

MINUTES

7:30 PM

PRESENT: R. Dodds
D. Haywood
P. Lubitz
J. Mathieu
L. Riggio
J. Strasser
M. Synchronick
L. Voronin, Alt #1
C. Ely, Alt #2
B. Width, Attorney

ABSENT: S. McNicol

CALL TO ORDER

The meeting was called to order by M. Synchronick at 7:30 PM.

NOTIFICATION

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Courier News on January 19, 2017, and has been posted in the Kingwood Township Municipal Building on January 13, 2017 and has been filed with the Municipal Clerk.

NEW AND PENDING MATTERS

Bunker Hill Homes – Block 22, Lot 17.04 – Request for Amendment to Prior Approval Conditions

M. Synchronick stated that in October Bunker Hill had requested a release of the requirement to install a bio-retention basin on the property which was not functioning. The Township engineer agreed with the request. Some of the Board members were concerned that the street trees were not planted. A condition of approval was added that the street trees had to be planted before a Certificate of Occupancy (CO) could be issued on Lot 17.04.

B. Width stated D. Pierce had forwarded a memo to the Board detailing his position, a brief history of the issue and his recommendation. Essentially everyone was under the understanding that Lot 17.04 was the last lot in the development. It now seems that there is one more lot, Lot 17.03 that remains undeveloped at this time. It would cause undue hardship to the applicant to have to sit on Lot 17.04 until a CO could be issued. The Board can take the steps of amending the conditions to permit the issuance of a CO on Lot 17.04 and, then as offered by the applicant, withhold a building permit on Lot 17.03 until the street trees have been planted.

D. Haywood stated she has an issue with removing that condition. The applicant caused the condition by not having the trees already installed.

P. Lubitz inquired what the original condition of approval was in regard to the planting of the trees. M. Syrnick responded the original approval required that the street trees would be installed after the final pavement course.

P. Lubitz stated he doesn't know how the Board was able to change the original condition of approval at the 11th hour requiring the trees to be planted when the last lot was developed. The residents of that road spent a lot of money on those houses and have lived many years without the trees and the final pavement course. It is a lesson to the Board moving forward. In an article in the NJ Planner, a Board imposed pre-conditions to have the street trees planted.

C. Ely stated the Board is confusing the street trees with reforestation.

M. Syrnick stated the applicant has reached an agreement with the DEP for reforestation. This Board has had a lot of frustration with the fact that this development has gone on for so long and that the trees still have not been planted.

D. Haywood stated there is no indication that the applicant will develop the final lot.

P. Lubitz stated there is enough money in the performance bond to cover the paving of the road and the planting of the trees. He inquired, at what point, can the Township step in and tap into the performance bonds.

B. Width was not aware of the standard but would be happy to research it.

J. Mathieu stated on the development on Thatcher Road language was added to the condition of approval that if the Township was required to do the mowing and maintenance of the retention basin the developer would be charged. He wasn't sure if it was going to be charged against a bond.

J. Strasser inquired isn't a Homeowner's Association going to be in place for the development.

M. Syrnick stated the Board did discuss it at the October 12th meeting and she believes that the engineer said that the only leverage the Township has is to draw on his performance bond.

P. Lubitz stated drawing down on the performance bond does not have to do with the issue at hand. There are conditions in the original approval and the Township and applicant have to abide by the conditions.

B. Width stated if the resolution is not amended the applicant will have to plant the trees before the CO is issued for Lot 17.04.

M. Syrnick stated when the Board adopted the amended resolution, they thought that Lot 17.04 was his last lot.

R. Dodds stated the November resolution amends the original approving resolution.

J. Mathieu inquired if the Board is willing to accept D. Pierce's suggested language by putting in a time limit for the installation of the trees on the issuance of a building permit for Lot 17.03. He suggested it be conditioned on the sale of the final lot or one year after the adoption of an amended resolution.

R. Dodds suggested six or nine months.

P. Lubitz stated he feels that the Board amended it in error and no discussion should be occurring this evening.

M. Syrnick stated the last amendment superseded the original approval. B. Width confirmed.

M. Syrnick stated the applicant cannot put the house on Lot 17.04 on the market until he plants the street trees.

P. Lubitz stated doing away with the bio-retention basin is illegal. If the applicant were to go to court and say that the adoption of the amending resolution was done in error and the trees did not have to be planted until the last lot was developed as per his original approval, would that overturn the original resolution requiring him to have the bio-retention basin.

B. Width stated the amending resolution superseded the original approval resolution.

M. Syrnick stated she understands that the Board has concerns. She commented if it was a good time to plant the trees or if the optimal time would be in the spring or fall. Does the Board was to postpone him selling the house on Lot 17.04 until he can plant the trees or have a condition that they need to be planted within the next year or until he gets the building permit for the last lot, which could be ten years from now or never?

C. Ely stated that the applicant's attorney indicated in his letter that his applicant could not plant any trees until the spring. He stated trees can be planted throughout the year.

M. Syrnick stated he is also planting trees for the DEP. The applicant will be in tree planting mode in the spring. It is her opinion that the Board allow the CO for Lot 17.04 be issued and institute a condition that the street trees have to be planted within a certain time period.

D. Haywood stated the resolution and conditions were granted in October and the applicant could have planted the trees at that time.

L. Voronin stated the approval was modified by permitting the removal of the detention basin and requiring the planting of the trees. There are approximately twenty trees.

J. Mathieu stated the Board is not obligated to accept the request.

B. Width stated the resolution conditions lifted the requirement of the detention basin and require the DEP reforestation and street trees be completed before the CO is issued on Lot 17.04.

