

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES
April 9, 2014

The Planning Board of the Township of Denville held its regular meeting on Wednesday, April 9, 2014. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:31 p.m. Chairperson Buie presided.

Secretary Probasco read Notice of Public Meeting.

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

MINUTES

March 12, 2014

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

PURCHASING

Motion to pay vouchers submitted by **Kasler Associates** (dated March 28, 2014) subject to the availability of funds, was made by Mbr. Filauro, seconded by Mbr. Maffei and unanimously approved by a majority of Members present and able to vote.

Motion to pay vouchers submitted by **Hatch Mott MacDonald** (dated March 27, 2014) subject to the availability of funds, was made by Mbr. Filauro, seconded by Mbr. Golinski and approved by a majority of Members present and able to vote.

Motion to pay vouchers submitted by **The Buzak Law Group** (dated February 28, 2014) subject to the availability of funds, was made by Mbr. London, seconded by Mbr. Nienstadt and unanimously approved by a majority of Members present and able to vote.

PUBLIC HEARINGS

Chr. Buie addressed the members of the public and advised that the public hearing would be limited to 9:30 due to the busy agenda.

**PSP/FSPV 13-07: Estling Village, LLC
Block 30601, Lot 6
30 Estling Lake Road**

This is the second public hearing for this applicant and was carried from March 12, 2014. The applicant is requesting preliminary and final site plan for a multi-family development and 'C' bulk variance relief for number of units per building.

Joseph A. O'Neil, Esq. of Garofalo & O'Neil (60 Baldwin Road, Parsippany) represented the applicant, Estling Village, LLC. Mr. O'Neill stated that a plan to make a uniform walkway with additional lighting to the train station, pending approval of the utility. Further stating that there is a pending sewer easement agreement with the lake community, eliminating the NJ Transit issue. Mr. O'Neil had two additional witnesses and asked that they be sworn in. Mr. Thomas King and Mr. Michael Novak were both sworn under oath.

Tom King, AIA of Devereaux & Associates (McLean, Virginia) was accepted as a fact witness by the board. Edward Buzak, Esq. reminded the board to keep in mind that Mr. King was not a professional witness. Mr. O'Neil stated Mr. King was the architect responsible for the project design. Spoke to the project have a feel of individual dwelling units. Multi-level living, garages and individual entrances. Mr. King testified to being well into the design process when he was advised about the eight units per building. Stating that the impact would require elimination of the garages creating a garden apartment scenario with all surface parking. A density study was performed. The result would be elimination of the community center and gang mailboxes. While eliminating the garages decreased the building footprint, the increase in buildings would result in more impervious coverage.

Chr. Buie asked Mr. O'Neil to present his next witness.

Michael Novak, Licensed Site Remediation Professional. Mr. Novak was accepted by the board as an expert in site remediation services. Mr. Novak spoke to the client's desire to protecting the environment, soil sampling and discover any issues prior to development. Stating the prior environmental research resulted in environmental areas with contaminants in four locations on the property. The first area from a surface spill of solvents, approximately 50' x 20' directly behind the building. Three additional areas were identified under the building floor.

Spoke to the ongoing remediation and explained that soil would be excavated, removed and properly disposed. Post excavation samples would be taken to ensure the soils are clean for development. A soil remedial outcome letter will be issued at that time. The monitoring well would be used to determine if contaminants are present and if additional monitoring wells are required. Stating that the contamination is not the type to impact the development, future inhabitants or the neighbors.

Joseph O'Neil, Esq. had no further witnesses and Chr. Buie opened to the board professionals.

Jason Kasler, PP had none.

John Ruschke, PE inquired about the soil remediation. Mr. Novak confirmed that excavation of 250 cubic yards equating to approximately 400 tons of contaminated soil in approximately two days totaling 12 truckloads of soil. John Ruschke inquired about health concerns. Mr. Novak explained that there are health and safety requirements and any contaminants would be contained within the work area with no impact to the surrounding area. The Township Engineer inquired about groundwater investigation and vapor concerns. Mr. Novak confirmed that some testing of groundwater samples have been performed but no permanent wells can be installed until after excavation. Mr. Novak stated that there was no vapor concerns and substantial groundwater contamination is not expected.

