April 10, 2024

Township of Denville
Planning Board
Regular Meeting Minutes

April 10, 2024

The Planning Board of the Township of Denville held its regular meeting on Wednesday, April 10, 2024. The meeting was held in the Municipal Building and commenced at 7:30 pm.

Chair Schmitt led flag salute

Board Secretary Stroisz read NOTICE OF PUBLIC MEETING

ROLL CALL:

Present: John Ciardi, Don Kuser, Mark Venis, Louis Maffei, Stephanie Turkot, Tim Behrens, Stephanie Lyden, Mayor Andes, Kurt Schmitt

Professionals Present: Andrew Brewer, Esq., Jason Kasler, AICP, PP, John Ruschke, PE

MINUTES:

February 28, 2024 *(no vote: Ciardi, Lyden, Andes)*
A motion to approve these minutes was made by Mbr. Venis, seconded by Mbr. Maffei and approved by all members able to vote.
AYES: Venis, Maffei, Kuser, Turkot, Behrens, Schmitt

March 13, 2024 *(no vote: Kuser, Lyden)*
A motion to approve these minutes was made by Mbr. Venis, seconded by Mbr. Ciardi and approved by all members able to vote.
AYES: Venis, Ciardi, Maffei, Turkot, Behrens, Andes, Schmitt

PURCHASING:

Kasler Associates
Warner
Maraziti Falcon
Mott MacDonald

A motion to approve the purchasing was made by Mbr. Kuser, seconded by Mbr. Ciardi and approved by all members able to vote.
AYES: Kuser, Ciardi, Venis, Maffei, Turkot, Andes, Schmitt

RESOLUTIONS:

PB/PSP/FSP 23-06 **12-18 Vanderhoof, LLC.**
12-18 Vanderhoof Ave.
Block 62002, Lot 1

A motion to approve this resolution was made by Mbr. Kuser, seconded by Mbr. Maffei and approved by all members able to vote.
AYES: Kuser, Maffei, Venis, Turkot, Behrens, Schmitt

PUBLIC HEARINGS:

PB/MSV 22-11 **Apura and Anuja Shah** *(carried from February 14, 2024)*
14 Augusta Street
Block 41203, Lot 15

Remo Caputo, Esq. – additional calculations were submitted after the last public hearing to satisfy Mr. Ruschke's concerns.

John Ruschke, PE – minor items need to be addressed from his last review letter. Has received a satisfactory response on how the applicant will be addressing those concerns.

Mr. Caputo, Esq. – agree to put on record that those changes requested by Mr. Ruschke will be made on the plans. The resolution will stipulate to addressing engineering comments.

Mr. Brewer, Esq. – summarized some finer points of the resolution and conditions

A motion to approve this application was made by Mbr. Ciardi, seconded by Mbr. Venis and approved by all members able to vote.
AYES: Ciardi, Venis, Maffei, Kuser, Behrens, Andes, Schmitt

Mr. Brewer, Esq. – gave a brief summarization of the resolution for the Shah application

A motion to approve this resolution was made by Mbr. Venis, seconded by Mbr. Ciardi and approved by all members able to vote.
AYES: Venis, Ciardi, Maffei, Kuser, Behrens, Andes, Schmitt

PB/PSP/FSP 22-09 **DR Horton** *(carried from March 13, 2024)*
Thurmont Road
Block 30501, Lots 8, 32-34, 36-37
Block 30604, Lot 16
Block 30607, Lots 15-17
Block 30611, Lots 1-5

Larry Calli, Esq. – there have been a number of hearings on this application, which is pursuant to a prior settlement agreement on this property. This application matches the terms of that agreement. Various witnesses have been heard through testimony and cross examination. Bohler Engineering has gone back and forth with Mr. Ruschke to help satisfy his concerns with the project. Only presenting one witness this evening to discuss the changes to the plans. Will show that they can conform to engineering report.

Brad Bohler SWORN, QUALIFIED – marked exhibit A-17, site rendering with landscaping: layout changes described. Northside along Thurmont Road will now be a proposed bioretention basin, the building was moved down to Road A along the south side. Two units were also added to Building 7, now containing 8 units instead of 6; the cul de sac has also been extended about 250 feet to the south east corner. 21 on-street parking spaces were added to Road A, 11 on-street parking spaces were added to Road B. Multiple bioretention and infiltration basins have been added to allow for water quality on the site. Mechanical units were also added to treat the water prior to discharge into the basins. Additional landscaping has been added to the bioretention basins. Steep slopes maps have been updated: 15-20% increased by about 9,000 square feet; 20-25% increased by 5,000 square feet; 25-30% increased by 2,000 square feet; 30%+ increased by 6,000 square feet. Truck route was discussed, (exhibit A-18) and showed how trucks would visit and exit the property: travel up Route 53 to Route 80, if the trucks can't make the crossing underpass, they will travel down Route 53 to Route 10; they would utilize main highways to get to the site. Considering tying into the sanitary sewer to the west of the property, which would be their preferred plan rather than going through the railroad crossing. Reviewed the engineering letter from Mr. Ruschke and have no objections.

OPEN TO THE BOARD

John Ruschke, PE – asked about RSIS waiver.

Brad Bohler, PE – berm for basins has to be 10 feet wide, currently about 6 feet wide, asking for waiver on the width of the berm just in case they can't meet the 10 feet wide requirement.

John Ruschke, PE – reviewed the submitted materials and is confident that the design has advanced enough that it will work. Details need to be worked out to confirm compliance.

Jason Kasler, AICP. PP – length of retaining wall discussed. Have not received data stating the length of retaining walls over 6 feet and over 8 feet tall. Slopes of individual driveways, by ordinance, are permitted to be at a max of 2%, proposed driveways start at 2% and go to about 6%. Suggested looking at that slope and evaluate changing the slopes.

OPEN TO THE PUBLIC

Andrea Bias SWORN (Parks Road) – against approving waivers. Asked for exception in asking questions of just this witness. Lives on Parks Road and they constantly have box trucks and 18-wheelers cutting through their neighborhood going to Route 10. Asked of the board if they had considered what all of this additional traffic would do to the existing residents. Route 53, Parks Road, Franklin Road are all a traffic nightmare. Mr. Brewer addressed the questioning: everyone has a right to comment on the application; as a general matter the questions about traffic are not something this board has the power to deal with. Governing body has determined that a certain

level of development can occur, this board cannot prohibit it because it will cause traffic. There's a constitutional obligation in NJ to provide a reasonable opportunity for affordable housing. Ms. Bias stated that the amount of affordable housing required can fit into one of these developments that have been approved. Mr. Brewer finished that there would be no profit margin for an affordable housing development without market rate units; it's not reasonable, it won't get built. In order for the affordable housing to be built, it needs to be built by someone that can subsidize the affordable housing costs with market rate units. The numbers required are a result of the supreme court decision. Ms. Bias asked if the supreme court determines how many units are affordable in the development; Mr. Brewer answered that the settlement agreement does. Recommends keeping questions and comments relevant to this application and not the laws governing it. No one is happy with the impact of these developments but we can't prohibit them for reasons of traffic. Ms. Bias continued that they trusted their planning board and now there are housing developments being constructed all over town; asked how they are going to ensure that dump trucks from this site are not going to come through Parks Road.

Ed Krysa SWORN (Beacon Hill) – asked the mayor if he can do anything about the traffic on Parks Road. Mayor Andes stated that the truck route ensures that they will stay on Route 53 to get to Route 80 or Route 10 without taking Parks Road. It will be in the resolution and if the neighbors on Parks Road call in to complain, the police will put a stop to it. Generally, the developers tell their truckers to follow the route. Mr. Brewer added that they put into record that their trucks will take a particular route and that will be a condition of approval in the resolution; it would be a violation of the resolution if they didn't take that particular route. Mr. Krysa stated that crossing the railroad crossing is difficult, as well. The drainage system was discussed: it ultimately will flow into the Rockaway River. Concerned with additional flooding. Nothing has been done to the Rockaway River to alleviate the flooding. Still has ground water issues living in Beacon Hill. Mayor Andes stated that we are working with the Army Corps of Engineering and it's a very slow process; it will help raise houses but not keep water from breaching the river banks. Applied for help with walls along the river and didn't qualify. Asked Mr. Ruschke to speak to the drainage: flooding in the Rockaway River isn't limited to Denville. Meaningful flood mitigation wouldn't start by preventing development in Denville. This development is ultimately discharging into the NJT right of way which discharges into Route 53 and then it discharges into the NJT right of way at the low point in Route 53. They are to meet a state standard for peak reductions for their storm flow; they look at the existing drainage flow and then meet the peak reductions for the state and township codes. They are reducing the amount of flow coming off the site by using the massive retention basin, they also have to meet a state requirement for groundwater recharge. Mr. Krysa stated that water is not draining into the ground, it's running off.

