

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**April 10, 2013**

The Planning Board of the Township of Denville held its regular meeting on Wednesday, April 10, 2013. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Maffei presided.

**Secretary Probasco read Notice of Public Meeting.**

**Roll Call:**       **Present** – Chr. Louis Maffei, Mayor Thomas Andes, Peter Nienstadt, Marilyn Kuntz, Christopher Golinski, Sue Filauro, Kurt Schmitt  
**Absent** – Vice Chr. Glenn Buie, Mark London  
**Professionals present** – Tiena Cofoni, Esq., John Ruschke, PE, Jason Kasler, PP

**MINUTES**

**March 13, 2013**

Motion to adopt the meeting minutes as submitted was made by Mbr. Filauro, seconded by Mbr. Nienstadt and unanimously approved by all members able to vote.

**PURCHASING**

Motion to pay vouchers submitted by The Buzak Law Group (dated March 8, 2013) subject to the availability of funds, was made by Mbr. Kuntz, seconded by Mbr. Filauro and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald (dated April 2, 2013) subject to the availability of funds, was made by Mbr. Filauro, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Kasler Associates (dated April 1, 2013) subject to the availability of funds, was made by Mbr. Kuntz, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

**RESOLUTIONS**

**MPS 08-03:       Glenmont Commons Developers, LLC       (No Vote: Kuntz, Schmitt)**  
**Block 10003, Lot 3**  
**Casterline Road**

Motion to approve the resolution of approval was made by Mbr. Filauro, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

Roll Call:       Ayes: Filauro, Nienstadt, Maffei  
                  Abstain: Andes

**PSP/FSPV 12-05:   Universal Institute, Inc.       (No Vote: Kuntz, Schmitt)**  
**Block 60101, Lot 502**  
**40 Morris Avenue**

Motion to approve the resolution of approval was made by Mbr. Filauro, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

Roll Call:       Ayes: Filauro, Nienstadt, Andes, Maffei

**PUBLIC HEARINGS****MS/SS 13-01: The Valva Family Trust and George Valva Co-Trustee  
Block 10401, Lot 13  
Michael Street and Echo Lane**

Chairperson Maffei announced to the members of the public that this application would not be heard this evening. The applicant has requested adjournment and will be rescheduled. Legal notice will be provided.

**Morris Habitat for Humanity  
Lake Lenore  
Block 31109, Lot 13.01**

Short presentation and discussion regarding prior conditions imposed by board approval and the potential use of the property for affordable housing.

Sean Monaghan, Esq. of Drinker, Biddle & Reath LLP (500 Campus Drive, Florham Park) was present and represented Morris Habitat for Humanity. Mr. Monaghan explained that there is no application before the planning board, they are before the board to make a presentation of an affordable housing project. As part of the prior planning board approval in 2008, there is a restriction of further subdivision of the property. Stating that the Morris Habitat for Humanity has a mortgage of \$199K and additional funding of \$43K along with an agreement with the Township of Denville.

Tiena Cofoni, Esq. the board attorney provided the board members with a brief summary of the board's jurisdiction. It is the opinion of The Buzak Law Group that the proposed project would be a violation of the deed restriction. It is Morris Habitat's position that it is not a violation, since no further subdivision is proposed. It is not for the planning board to make this determination. The planning board has no jurisdiction over the zoning board of adjustment who has the application. The question was whether a quiet title action, to remove the restriction, would be opposed by the planning board. There is no action required on the part of the board and this is only to obtain the planning board's informal comments or questions.

The proposed project is to construct six affordable housing units. This project was included in the Housing Element of the Denville Master Plan. An application was filed before the zoning board of adjustment in June of 2012. It is the desire of Morris Habitat to proceed with the zoning board of adjustment application and public hearing. Access and steep slopes are two constraints of the property. The project would include a paving improvement of Burton Lane which is currently dirt. The existing home would be demolished. The septic would be replaced by the sewer service and the underground storage tank would be replaced with gas service. It would require some regrading of slopes and would improve access and drainage. (Mbr. Golinski entered at 7:53 pm)

Morris Habitat is not proposing to subdivide this property. A Master Deed would be created for the condominiums that would be individually owned. Morris Habitat is interested to know if the planning board would be compelled to take action and intervene in the matter. Morris Habitat will advise the zoning board of adjustment that they have appeared before the planning board and ask that a public hearing on this matter be scheduled for the zoning board. Explaining that litigating the matter would not be a great use of the unlimited resources devoted for an affordable housing project.

Mbr. Filauro inquired about the history of the parcel. Mbr. Kuntz provided an overview of the prior subdivision approval with variance relief that was provided by the planning board in 2008. Stating that the planning board took great interest in the property based upon having steep slopes, railroad tracks and a portion in Parsippany. Mbr. Kuntz continued with a summary of the prior board meetings. Tiena Cofoni, Esq. provided a summary of the prior resolution conditions of approval and deed restriction language. The property was purchased and an agreement was made regarding this property in August 2011.