Edward Buzak, Esq. inquired about the NFA (No Further Action letter) that was issued by the NJDEP years ago. Inquiring how an NFA could have been previously issued when there is currently contamination on the site today. Mr. Novak responded that this could be a result of sampling in only certain areas. Stating that a thorough buyer's investigation uncovered different results than a seller's investigation. Mr. Buzak asked additional questions regarding the contamination referencing the NFA and RAO (Response Action Outcome letter). Mr. Novak stated that NFA is no further action required and that the buyer elected to investigate. RAO will be more thorough and conclusive of the NFA due to more samples of the soil and the ground water. Edward Buzak Esq. asked if it would meet residential standards. Mr. Novak stated that it would comply with residential buildings standards. Mr. Ruschke inquired about the issuance date. Mr. Novak stated it was a 2009 NFA.

Chr. Buie advised the board that he would open to the public before the board and advised the public on board protocol.

Barry Mushala (35 Thurmont Road) inquired about impact studies for economic, social and traffic impact studies. The board attorney responded to Denville's land use requirements for the applicant to comply. Explaining that the township professionals review the applications. Jason Kasler, PP confirmed that the checklist doesn't require an impact statement. Mr. Mushala inquired about the number of homes and the number of NJ Transit parking spaces. Edward Buzak, Esq. responded that these items weren't related to the application. Mr. Kasler stated that the applicant will meet the necessary parking requirement and the street will meet the code under the RSIS.

Brian Walsh (380 Franklin Road) inquired about having 192 parking spaces. Mr. King confirmed the number of parking spaces. Mr. Walsh referenced the trains and speed of travel and asked Mr. Peregoy several questions that the applicant's legal counsel advised didn't require an answer. Mr. Walsh inquired about the remediation standards being the same since 2009. Mr. Novak replied yes. Mr. Walsh had other questions that Mr. Novak was unable to answer. Mr. Walsh commented on a remediated site in Newark, fire access and having only one road. Mr. Walsh inquired about the traffic report and was advised by Mr. O'Neil that a copy is on file with the board secretary.

Chr. Buie asked for other members of the public.

Tammy Boyd (27 Vista Way) referenced the number of trains being higher than what was testified. Ms. Boyd stated that a second access is necessary and referenced a paper road Patnode Road. Voicing concern for an additional 100 cars and worry for fire access. Ms. Boyd entered photographs of cars parking where they should not be. Ms. Boyd was sworn under oath. Ms. Boyd emphasized the importance of an emergency access road.

Chr. Buie asked for other members of the public.

Bruce Whitlock (Estling Lake, Denville summer address, Pennington, NJ winter address) was sworn under oath. Mr. Whitlock asked the applicant about the traffic study. Mr. Peregoy responded to having discussed this at the last meetings testimony and explained how the traffic was projected. Mr. Whitlock provided further comments and referenced the number of scheduled trains. Mr. Whitlock inquired about sidewalks. Eric Keller, PE came forward to respond to the sidewalks, the 20' wide cart way and a 2' wide area for pedestrian traffic. Mr. Keller also provided information on the lighting. Mr. Whitlock inquired about school buses. Mr. Keller advised that there is sufficient circulation for a bus within the development but that it was the Board of Education's decision to enter private property. There was some dialogue between Mr. Whitlock and Mr. Novak