Bruce Bogle SWORN – asked if the retention basin is going to be used instead of the porous pavement on their roadways; Mr. Bohler answered that no porous pavement is proposed in this project.

John Troccoli SWORN – used to live in Beacon Hill, water vein broke through the side of the hill. Berm was discussed; Mr. Brewer explained the process of studying drainage patterns.

James Hallik SWORN – discussed moving Thurmont Road. It will not be moved but it will be improved to meet residential standards. The crossing is the only way to get in and out of that neighborhood. Would like assurances that construction will not lead to dangerous situation for residents being trapped behind railroad tracks. Mr. Calli stated that this was testified to previously and will not be revisited. Chair Schmitt stated that during construction nothing can be guaranteed. Mr. Hallik opined that this development is just wrong but to dismiss people the way the applicant has, it is appalling. Are we doing things to better Denville or are we doing things to better a multibillion dollar developer? Wants to ensure his sons have somewhere to go when they grow up in town. One road going in and out of this development is concerning. Experts that testified will do or say anything the developer tells them to.

Elizabeth Ricafort SWORN – hopes this developer will take this development to another town. Currently the trees do the job of the retaining walls and the basins. Asked if sewage is going to the same place that the Station Village sewage will go to. This application doesn't need to be approved tonight; implored the board to give it some thought and deny waivers to the developer.

Barbara Kane SWORN – stated that the Mayor called this developer, over other developers, "gentlemen we could deal with" – one of their team members called a member of the public "trash" after the last meeting. Quoted online reviews stating that DR Horton is a terrible developer. Confirmed with the mayor that they will not be cutting this developer a deal on the tree removal

ordinance like they did with Pulte on Route 10. The mayor stated that they are not getting a break, the previous applicant was approved before the new ordinance was in place so that's why they got a break. Clarified that calling them "gentlemen" was taken out of context; developers that took us to court were unreasonable. Everyone on this board hates this project, as well. The township was sued by five different developers and were required to provide 1,786 affordable housing units in town. After years of negotiations, they got the required number down to 196 units (48 credits = 148 affordable units). The average price to build an affordable unit is about $400 thousand, which would have to be paid for by the township. Another round of affordable housing is coming next year. Failure to abide by the court decision the developers will take the township to court and we will lose. Mentioned similar thing that happened in Millburn. Gave history on The Forges being built with Peer Place up on the hill. Courts don't care about traffic or drainage/flooding. Ms. Kane stated that Highlands Council would've held us to a smaller unit count and asked why we're permitting so many warehouses to be built in town. Mayor Andes answered that one of the warehouses was agreed upon for financial reasons; that site sat vacant for many years. A bill may be passed that will give us access to get back into the Highlands. Our affordable housing number would've been the same whether we were in the Highlands or not; the new law may make a difference but it will be evaluated.

Bob Grant SWORN – asked of the Mayor if this applicant will be complying with the tree ordinance, even though the council approved a tree replacement reduction for the Route 10 project. Mayor Andes explained that their application was approved before the new ordinance went into effect; they will have to comply with the newly amended tree ordinance. Mr. Grant has an issue with the number of market rate units not the affordable housing units. These units are meant for families not for people downsizing. No guarantee for safe passage into the development with one entrance over the train tracks. Mr. Calli had stated that no traffic study was required for this application because it is a conforming site plan per the settlement agreement; the traffic study was gratuitous even if there was no settlement agreement. The settlement agreement precedes this developer's involvement. Mr. Brewer added that our courts have said that if a settlement is in effect, they have taken traffic into account and this board cannot require more. The courts are not concerned with off-site traffic and this board cannot change that. The number of units was negotiated and settled on 106 units. Mr. Calli stated that the applicant has to comply with the tree removal ordinance because this board cannot grant a reprieve from it. Mayor Andes elaborated on the revised ordinance: $35,000 per acre. Mr. Brewer reined Mr. Grant in to ask only questions related to tonight's testimony and public comment. The Planning Board has a right to deny this application and get sued by the developer which would result in a much larger requirement. Mayor Andes stated that townships that get sued don't win. Brought attention to Peer Place. Mr. Grant asked if the reason he keeps bringing up Peer Place is because "a lot of black people live there?" leaving the board and the Mayor appalled. The comparison to Peer Place and The Forges was made to show the segregation of affordable housing rather than integration. Mr. Brewer stated we have to keep the questioning limited to this application. Mr. Grant asked how many fewer market units can be built while still making a profit; Mr. Brewer stopped the questioning.

Dawn Welch SWORN – lives on Thurmont Road. The site plans show that Thurmont Road is straight but currently the road is curved. Mr. Bohler stated that they will be making improvements. Concerns with passing through during construction; Mr. Bohler stated there would be a staging plan and a traffic control plan during construction. The road will never be closed at any time. It will be constructed in stages. Integration of affordable housing was discussed; tot lot will be constructed on the cul de sac. The dumpster enclosure has been relocated.

Claudia Ionescu SWORN (44 Cliffside Trail) – will unapologetically make her statement: we are in the Highlands area and the Highlands area gets special treatment. 8,000 acres are supposed to be protected per the regional master plan; Denville chose not to comply. Those that comply get protection from over development. Would like a straight answer as to why we do not participate with the Highlands Council. Mayor Andes stated that the new bill will be reviewed and we'll make a decision off the new bill. Explained that it had very little to no effect on our development.

Gabe Vasquez SWORN – asked about proposed improvements on Thurmont Road. Mr. Bohler stated the road will be widened, paved, and curbs will be added; stormwater improvements and grading. Will be 24 foot wide, two way road. Asked the board how we can ensure that low-cost materials won't be used and we won't have issues with the buildings. Mr. Brewer stated that the materials and the manner in which the construction will be done will be compliant with UCC and inspections. Asked what the town is planning to do about the one point of egress in the area. This board cannot really respond to that; that's an enforcement issue and this board can't speak to that. This board cannot do its own traffic study for the township; it's not part of this application.

Dave Hasler SWORN – asked about how much water the retention basins can hold. Mr. Bohler answered that it's not measured in gallons; he'll have to calculate an approximation. Stated that if the water doesn't stay in the basins, they'll have to deal with NJT and the state. Mr. Brewer stated that the state and NJDEP have studied this issue and they know how much rain can be handled in the basins. There are standards that have to be met. Our engineers review everything thoroughly. Asked about egress. Mayor Andes stated that this has nothing to do with this application but they installed the emergency access road when Estling Village was being constructed because residents were concerned about being stuck when the train is parked. If there is a train stopped, they can get the police over there to open the access road for the residents to come in and out but it will not be an improved road. State wants to close down the Lackawanna crossing; township has a plan in place if the state decides to move forward. 15 years ago there was no emergency access road and if the state moves forward with their plans, the township will be able to turn that into a road. Some residents don't want that road to be opened up; suspects that the state's decision will come soon.

Liane Gross SWORN – has lived in town since 1977. The other end of Thurmont Road is Birch Run. Concerned that they will open up a path through the woods from Birch Run to Thurmont Road – Mayor stated that they have no intention of doing so. Mr. Brewer stated that the decision maker on that is the governing body; they can overrule the mayor; can't make a promise that he doesn't have the power to uphold.

Robyn Cook SWORN – detention basin will be utilized on the lot. It slowly releases water once it fills. There's a pipe that runs out of the basin and releases water at a very slow rate. Ms. Cook mentioned that Luger Road's retention basin is full all the time and now they have flooding issues. Mr. Ruschke will look into it. When widening Thurmont Road, they will not take land away from the neighbors because they will only be widening within their development area.

Stacy Casella SWORN – moved to town in 1967. Watched a flatbed truck filled with trees coming up Cooper Road to Franklin Road; concerned about the bridge on Franklin holding the load. Mayor stated that they're supposed to stay on Route 10; will address it with the developer of Pulte Homes. Structure of the bridge will be examined.

CLOSED TO THE PUBLIC
OPEN TO THE BOARD

Mbr. Behrens – asked if both roads within the development will be dedicated to the township now that they are no longer porous pavement; that's correct. The remainder of the undeveloped land will still be preserved; that's correct. Asked about explosives and blasting; applicant stated that they will be. No explosive testimony has been heard from the applicant like we have on prior applications. Mr. Calli stated that the work will have to comply with state regulations; they will retain the same explosives specialist that testified before the board on prior applications; that testimony is not required because the applicant will be complying with all municipal, county, and state standards and will be reviewed by the municipal engineer. Mr. Behrens stated that although they will comply with all the standards, it's not for Mr. Calli to comment on and should be testified to by an expert. Mr. Calli stated that they will stipulate to complying with all the regulations and will not be providing an explosives expert.

Mbr. Ciardi – disappointed that a traffic study will not be done on the surrounding area. Disagrees with the traffic study that was done and testified to because he has done his own studies and has been stuck in traffic numerous times in the area.

Mbr. Kuser – asked Mr. Ruschke for additional information on the blasting and whether he thinks they should provide additional testimony on it. Blasting is regulated by the state and not locally so even if they gave testimony it would be inappropriate for the board to impose additional conditions than those imposed by the state. We cannot override the state requirements. They will have to set up seismographs, do field surveys; it is highly regulated. Blasting is a science. Mr. Kuser asked about fire trucks being able to turn in the culs de sac if they are filled with parked cars; Mr. Bohler stated that the turning radius has been reviewed and the parked cars will not be in the way. Discussed steep slope of Thurmont Road; RSIS standards are being met; will look into lessening the slope. Retention basins will be the responsibility of the home owners association and will be required to submit reports bi-annually as per state requirements; documentation to same will be provided to Mr. Ruschke for review.

Mbr. Maffei – discussed garbage collection: market rate units will have their own trash cans and will put them out; affordable units will utilize a dumpster in the cul de sac. Asked that the dumpster be bear-proof because this area is filled with a lot of wild animals; applicant agreed. The roads will be dedicated to the town; common parking areas will be regulated by the HOA. Concerned that train commuters will park in the development or use it for pick up/drop off of passengers. Those being town roads, there's nothing to stop people from parking there and taking the train. Retaining walls discussed: expect a stacked block wall. Mr. Maffei recommended using a solid rock because of hydrostatic pressure. Used Parsippany's and Rockaway's failed retaining wall as an example. Read Fairness Hearing Summary regarding 2018 hearing before a judge. Judge stated that the developments met both the letter and the spirit of the law by integrating the affordable units in with the market rate units so they were architecturally indistinguishable. Asked why they weren't mixed in; all other developers that came before them have done so. Mr. Calli stated that this has always been part of the design because the settlement was outlined like this, as well. There are rental units and for-sale units and the affordable units are in a more desirable location on the property which makes it prime real estate. Mr. Maffei opined it looks terrible. Initial developer planned to build 350 units on the property. Stated for the public that they can't not approve this application because they were sued. Gave old Warner Lambert property in Morris Plains as an example of what happens when you challenge the courts.

Mbr. Turkot – at a previous meeting, the applicant stated that they would be in contact with the BOE for locations of bus stops and updated plans would be provided. No final decision has been made on that. Asked Mr. Ruschke about noise regulations on blasting; Mr. Ruschke stated that they would have to meet the state's noise ordinance. NJDEP's site remediation program was discussed: if contaminated soil is found on site, necessary steps will need to be taken; applicant agreed.

Mayor Andes – we all love this town; no one wants to see development. NJ is the most densely populated state in the country; this was mandated on us. Developer wouldn't integrate the units because some are rentals and other are for sale; didn't care about the citizens of Denville. Made certain concessions in order to get the number of units down. Also disappointed that they didn't have the blaster testify. Recommended that anyone that's worried about the blasting document their houses on video. Confident that this blaster will do a good job. Doesn't foresee that they can take ownership of the roads because there will be nowhere to put the snow; that will be a council decision.

Chair Schmitt – agrees that this board is in a tough situation. Thinks this applicant did what they could to reduce the number of units; it's not making anyone happy but it's the best we could do.

John Ruschke, PE – dedication of the roads needs to be looked at and there may have to be some language in the resolution regarding a dumpster in the ROW, conditions on parking stalls being maintained by the HOA, right to discharge into their basin; a number of agreements need to be worked out.

Mbr. Kuser – confirmed that they are definitely building a playground on site; applicant confirmed.

Mbr. Venis – it's not under the jurisdiction of this board to dedicate the streets but he would encourage town council to look at the benefits of taking possession of these streets.

Mr. Brewer, Esq. – gave summary of application and conditions

A motion to deny this application was made by Mbr. Ciardi, no one seconded the motion; the motion does not carry.

Mbr. Venis – asked of Mr. Brewer if parking stalls on the streets will be permitted overnight or prohibited like all other township roads? It will be determined by whether the council decides to dedicate those roads to the town; not something that the board will be deciding.

Mbr. Kuser – implored Mr. Ruschke to take a good look at the retaining walls because failure would be devastating. A maintenance bond is usually posted for two years after construction. HOA would be responsible for replacing anything that fails.

A motion to approve this application was made by Mbr. Kuser, seconded by Mayor Andes and approved by a vote of six to one.
AYES: Kuser, Andes, Venis, Maffei, Behrens, Schmitt
NEYS: Ciardi

OLD/NEW BUSINESS: none

Adjournment: 10pm
Minutes approved May 8, 2024
Dagmara Stroisz, Board Secretary