Mbr. Kuntz commented that she is not opposed to Morris Habitat for Humanity. Stating that her opinion was that it is too much for the property. The applicant's attorney stated that the application should be allowed to go forward with the zoning board application for a land use determination to be made. Tiena Cofoni, Esq. explained that board members should continue providing their comments. Stating that it is not for the planning board to prevent the zoning board from moving forward.

Mbr. Filauro inquired if Morris Habitat would be satisfied in building a single unit on the property. Blaire Slycher-Bravo, Executive Director and Liz DeCoursey, Director of Operations for Morris Habitat for Humanity (South Salem Street, Randolph) was present and sworn under oath. Ms. DeCoursey stated that the agreement with the Township is for six units. The Township provided \$199K to purchase the property from Ms. Totaro. If the property cannot be developed, the Township will regain the property but there will be funds that cannot be used to develop the property.

The mayor added that the \$199K came from the COAH Trust Fund specifically for affordable housing units. The issue will become paying back the COAH fund. The Governing Body was unaware at the time of the deed restriction. Learning later of the bad title search. The Township has already committed \$243K. Stating that there is no interest in having this as Open Space. The agreement with the trust fund dollars was tied to the number of housing units.

Mbr. Filauro inquired how this development would impact the neighboring properties. Ms. DeCoursey stated that one of the benefits will be gas connections. Gas line connections will be extended, at no

expense to Habitat, to 25 existing homes that wouldn't have access otherwise. The access will be widened to allow for emergency vehicles. Ms. DeCoursey explained that several meetings were held with Bill Denzler, Township Planner. Great efforts were taken to address the project with minimal impact to the steep slopes and the neighborhood. The proposed units would be placed on the flat section of the property and not the steep slopes area. The units need to be handicapped accessible and will involve retaining walls. Additionally, a walkway will be installed to gain access to the rear of the building.

Habitat's legal counsel explained that all the positive and negative criteria will be provided in the testimony before the zoning board of adjustment. Stating that the project will not be approved if the criteria is not met. The Planning Board attorney reminded the members that the issue was the multi-housing units on a property with a deed restriction for further subdivision. Stating that Morris Habitat's position is that they are not subdividing the property, they are not violating the deed restriction and seeking the board's feedback. Tiena Cofoni, Esq. stated that nothing here binds the board. It's important for the process to go forward and we deal with the consequences.

Mbr. Filauro stated that it's too intensive a proposed project for that site.

John Ruschke, PE asked if Morris Habitat spoke with the Township Attorney. Ms. DeCoursey stated that Paula DeBona, Esq. was involved in the structuring of the agreement and encouraged them to consult the planning board. Ms. DeCoursey stated that the unique circumstances of the situation determined that they come to the planning board to avoid court and obtain a resolution. Mr. Ruschke stated that it's not the function of the board for administration.

Chr. Maffei stated that the matter is more complicated than the board members had anticipated.

Mbr. Golinski inquired about the legal opinion regarding condominiums not being a subdivision. Ms. Cofoni confirmed that this is true. Stating that while it is not further subdivision it becomes an issue of further density and a violation of the spirit of the deed restriction and further development. Stating in her opinion that this needs to go to the zoning board of adjustment regardless. Mr. Ruschke stated his position is that the township attorney provide a legal opinion to provide the zoning board in order for them to hear the case and move forward. With the planning board can discuss rendering an opinion once the zoning board has made a determination. Stating that there is a lot of proofs and testimony that need to take place before the zoning board.

Mayor Andes stated that one alternative would be to have the prior township attorney provide an opinion.

Mr. Monaghan asked if the planning board could provide a letter that the planning board was not taking a position at this time.

Mbr. Nienstadt had no comments.

Mbr. Schmitt stated that in his opinion there is no violation of the subdivision and that it is a use variance. Commenting that it's not for the planning board's jurisdiction. Agreeing that the case be heard before the zoning board of adjustment.

Chr. Maffei stated that he agreed with Mbr. Kuntz. Having said that, the zoning board is a separate entity and this matter be heard.

Tiena Cofoni, Esq. stated that she could write a letter if the board so directed. However, it would not state that the board isn't taking a position, only that no action will be taken at this time. It was agreed by the board members and professionals that the board take no action at this time, no letter be written and just direct the board secretary to schedule a hearing.

Morris Habitat thanked the board for their time. Explaining that if they knew there was a deed restriction they would not have purchased the property.

#### **OLD BUSINESS**

There was no old business referenced.

#### **NEW BUSINESS**

Mbr. Golinski referenced the discussion at the last meeting regarding prior applications and approvals. Inquiring if they could ask each applicant that appears before the board if they have had any applications before the board previously. Mr. Ruschke stated that this is on the application regarding easements, deed restrictions, prior approvals, etc. Mr. Kasler stated that depending the length of time they have owned the property they might reply not to their knowledge.

#### **ADJOURNMENT**

Motion to adjourn.