regarding buffer zones. Chr. Buie added that all board approvals are contingent upon outside agencies approval, including NJDEP. Mr. Whitlock inquired about the building height definition. Mr. Keller responded to it meeting the ordinance requirements. Jason Kasler, PP indicated that it's determined by the roof type and confirmed it's a 35' building. Mr. Whitlock inquired about losing an acre and the reduction of land. Mr. O'Neil spoke explaining it was not part of this application. Mr. Kasler stated it was part of the redevelopment process. For the record, Mr. Buzak stated the property was declared an area in need of rehabilitation. Mr. O'Neil apologized and agreed that he had misspoke. Mr. Whitlock inquired about stormwater. Mr. Keller responded that storm water regulations would be met and maintained by the property owners. Mr. Whitlock inquired about Metro North accident and plans for a barrier between the garages and the train. Mr. Keller responded none proposed. Mr. Whitlock inquired about additional overflow parking. Mr. Keller responded to guest parking and provided the RSIS standards for parking. Mr. Whitlock asked about fire trucks. Mr. Keller responded that fire trucks were possible with the current configuration. Edward Buzak, Esq. advised Mr. Whitlock that the two page document he provided the board was inadmissible and explained that he would have to read his statements as a matter of record. Mr. Whitlock read off portions of his document which included comments on traffic safety and the need for outdoor recreation areas.

Chr. Buie asked for other members of the public.

Margaret Whitlock (35 Estling Lake and Pennington, NJ) was present and sworn under oath. Ms. Whitlock referenced the redevelopment and the requirements as it relates to the number of building units. Mr. O'Neil stated that the testimony was that the architect wasn't aware of the unit change until after the ordinance was adopted. Ms. Whitlock commented on it being difficult to accept it as a hardship. Ms. Whitlock referenced the stub roads and dangers of the residents getting hit by a vehicle backing out.

Chr. Buie asked for other members of the public.

Mr. Whitlock asked if he could speak again. Chr. Buie advised not at this time.

Katherine Valentino (43 Estling Lake Road) was present and sworn under oath. Ms. Valentino referenced the rehabilitation plan meetings as it relates to the number of acres and the name change from Denville Mews being confusing. Ms. Valentino spoke to parking, designations and numbers. Mr. Keller responded the 192 parking spaces was broken down as 60 garage spaces and 32 detached garage spaces (in four structures). There are 100 surface parking spaces throughout the lot.

Ms. Valentino entered three photographs she had taken on Sunday, April 6th.

Exhibit O-1 – Valentino

Exhibit O-2 – Valentino

Exhibit O-3 – Valentino

Ms. Valentino referenced the road measurements were not sufficient to add a pedestrian walkway and inquired about road widening. Speaking to the danger of the train station and inquiring about the preferred width of a road. John Ruschke, PE stated it was determined by the type of the road. Jason Kasler, PP spoke to 10' alleyway, a 30' cart way with a 50' ROW and a 20' cart way with a 30' ROW. Ms. Valentino commented on the hardship being created and inquired about the applicant creating their own hardship. Mr. O'Neil stated that this wasn't an accurate depiction of the application

Chr. Buie announced a break in the hearing, stating Ms. Valentino was to begin at the next meeting.

Jason Kasler, PP referenced handicapped parking spaces. Stating that the two spots should be relocated in front of units 61 through 65 for sidewalk access to eliminate having to cross the road.

Chr. Buie asked the board for consideration of an additional meeting and inquired about legal notice. Secretary Probasco confirmed that it would require a special meeting on April 30th. Mr. O'Neil confirmed that this would be fine. Mr. Kasler inquired about an extension of time. Mr. O'Neil provided an extension through the end of May.

Chr. Buie announced that the public hearing for this application would be carried to Wednesday, April 30th at 7:30 pm without further notice.

NEW BUSINESS

Jason Kasler, PP spoke to Kasler Associates, PA Consistency Review Memorandum dated April 8, 2014 regarding the Hotel Ordinance #6-14 – Master Plan Consistency Review. The board needs to determination whether the ordinance is not inconsistent with the Master Plan. Explaining that the prior ordinance addressed motels and hotels. The current ordinance before the board is only for the Hotel zones. The ordinance removes hotels as a permitted use in the I-1 zone. Secondly, it moves the hotels as a permitted use to a conditional use in the I-2 zone. The Township Planner spoke to environmental sensitivity, land use regulations and impact to the surrounding area. Summarizing that the hotel ordinance before the board is not inconsistent with the Housing Plan and the complete Master Plan of the Township of Denville.