C. Ely inquired if the DEP is requiring the work be done in the spring. R. Dodds responded they are requiring it as soon as weather permits.

C. Ely suggested the Board should be willing to work with the applicant. When he does the DEP reforestation, he could save money by buying all of his trees in bulk and be able to plant them when weather is permitting.

M. Syrnick read from the paragraph in the Mr. Vincent's, the applicant's attorney, letter:

No Certificate of Occupancy shall be issued for Block 22, Lot 17.04

until the applicant has planted all street trees as required under the original final subdivision approval and provided proof of completion of all the requirements of the Reforestation Plan entered into by and between the Applicant and the New Jersey Department of Environmental Protection.

P. Lubitz stated it goes back to the original approved conditions. The original condition was that the street trees have to be planted when the last lot was completed.

M. Syrnick stated the Board is amending the original approval by requiring the planting of the street trees prior to the issuance of a building permit on the last lot.

M. Syrnick stated whatever the Board decides to do will not block his approval from the DEP. He has an approved reforestation plan.

B. Width stated the applicant has to provide the Board with proof of completion of the DEP reforestation plan.

M. Syrnick inquired if we amended the resolution to what D. Pierce is suggesting by saying no building permits on Lot 17.03 until the street trees are installed, will that still hold up the CO on Lot 17.04.

P. Lubitz responded he will be able to get the CO on Lot 17.04.

B. Width stated in order for the applicant to get the CO on Lot 17.03 he has to plant the street trees. The legal issue brought up is whether the Township can break into the performance bond. It may be something the Township may be able to do even if it agrees to allow the CO to be issued on Lot 17.04. He needs to confirm the standards and time concerns. If the Board withholds the building permit on Lot 17.03 that will be its primary leverage and force the project through conclusion to access the performance bond.

J. Strasser stated if the planting of the street trees and the installation of the final course of paving is contingent on the issuance of a building permit on Lot 17.03, the developer doesn't have any incentive to complete the project.

P. Lubitz stated the original approval may contain some grey area in the language pertaining to the planting of the street trees. It doesn't indicate at the beginning or the conclusion. The Board may be taking that greyness in the language to mean at the beginning and not at the end on Lot 17.03.

R. Dodds stated the Board was under the impression that Lot 17.04 was the last lot when it adopted the amending resolution.

It was moved by P. Lubitz, seconded by J. Strasser and carried to amend Resolution #2017-06 adopted in November to require the street trees to be planted before the issuance of a building permit for Lot 17.03.

ROLL CALL VOTE:	AYES:	Dodds, Lubitz, Strasser, Syrnick
	NAYS:	Haywood, Mathieu, Riggio, Voronin, Ely
	ABSTAIN:	None

The motion failed.

Schedule Re-Org Meeting

It was moved by J. Mathieu, seconded by D. Haywood and carried to schedule the 2018 Re-Organization meeting for January 11, 2018 at 7:30 PM. All members present voted **AYE**.

Approval of Minutes

It was moved by R. Dodds, seconded by J. Mathieu and carried to adopt the minutes of November 9, 2017. All members present voted **AYE**, except J. Strasser, who **ABSTAINED**.

CORRESPONDENCE

Notice and Settlement Agreement – Affordable Housing obligation

P. Lubitz stated the Courts took over Council on Affordable Housing (COAH) when the Governor ceased operation of COAH. It is a long standing suit, primarily from the Fair Share Housing Coalition against all the municipalities in New Jersey. The issue was the difference between two different methods of calculating the housing obligations of municipalities. The key piece was whether or not there were three stages of obligations. The middle stage was held unconstitutional by the Supreme Court. Did the municipalities have an obligation during the period when there were no rules? The Courts have ruled that the Township has to fill that obligation. The Township decided it was in their best interest to reach a settlement with Fair Share Housing Coalition. With the settlement their obligation would be discounted by 30%. The bulk of the affordable housing will be located in the Eastern Gateway Village. There is enough land and the zoning would accommodate 100 units. The Township is not required to build the units but provide a realistic opportunity for them to be built. The Court has approved the settlement. The Township now has protection from a builder's remedy suit until 2025.

R. Dodds stated if another municipality takes the suit to court, which is not an inexpensive venture, and succeeds in having their number lowered, the number is reduced for us also.

P. Lubitz stated the Housing Board will be meeting to discuss the settlement requirements.

In response to a question of how the units can be built due to the fact that the Township does not have a sewer system, P. Lubitz responded currently there are two sewer systems in the Township, one in the Business Park and one at MEL. The DEP has indicated that they would approve a sewer system for the affordable development. The proposed plan is more than just housing. It will provide for a mixed use. It is a pretty big project and it may be feasible for a plant to be constructed. The Housing Board will be meeting with the Township Attorney and Planner and possibly make a recommendation to the Township Committee, if necessary, for a modification to the Township's zoning. If so, the Township Committee will make a recommendation to the Planning Board.

The New Jersey Planner – September/October 2017;

PRIVILEGE OF THE FLOOR

M. Syrnick thanked P. Lubitz for all the time he has spent in service to the Township and participating on the Board.

P. Lubitz stated this is his last meeting on the Planning Board but not on a Board in the Township. He feels that he is leaving it in capable hands.

J. Mathieu stated that P. Lubitz has done an extraordinary job and is always prepared. His counsel, direction and guidance has been very helpful.

P. Lubitz stated it was a pleasure to serve with all of the Board members.

ADJOURNMENT

It was moved by P. Lubitz, seconded by R. Dodds and carried to adjourn the meeting at 8:30 PM. All members voted **AYE** on **ROLL CALL VOTE**.

Respectfully submitted,

Diane Laudenschick, Secretary