

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

December 08, 2010

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, December 8, 2010. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Filauro presided.

Secretary Probasco read Notice of Public Meeting.

Roll Call: **Present** – Mayor Hussa, Chr. Susan Filauro, Vice Chr. Lou Maffei, Glenn Buie, Marilyn Kuntz, Don Kuser, Peter Nienstadt, Kurt Schmitt, James Schoner
 Absent – None
 Professionals present – Tiena Cofoni, Esq., Nicholas Rosania, PE

PURCHASING

Motion to pay vouchers submitted by Denzler & Associates (dated November 4, 2010) subject to the availability of funds, was made by Mbr. Kuntz, seconded by Mbr. Buie and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by The Buzak Law Group (dated November 2, 2010) subject to the availability of funds, was made by Mbr. Kuntz, seconded by Mbr. Buie and unanimously approved by all Members present and able to vote.

CORRESPONDENCE

Chr. Filauro referenced the correspondence received by the board, including two letters from the board attorney. The first dated, November 10, 2010 is regarding Woodmont Properties vs. Meola Builders and Planning Board of the Township of Denville. The Judge dismissed the Plaintiff's claims against Meola. The Plaintiff is appealing both Court rulings. The second letter, dated November 19, 2010 is regarding Briar Rose Group, LLC v. Denville Township Planning Board, et al. containing the Planning Board's Brief and Certification of Service. Correspondence also included a memo dated November 17, 2010 from the Tax Assessor to the Township Engineer regarding two subdivision properties that were approved by the board but no filed deeds or maps have been received. These were Katherine Hall/Tulip Lane and D'Egidio/Kitchell Road.

PROFESSIONAL COMMENTS

Chr. Filauro asked the township engineer for comment on the memorandum from the Tax Assessor. Nick Rosania, Township Engineer explained that he meets with the Tax Assessor to perform a year end review of tax maps changes, during which these missing deeds came to light. Stating that he took it upon himself to contact the attorney's for both these properties. Found that the deed for the Hall subdivision was recorded at the county but not received by Denville. Stated that Ginny Klein was not happy with the wording and that a condition of the resolution indicated that the Denville and Parsippany Tax Assessors would need to talk to resolve a small piece of the property in Parsippany. Tiena Cofoni, Esq. stated that a corrected deed can be issued if required. Mr. Rosania further stated that he just received a letter tonight from Howard Spear and that Mr. Spear and Ginny Klein would be speaking to resolve their differences on the lot numbers or to address any questions.

Nick explained that on the D'Egidio subdivision it became complicated because of a roadway dedication involving both the township attorney, as well as the board attorney. Stated the outcome is still unknown but is being finalized by the Township attorney. Tiena Cofoni, Esq. stated that the deed was consummated but that the Right of Way, which has no time constraints, had not been finalized. Sue Filauro inquired if this was a concern of the board. Tiena Cofoni indicated that the planning board was fine and that the deed was filed. Nick Rosania responded that he has given thought on streamlining our process, out of his concern from this Tax Assessor issue. Nick spoke with both planning and zoning board attorney's, as well as board secretaries in other towns.

The board attorney clarified that there are no statutes regarding this being a responsibility of the board secretary and that it really is the applicant's responsibility to execute the conditions of approval. However, the board secretary could check off that the health department has completed an item upon receipt of the health officer's memo. Ms. Cofoni explained that when an applicant requests signature on a

site plan, the board secretary could state that the conditions of approval have not been satisfied. The board secretary can request a letter proving that the conditions of approval have been met but does not have the responsibility of contacting the board of health, construction official, zoning officer, etc. All the burden is on the applicant. The Board Secretary is the clearing house for all the information coming in to her.

Chr. Filauro inquired how this would fit with the way it is currently handled. Secretary Probasco responded that although the Tax Assessor and Township Engineer do not report to one another, none of the department heads report to the board secretary. Stated that based upon the current process, it would be a large undertaking for a non-professional to change and manage this process. Chr. Filauro agreed with the board secretary.

