

**WYCKOFF PLANNING BOARD**  
**APRIL 14, 2021 PUBLIC WORK SESSION MEETING MINUTES**

Public Work Session: 7:30 p.m. Second Floor Court Room, Memorial Town Hall  
Public Business Meeting: 8:00 p.m. Second Floor Court Room, Memorial Town Hall  
The meeting was also streaming live on the Township of Wyckoff YouTube channel.

The meeting commenced with the reading of the Open Public Meeting Statement by Chairman Robert Fortunato.

“The regular April 14, 2021 Public Work Session Meeting of the Wyckoff Planning Board is now in Session. In accordance with the Open Public Meeting Act, notice of this meeting appears on our Annual Schedule of Meetings. A copy of said Annual Schedule has been posted on the bulletin board in Memorial Town Hall; a copy has been filed with the Township Clerk, The Record, The Ridgewood News and the North Jersey Herald and News – all newspapers having general circulation throughout the Township of Wyckoff. At least 48 hours prior to this meeting the Agenda thereof was similarly posted, filed and mailed to said newspapers.” Formal action may be taken.

Members of the public are welcome to be present at this meeting. However, in accordance with Section 7(A) of the Open Public Meetings Act, participation on the part of the public at this meeting will not be entertained.

*“All applicants are hereby reminded that your application, if approved, may be subject to the terms, conditions and payment of the Affordable Housing Development Fee requirements of the Township. Information can be obtained from the Code of the Township of Wyckoff, Chapter 113-8 on the Township’s website, [www.wyckoff-nj.com](http://www.wyckoff-nj.com)”*

*“This meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.”*

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**ROLL CALL**

Board Members present: Rudy Boonstra; Township Committeeman, Rob Fortunato; Chairman, Kevin Purvin; Vice Chairman, Kelly Conlon, Frank Sedita, Mike Homaychak, Glenn Sietsma, George Alexandrou, and Mae Bogdanský.

Board Members absent: Melissa Rubenstein, Mayor; and Scott Fisher.

Staff present: Kevin Hanly; Board Attorney, Mark DiGennaro; Township Engineer, and Maureen Mitchell; Board Secretary.

**OLD BUSINESS**

Approval of the March 10, 2021 Work Session and Regular Business Minutes

Mr. Homaychak made a motion to approve the March 10, 2021 Work Session and Regular Business Meeting minutes. Second, Mr. Purvin. Voting in favor: Ms. Conlon, Mr. Sedita, Mr. Homaychak, Mr. Sietsma, Mr. Boonstra, Mr. Purvin, Ms. Bogdanský, Mr. Alexandrou, and Chairman Fortunato.

**RESOLUTIONS TO BE MEMORIALIZED****Township of Wyckoff Maple Lake Minor Subdivision Block 320, Lots 10.02 and 11**

There was a discussion regarding the language in the Resolution pertaining to the funding of a potential future sewer connection hook up for the residents on Pace Drive. It was agreed upon that it would be best not to include binding language that would limit who funds the project.

Mr. Boonstra made a motion to approve the Resolution. Second, Mr. Homyachak. Voting in favor: Ms. Conlon, Mr. Sedita, Mr. Homyachak, Mr. Sietsma, Mr. Boonstra, Mr. Purvin, and Chairman Fortunato.

**COMPLETENESS REVIEW****DeLorenzo, Mark 359 Ruit Farm Rd. Blk 429 Lot 44**

**(The applicant is seeking approval to move soil in excess of 100 cubic yards to install an inground pool)**

Mark DiGennaro, the Township Engineer provided the following technical summary of the application:

The applicant has submitted a Demolition Plan, Pool Plan and Construction details prepared by Omland and Osterkorn Engineering dated last revised 3/1/2021 along with an application and photos. The applicant proposes to improve the property by constructing an inground swimming pool and cabana requiring regrading of the property resulting in soil movement in excess of 100 cubic yards requiring Planning Board approval under 186-22H of the Township Code. The plan proposes to remove two (2) trees from the property. The proposed tiered retaining wall along the north-westerly property line and a single retaining wall along the easterly property to effectively grade the property. Wall setbacks from the property line are conforming. All retaining walls in excess of 2' in height require design calculations by a New Jersey Professional Engineer. Approximately 230 cubic yards of soil are proposed to be removed from the site. Stormwater design and calculations have been included on the plan and satisfy the Township requirements. Retaining wall stability calculations must be submitted for review and approval prior to the issuance of any construction permits. Approval from the Bergen County Soil Conservation Service shall be a condition of any approval. Based on the information provided, Mr. DiGennaro stated that he takes no exception with the Planning Board deeming the application complete and proceeding to a public hearing.

