes and branch systems.

Mr. Sinisi said this facility has operated for many years, if this is an alternate or backup generator, the size in comparison is a concern to the residents.

Ms. Brown said that the code requires a ventilation system, sterilizers, lights and outlets.

Joan Balducci, facility manager, HH Surgery Center, said the purpose of the generator is the sole support of the ambulatory surgery center, being able to provide all life safety systems, environmental control, elevator and anything for safety of the patient. It is designed to run no longer than 90 minutes. She said testing requirements are it has to run 30 minutes once a month, and 90 minutes once a year. She can determine what is the best time to run.

Mr. Toronto said the neighbors were not arguing the use of the generator, and questioned Mr. Buermann about placement, that the residents want it moved further onto the hospital property out of their view and wouldn't it be better closer to the building and the electric room.

Richard Burke, alluding to the running time, asked to move it out of the people's way.

Ms. Balducci said with the evolution of technology, in comparing the generators and equipment now, the requirement is very different.

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Mr. Toronto was not arguing the necessity of the generator, that it was a not for profit hospital, now it was for profit, that the fact of the matter is and the position of the neighbors is that a variance was needed to make it more conforming.

Mr. Sinisi asked to stay on the generator as this was the significant issue, its size and placement.

Mr. Epstein did not disagree with Mr. Toronto, but the zoning officer did not see a problem and didn't deny the application, that over one million dollars has been spent. If he had denied the permit, then the application would have been threefold, challenge the determination of the zoning officer, as part of the application, to see if a variance was required, either structure or expansion. The only issues raised are aesthetic and dimensional.

Mr. Sinish thought there was one other issue, the location issue and encroachment in terms of where it is presently located.

Mr. Epstein said it was what yard it was considered.

Mr. Sinisi said in interpreting Mr. Epstein's position, that the work has been done. Is there any way to address the placement of the generator be altered or accommodated. He said more specificity of what the residents needed to hear as there was no vetting of this application before any board. He asked if there was someone who could talk about the landscaping.

Mr. Epstein said the generator is installed, fencing and shrubbery have planned or already placed. He asked Mr. Buermann to speak.

Mr. Buermann said the plans were to plant arborvitaes coming down the fence line with one row and some around the generator itself. The ones around the generator were planted within the last week but were stopped once litigation. He said there will be a white PVC fence to match the neighbors, six foot high without the lattice on top but solid to the curb line and down the property.

Mr. Sinisi asked Mr. Toronto's opinion of this.

He said this property should have been buffered and screened a long time ago, that the problem was the generator which he said was 10.3 foot high, 6 feet wide and goes back 12 feet and that the plans must be at least 30 pages, on the last page it shows a pad horizontal to the building which provided adequate space to put a 5 foot buffer along the right of way. It would have not caught the attention, as this beige monstrosity does when traveling Berkshire Road. From the citizens point of view, it required a review by the municipality even if you filed an argument against needing a variance,

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you still would have had to submit an application, plans, site plan, landscaping, lighting, dumpsters site, that he believed the zoning officer made a mistake. There was no landscaping plan in the building department, it was 3 feet to the curb of the right of way. Can they get a fire truck back there.

Mr. Epstein responded that it was PSEG that caused the minor movement to comply. If a variance was not needed, there was no need to apply for one.

Mayor Heck interjected that there were a number of people who still wished to speak.

Mr. Sinisi asked Mr. Epstein for an answer on the decibel issue and if an actual landscaping plan were available to place on file and that a copy be provided the Borough and Mr. Toronto.

Ms. Brown said they were aware of the decibel level and the design of the generator which is part of the sound enclosure which makes it big but acts as a muffler to 65 decibels 10 feet to the property line during the day and 55 decibels 10 feet to the property line during the night.

Mr. Sinisi invited residents to come forward.

Joann Clark, 195 Terrace Avenue, was involved with the citizens when the building was redoing their parking lot and distinctly remembered that it was a nonconforming building in a residential lot that everything had to go by variance and didn't understand why they didn't get a variance.

Jim Skinner, 177 Berkshire Road, with regard to the distance of the generator, said he builds data centers for Wall Street trading operations in Manhattan high rise buildings. There are sometimes 30-50 floors away from the generator which is pretty much the same size. It is really a cost or engineering process that determines the distance and he would challenge it. There are generators on roofs in Manhattan that supply the whole building.

Robert Searle, 51 Henry Street, had driven down Berkshire Road and thought he was looking at a container. He had served on the Planning and Zoning Boards for 23 years, and in his opinion it was a definite expansion of a non-conforming use. He commended the neighbors for bringing it forward. He was very sympathetic to the folks. He gave an example of a building where conduit ran around the building.

Mr. Sinisi said if this were a land board hearing, referring to Mr. Lamparello coming forward to speak, the question would be asked the counsel why is it that one of your clients would be speaking when they have availed themselves of counsel. Mr. Lamparello said the process has been flawed and what they presented as interior work, they added to it and that was why they were here today.

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Michael Corcoran, 195 Berkshire Road, thought there were three issues, one would be litigated, the second was going to Mr. McManus who had an engineering report of a gasoline flow underneath his house, when they bored into the garage, the report was technical and that it was not overlooked for remediation, and thirdly he was appalled at the 180 degree difference of opinion between the building office and Ms. Ramirez. It appeared to him to be a bureaucracy. On a separate note, he commended Mr. Spindler and the DPW for the snow clearance and garbage pick up as well.

Marcel Ramirez, 205 Berkshire Road, whose home is adjacent to where the generator is placed. For months and months she questioned the building department on the work being done and was never told there was to be a generator. She questioned when they were putting in the concrete base if they were putting in a road. She felt it was hidden from her. She referred to the Borough Hall generator's placement away from homes and why this couldn't be done. She said the parcel of land is one of the largest in town and there are parts not utilized where they could have placed it. She asked if the generator will vibrate and cause her alarm system to be set off. Three feet of her property has been graded down, roots that removed from her tree might cause problems.

Mr. Sinisi said the meeting would continue, and thought there was not enough said about the vents that are part of the series of complaints.

Mr. Toronto said as depicted in the photographs there are a series of vents protruding down the side of the building, jutting out at probably three feet wide, not attractive and very difficult to buffer as they begin from the top floor down, and this was not interior work pushing into the residential zone.

Mr. Sinisi said or some decorative feature like a pseudo balcony of some kind.

Mr. Epstein said it doesn't look like a pseudo balcony and pointed to the picture showing where the shrubbery goes. There is piping on the outside of the building, there was no deceit on his clients' part.

Mayor Heck said two of the homeowners who were here the last time had things done to their property that they were not aware was happening, which would be reflected in those minutes and if he so desired, a copy could be sent to him. He said he would be happy to review it but couldn't speak with what happened during the course of construction. Mayor Heck said he should have made himself aware of the entire situation, not just the law suit which came after.

Mr. Sinisi said one of the persons the Mayor referred to complained about the issue of boring in or around his garage. He asked if any of the personnel present that confirms that borings were undertaken and whether any results have been received.

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Dr. Peter McGovern, part owner of the building and principal of the Surgery Center, said their intention when they took over the building in October 2008 was to rectify the bad history that HUMC had as a landlord and be better neighbors. He continued as far as the drillings, apparently there were two underground storage tanks, one gasoline about two feet from the neighbor's garage and in the area where the generator is now, there is a 200 gallon oil tank. Both tanks have been sealed. He said they were not told about them when they bought the property but when the appraisal was done, the person thought there might be tanks and they hired an environmental company to look for tanks. Their report before they bought the building said they could not find any tanks, although there were abnormal magnetometry readings in those two areas. Drillings were done through the right of way and where the generator is. When the construction began the tanks were discovered. The process of remediation began to remove the contaminated soil. The resident's garage is right on the driveway and when they spoke to the person, he thought he smelled gasoline vapors in the house so someone was sent into the home to do testing or any danger to them. The vapor intrusion test proved negative and as of right now there is no leakage from the 4,000 gallon oil tank and those samples negative. He said they were following the DEP process for remediation of that soil and a monitoring well was installed. When Mr. Sinisi asked if they were doing some brown water monitoring, Dr. McGovern said yes. Mr. Sinisi said if a private company was used, and Dr. McGovern said yes.

Mayor Heck recommended to Dr. McGovern that he reach out to the borough clerk for the minutes of the Dec. 14 meeting to see the complaints made and as a good neighbor respond to them.

Dr. McGovern said the gentlemen who came from that company spoke with the neighbor directly. Mayor Heck advised Dr. McGovern that a CD of that meeting was available.

Thomas Mergola, 235 Berkshire Road, (who was speaking in Mr. McManus' behalf as he was not present) said when they did the testing in Mr. McManus basement and garage he never got a full report, the report he got he couldn't understand and he was asking if it was contaminated, how long do you have to wait for it to be remediated. Mr. Sinisi said his question did not come out that way, he was very specific about what he was concerned about and what activity occurred. He asked Dr. McGovern if his attorney transmit to Mr. Kronyak a copy of that report. Dr. McGovern said it was already done, and now they are monitoring the ground water, it happened several months. He pointed out that if the surgery center construction had not happened, they would never have known about the tanks or leak.

Mayor Heck interrupted and said everything was addressed that could be at this point in time, and if any reports or dialog can be continued between the two attorneys. She recommended to Dr. McGovern that perhaps an outreach from the Center to the

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neighbors would be nice. She said that when he listened to the CD, he would hear what the hurt feelings were, not just the generator, but additional concerns about the way they've been treated, it is a matter of public relations.

Marcel Ramirez referring to the three foot setback that should have been, but the last time they were told it should be 10 feet from her property line. They were supposed to do a "presurvey" but she did not think it was set the right way to begin with.

Mr. Epstein said he needed to provide two things, a landscaping plan showing the proposed work for around the generator and the rear of the property and was told to give it to Mr. Kronyak, Mr. Toronto and Mr. Sinisi. He would also provide the environmental reports.

Mr. Job was asked about the surveys, and he said a survey from the hospital to show the generator's location, but what exactly the 10 foot reference meant, whether it's the ten foot setback, ten foot equipment, how far off the property the generator is.

Mr. Epstein said an as-built survey, yes.

MOTION TO ADJOURN:

At 8:42 p.m. Mayor Heck asked for a motion to adjourn, which was made by Councilwoman Link, seconded by Councilwoman Buckman and unanimously carried.

I, ROSE MARIE SEES, Borough Clerk of the Borough of Hasbrouck Heights, do hereby certify that the foregoing Minutes are to the best of my knowledge a true account of the Special Meeting held on December 28, 2010.

Rose Marie Sees, Borough Clerk