The Board Attorney stated an example of a health department approval for a sanitary sewer connection. Sec. Probasco responded that the board secretary receives no information regarding such. Having no knowledge of what transpires between health, building or engineering. Stated further that no signatures are made on any documents without first checking with the professionals and that the engineer's signature is the first signature on any of these documents. The board attorney stated that she is not aware of what conditions are satisfied and that only the form is reviewed for content by their office. Chr. Filauro inquired if Nick reviews the conditions. Nick responded that it's looked at as a group and he looks at things that pertain to engineering and assumes the other department heads have done their part. Chr. Filauro stated that she doesn't think it's something that can be resolved by the board. Nick responded that we aren't trying to resolve it but just making suggestions to improve the system so that it works. Further stated that all these years it has worked well because nothing has slipped through the cracks and that we are just trying to improve that. Suggested that in the conditions of approval, those items be bold for the department heads ease. Sec. Probasco added that if the departments heads are not currently responsible to read the resolution conditions, bolding the items would not make a difference. Nick went on to state that perhaps a letter from the mayor's office could go out reminding the department heads to read the resolutions to prevent having someone come into the engineering office stating that the engineer is responsible. Stated it is unfair that it be brought up at the end of the year, something that should have been done last February.

Mbr. Kuser questioned what standard operating procedure was in place. Inquired if the files are routed through departments for sign-off. Nick Rosania responded yes, but only informally, and this would formalize the process to make it air-tight. Sec. Probasco stated that the sign-off's Mbr. Kuser referred to do not come through the board office but are routed through other departments. Suggested again that this matter be discussed at another time. Mr. Rosania responded that there is time to address it due to the light agenda. Mayor Hussa inquired about the routing slips to the departments currently received and if something similar could be done. Nick Rosania replied yes. Sec. Probasco stated that Mr. Rosania may be oversimplifying the process and voiced discomfort in having the responsibility of generating a checklist from a large application/resolution for fear of an omission. Sec. Probasco emphasized that the board secretary relies upon the professionals for this and that for the length of her employment it has always been done this way. The board secretary stated again that she was not prepared to agree to any new processes at that time. Mr. Rosania objected to the simplistic summary, stating out of gratis that he handled things that are not his responsibility because the board secretary has been new but it is not his job either.

Nick Rosania stated he liked the mayor's idea to have a checklist. The Mayor suggested that the board attorney create a checklist with the specifics from the resolution. Tiena Cofoni, Esq. stated that the conditions of approval are listed together in one spot on the resolution. Voiced concern in trying to make a complicated resolution simplistic, fearing that an applicant might refer to only the items listed on the checklist as an end-all be all and may not look at the entire resolution as a whole. Chr. Filauro suggested that if a checklist is used it should be for internal use only and not distributed to the applicants and inquired who would be responsible for the checklist. Mayor Hussa responded that it would be either the board secretary or the township engineer. Mbr. Kuntz added that this was an internal matter and not an item for the planning board. Mbr. Kuntz suggested the Mayor may desire to call a meeting with his department heads to discuss and determine a reasonable solution. Nick Rosania reminded the mayor that this was a two part item, the first is the generation of a checklist, the second would be a memo from the mayors office to the department heads. Mayor Hussa suggested that checklist is a starting place for a standard operating procedure.

Chr. Filauro asked the township engineer to provide an update on the Casa Bella project. Mr. Rosania stated that the applicant will be continuing the approved build-out as finances permit. Chr. Filauro inquired what happens with applicant's that do not perform their approved development. Nick Rosania responded that they receive a zoning violation, a certificate of occupancy could be revoked, etc.

RESOLUTIONS

2010 BikeWay Plan Element to the Denville Township's Master Plan

A motion to adopt the memorializing resolution of **approval** as submitted for the above property was made by Mayor Hussa, seconded by Mbr. Kuser and unanimously agreed upon by the members present and eligible to vote.

Roll Call: Ayes – Hussa, Kuser, Kuntz, Buie, Nienstadt, Maffei, Filauro

PUBLIC HEARINGS

**MS 10-04: Eugene & Margaret Feyl
Block 50407, Lot 21
13 Snyder Avenue**

The applicant, Eugene Feyl, was present and sworn under oath. Mr. Feyl testified that Lots 21 and 9 are both owned by Eugene and Margaret Feyl and Lot 11 is owned by Brian Kalcane. The building lot of 50' x 100' can support a single family home. The applicant has filed for minor subdivision approval to subdivide three (3) existing lots to two (2) lots. There are two existing dwellings (lots) with a vacant lot in between. The lot line adjustment will add 10' to Lot 21 and 40' to Lot 11, eliminating the middle lot. All three of the existing lots are located within the flood hazard area associated with the Rockaway River.

Chr. Filauro opened the hearing to the professionals.