Mr. Homyachak made a motion to deem the application complete. Second, Mr. Sietsma. Voting in favor: Ms. Conlon, Mr. Sedita, Mr. Homyachak, Mr. Sietsma, Mr. Boonstra, Mr. Alexandrou, Ms. Bogdansky, Mr. Purvin and Chairman Fortunato.

**Mueller, Maggi 478 Ellis Pl. Blk 347 Lot 13**

**(The applicant is seeking approval to install a 6' high, solid fence on a corner lot with two front yards)**

Mr. DiGennaro provided the following technical summary of the application:

The property is located in the RA-25 zone and is a corner property having frontage on Ellis Place and James Way. The applicant is proposing to install a 6' privacy fence in the front yard along James Way requiring variance relief. The height of fences located in rear or side yards shall not exceed 6' above the normal grade. The proposed privacy fence in the front yard exceeds the 4' maximum allowed for a front yard thereby requiring Planning Board approval. For site distance,

no fence on a corner lot may be installed within 25' of the point of intersection of the front and corner side lot line in order to maintain clear visibility for traffic at the corner. The proposed fence complies with this regulation. According to the Township Code, fences installed in the front yard shall be landscaped with hedge or shrubs of a height equal to at least ½ of the height of the fence along the portion in the front yard. There are existing shrubs on the property along James Way and the applicant is proposing to install the fence behind the existing shrubs. Mr. DiGennaro stated that he takes no exception with the Board deeming the application complete for a public hearing.

Mr. Homyachak made a motion to deem the application complete. Second, Mr. Sietsma. Voting in favor: Ms. Conlon, Mr. Sedita, Mr. Homyachak, Mr. Sietsma, Mr. Boonstra, Mr. Alexandrou, Ms. Bogdansky, Mr. Purvin and Chairman Fortunato.

**Kayal, Gary 225 Van Houten Avenue, Block 258 Lot 13  
(The applicant proposes soil movement in excess of 100 cubic yards)**

Chairman Fortunato provided the following background information on the application: There was a previous application for soil movement which was brought before the Board in 2019. Mr. Kayal had imported approximately 700 or 800 cubic yards of soil onto his property prior to obtaining permits or coming before the Board for approval to do so. Mr. Kayal also did a substantial amount of other work on the property without obtaining the required permits or approval to do so. At the time, Mr. DiGennaro notified Mr. Kayal that he needed to cease all work on the project and submit an application to the Planning Board for the soil movement and construction of retaining walls. Mr. Kayal then submitted an application to the Planning Board and after several hearings, the application was denied in 2020. The Resolution of denial was approved by the Board and the remedy was to have Mr. Kayal remove all of the soil that had been imported to the site. Bruce Whitaker, the applicant's Attorney, presented an alternate proposal at that time stating that if the Board would grant a stay of enforcement, Mr. Kayal would submit a new application to construct an inground pool thereby facilitating the removal of a substantial amount of the previously imported soil. A 60-day stay of enforcement was granted by the Board to allow the applicant to submit a new application.

Chairman Fortunato then read into the record the following excerpt from the stay of enforcement Memorializing Resolution:

*"Mr. Whitaker stated that the applicant would like to install an inground swimming pool on the property. If allowed, the applicant may be required to remove the soil that had been previously imported. Vice Chairman Purvin stated that it appears that the proposal is substantially different from the original application. He asked if the Board could withhold on the enforcement of the Resolution for sixty (60) days to allow the applicant to submit a new application as proposed in Mr. Whitaker's letter. Board Attorney Hanly said that since the Memorializing Resolution denying the soil movement application had been adopted, any enforcement of the denial would be handled by the Building Department's Code Enforcement Officer. Mr. Hanly added that as a matter of courtesy, the Board can request that the Building Department withhold enforcement for sixty (60) days to allow the applicant to file a new application with the Building Department. Township Engineer DiGennaro stated the Board's denial of the soil movement application creates a situation whereby the site, as it currently exists, is not lawful. As such, submitting an application for permits to construct a swimming pool would result in a denial and the matter would be referred back to the Planning Board for a soil movement application, grading, construction of a retaining wall, and pool installation. Mr. DiGennaro also stated that the project proposed in the letter would constitute a substantial change. Mr. Whitaker asked for clarification on what actions will be taken if his client decides not to submit an application for the construction of a pool. Mr. DiGennaro stated that Construction Enforcement would effect the terms of the denial which would entail, among other*

*things, removal of the soil. Mr. Whitaker said he will advise his client of his options as discussed this evening."*

Finally, Mr. Fortunato stated that ten (10) months has passed since the stay was approved and the applicant has again submitted an application for soil movement with no proposal for the construction of an inground pool.

Kevin Hanly, the Board Attorney, stated that the legal concept of this matter is called *res judicata*. This comes about when a matter is adjudicated, and the same parties return with an application that is not substantially changed from the application that was previously adjudicated. He went on to say that the Board has to make a determination whether the second application is substantially different from the previous application. If it is substantially different, the applicant can move forward with the new application however, if it is determined that it is not a substantially different application, *res judicata* covers it and the applicant cannot go forward with the new application. Mr. Hanly read into the record an email from Mr. Whitaker which stated *"It is my position that res judicata does not apply because there is a significant difference in this application from the prior application. I have been advised that the prior application proposed 150 cubic yards of export and 150 cubic yards or import as replacement. In this instance the application is proposing 420 cubic yards of export and 978 cubic yards of import. There is a disparity in what is now being proposed to what was originally denied. It is not the same relief being sought because of the large disparity in the quantities involved. Res judicata does not apply when there is a substantial change in the application itself and it is my position that taking all of the soil out that was imported v. being denied for taking only a portion of the soil out constitutes a substantial change."*

Mr. DiGennaro stated that back in August or September of 2020, Mr. Kayal's Engineer submitted a plan for an inground pool however he informed the applicant and his Engineer that he could not accept the pool application until a new septic design was approved because the septic system had to be moved to accommodate the proposed pool on the property. The septic design plan was subsequently submitted and approved. The pool application was then resubmitted in December which is when Mr. DiGennaro discovered that a variance would be required for exceeding accessory lot coverage. The application was placed on a Planning Board agenda however the applicant decided not to proceed with the pool application due to the variance requirement and submitted the soil movement application that is before the Board this evening for completeness.

Chairman Fortunato said that he does not believe the Board has enough information at his time to determine if this is a substantially different application. Under the circumstances and due to the time limitations, Mr. Fortunato recommended deeming the application incomplete to allow time for the Board to determine if this is a substantially different application and to allow the applicant's Attorney to provide additional information to substantiate that.

Mr. Hanly stated that this is a reasonable course of action.

Chairman Fortunato stated that the Board has been extremely lenient with Mr. Kayal in granting the 60-day stay of enforcement which allowed him time to submit a pool application adding that since the pool application was withdrawn before it came before the Board, the stay of enforcement should no longer be in place.

Mr. Homyachak stated that the full background story was not provided at the start of this meeting. He said that Mr. Kayal told the Board that he slowly brought in dirt and rocks to his property which it turns out was 774 cubic yards or 70 dump truck loads of dirt without a permit or Board approval. Mr. Kayal also constructed a retaining wall without permits and ran a drainage pipe from his roof

leader under the ground and though the retaining wall in the rear of the yard. The water runoff from the pipe ran onto the Library property and flooded the basement of the Library. Mr. Homyachak went on to say that even after Mr. DiGennaro visited the property and advised Mr. Kayal to stop the work and submit an application to the Planning Board, Mr. Kayal disregarded the order and continued to work on the retaining wall and the landscaping on his property.

Mr. Alexandrou asked if there is some way this matter can be resolved other than having Mr. Kayal remove the 774 cubic yards of soil that he previously imported. Mr. Fortunato said that unfortunately, the matter of the source of the imported soil is a large part of the problem with the soil remaining in place as a very limited number of samples were tested.

Mr. Boonstra stated that the entire stay of enforcement was predicated on the fact that a pool application would be submitted for consideration by the Board, and that did not happen. On that point, there is an ongoing daily violation of the Board's Resolution and perhaps should be referred to Mr. DiGennaro's office for enforcement and the monetary ramifications that go along with that.

Chairman Fortunato asked for a motion on the application. Mr. Homyachak made a motion to deem the application incomplete. Second, Mr. Sietsma. Voting in favor: Ms. Conlon, Mr. Sedita, Mr. Homyachak, Mr. Sietsma, Mr. Boonstra, Mr. Alexandrou, Ms. Bogdanskyy, Mr. Purvin and Chairman Fortunato.

Chairman Fortunato said that he would like this matter referred to Mr. DiGennaro to consider enforcement because Mr. Kayal is clearly in violation of the Resolution that was passed. At Mr. Kayal's request, the Board made amendments to the initial Resolution with regard to allowing him a stay to submit an application for a pool. The Chairman asked for a motion to refer the matter to the building Department for enforcement.

Mr. Homyachak made a motion to refer the matter to Mr. DiGennaro's office with regard to enforcement of the violation of the Memorializing Resolution dated July 8, 2020. Second, Mr. Purvin. Voting in favor: Ms. Conlon, Mr. Sedita, Mr. Homyachak, Mr. Sietsma, Mr. Boonstra, Mr. Alexandrou, Ms. Bogdanskyy, Mr. Purvin and Chairman Fortunato.

There being no further business, a motion to adjourn the Work Session meeting was made, seconded, and passed unanimously. The Work Session concluded at 8:18 p.m.

Respectfully submitted,

Maureen Mitchell, Secretary  
Wyckoff Planning Board