Chr. Buie recognized that Ted Einhorn, Esq. was present and allowed Mr. Einhorn to address the board.

Ted Einhorn, Esq. of Einhorn Harris represents Roma Hotels, the owner of the Hampton Inn. Mr. Einhorn stated that his client is opposed to the particular ordinance. Mr. Einhorn respectfully disagreed with the Township Planner as it relates to the board's role. Stating that the board is not limited strictly to deciding if the ordinance is consistent or inconsistent with the Master Plan. Further stating that the ordinance is

spot zoning. Mr. Einhorn spoke to the definitions within the ordinance being open ended for future development. Summarizing that the planning board recommend that the ordinance not be adopted.

Chr. Buie opened to the planning board members.

Mbr. Schmitt had no comments at this time.

Mbr. Golinski inquired about the entertainment and recreation definitions as it relates to the Hampton Inn. Jason Kasler, PP responded that there weren't definitions in the prior ordinance. Stating if you cannot define it, you cannot defend it. Mbr. Golinski stated that if no definitions existed, then the Hampton Inn could have had entertainment and recreational facilities. Mr. Kasler confirmed.

Mbr. Nienstadt stated his questions had been answered.

Mbr. London commented on a glossary of terms across all our ordinances that definitions would be a part of this master document of terms. Mbr. London referenced that the zoning map he had did not reflect an I-2 zone.

Mbr. Filauro commented on the traffic throughout town. Further stating that while not opposed to the hotel use, did not understand the urgency. Jason Kasler, PP responded that there is already a hotel in the zone. Mbr. Filauro stated that it was premature.

Mbr. Maffei had no comments or questions.

Mayor Andes commented that the ordinance was not inconsistent with the Master Plan.

Chr. Buie stated that it was consistent and commented that this is the best place in town for this. Referencing having had difficulty finding a hotel after a hurricane.

Edward Buzak, Esq. wanted to clarify the role of the board. Stating the board is to identify any inconsistent provisions. Further stating that the Township Planner in his review, it is not inconsistent with the Master Plan. The Board Attorney advised the planning board that they should provide any recommendations if there are any.

It was found that the proposed Hotel Ordinance #6-14 was not inconsistent with the Master Plan.

Motion was made by Mbr. Golinski, seconded by Mbr. Nienstadt and approved by a majority of members.

ROLL CALL: Ayes – Golinski Nienstadt, Filauro, London, Andes, Buie
Nays - Maffei

Chr. Buie commented on taking the definitions into account that were referenced by Ted Einhorn, Esq. as it relates to the definitions.

Mbr. London commented on the Mountain Lakes hotel ordinance as it relates to boundaries. Pointing out to the board that towns can adopt ordinances that can impact other towns.

Chr. Buie made the recommendation that the governing body consider tightening of the definitions.

There was brief discussion regarding recommending a traffic study and understanding landscaping conditions. Mbr. London sought clarification that under the current ordinance there is less protection than in the proposed ordinance with more controls in place to better shape a project that comes before the board. Jason Kasler, PP confirmed that Mbr. London was accurate and referenced the setbacks, requiring further burden of proof.

Motion was made by Chr. Buie, seconded by Mbr. Nienstadt and approved by a majority of members.

ROLL CALL: Ayes – Buie, Nienstadt, Maffei, London
Nays – Golinski, Filauro, Andes

OLD BUSINESS

Secretary Probasco referenced the Mayor's Bus Tour and reminded the members their response was necessary. Jason Kasler, PP offered to write something up for the Bus Tour if the Mayor would like.

Mbr. London referenced the Environmental Resource Inventory (ERI) presentation that the Township will obtain ten points for the Sustainable New Jersey. Stating the document is located on the website.

Video Demonstration Safety in Local Government

A short (13 minute) video was shown that was issued by the Municipal Excess Liability Joint Insurance Fund for Workplace Safety.

ADJOURNMENT AT 10:58 PM