Nick Rosania, Township Engineer commented on the application. Stating that it's more of a lot merger than a subdivision. The yellow on the drawing shows the existing property line and will essentially shift to where the orange line appears. Eliminating the potential for another home to be built in the floodplain. No variances associated with the application and no negative impacts from a planning or zoning perspective. Mr. Rosania recommended approval of the application to the board.

Tiena Cofoni, Esq. inquired if the property owner of Lot 11 was in agreement with this proposal. Mr. Feyl indicated that a contract of sale existed between the applicant and owner of Lot 11. Stating that the initial closing would be on the 100' property containing the home and a separate closing would occur next year for the additional 10' of property. Two deeds will have to be recorded. The tax assessor has already created 21.01 and 11.01, eliminating Lot 9.

Chr. Filauro opened the hearing to the board members.

Mbr. Schmitt commented that the proposed application is a good one. Pointed out that Lot 11 would have a non-conforming side yard setback of 5.9' after the lot line adjustment. Mr. Feyl stated it was an existing non-conforming condition. Mbr. Schmitt stated that it was not an existing non-conformity but that the lot conforms prior to the proposed subdivision. Tiena Cofoni, Esq. stated that it was an existing non-conformity. Nick Rosania, PE stated that it was actually in conformance but that the sliding scale of setbacks will change with the increase in the property size. Stating that a variance would be required for any future work on the right side of the home where 9' side yard setback is required on the expanded lot size. Lot 21 would be 11' requirement, Lot 11 would be 5.9'.

Mbr. Maffei had no questions and voiced in favor of this application.

Mbr. Nienstadt had no questions.

Mbr. Kuser had no questions.

Mbr. Schoner had no questions.

Mbr. Kuntz had no questions and voiced it was a great proposal.

Mbr. Buie had no questions, stating that it would make the neighborhood look better.

Mayor Hussa commented that it would be great to eliminate a floodplain lot and inquired about the reasons for making the subdivision. Mr. Feyl stated that it would enhance the ability to market the property.

Chr. Filauro agreed that it was wonderful to eliminate the one lot and wished the applicant good luck.

A motion to **approve** the above application for the above property was made by Mbr. Nienstadt, seconded by Mbr. Kuntz and unanimously agreed upon by the members present and eligible to vote.

Roll Call: Ayes – Nienstadt, Kuntz, Buie, Maffei, Hussa, Filauro
Abstain - Kuser

NEW BUSINESS

Chr. Filauro commented on the League of Municipalities. Mbr. Buie commented that the league was worthwhile. The questions and answers session was great with a fantastic panel of professionals. Chr. Filauro stated that Ed Buzak was ill and unable to explain the COAH. Chr. Filauro stated that the administration and legislation are at complete odds on COAH. Mbr. Nienstadt commented on hearing the different experiences of people and input from the lawyers who do it on a daily basis. Mbr. Kuser stated he attended nothing on planning but attended tool kit, funding and shared services. Chr. Filauro stated that spirit of sharing and cooperation on how other towns implemented and the techniques used. How to make the most of your time at the League. A history teacher from Milburn High School was there with his students on a class trip as he has for the past four years. Learned that the importance of the resolution, ensuring the content for legal reasons. Resolutions are looked at more than the record itself. Chr. Filauro stated that familiarity of the ordinances, time of decision, etc.

Mayor Hussa voiced his appreciation to the board this past year and thanking all the board members. The mayor stated that the two items he gained the most information on at the League were grant funding and tourism. Commenting that Denville has always been a place where people go and that we can enhance that.

Mbr. Kuntz referenced that in July Denville Township Environmental Commission was awarded the Smart Growth Planning Grant of \$3,000 to update the environmental ordinances. Mbr. Kuntz inquired who the planner was that was being hired to assist in creating ordinances on tree removal, well head protection,

residential lot coverage, floor area ratio for adoption by the township council. Voicing disappointment that the planning board was not aware. Mayor Husa stated that they do not yet know who the planner is. Mbr. Kuntz thought that the grant was great but that the planning board was not involved. Mbr. Schoner stated that he can obtain some information from Al Atkinson to generate a report. Mayor Husa said it would be good to let Al Atkinson know that the planning board should not be left out.

Chr. Filauro thanked the board for another great year and thanked everyone for their level of consciousness. Commenting on the diversity of the members and that each individual brings something to the table. Stating that although the board was not extremely busy, there were some more difficult applications that required time. Mayor Husa informed the board of the recent Community Rating System application to obtain a reduction of flood insurance costs for the residents. Praising Denean Probasco for her efforts on this assignment over the past year. Chr. Filauro and Mbr. Kuntz agreed.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted