

Call to Order:

The regular meeting of the Monroe Township Planning Board was called to order at 7:02 p.m. by Chairman O'Brien. The Board saluted the flag. Roll call was as follows:

Present – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Ms. Hui, Mr. O'Brien. Absent – Mr. Teefy, Council Liaison, (excused). Also present – Mr. Schwartz, Solicitor, Mr. Kernan, Planner, Mr. Jordan, Engineer.

Proper notice of this meeting was given in accordance with the requirements of the Open Public Meetings Act on January 11, 2013.

Mr. O'Brien read the following statement: "Be advised, no new item of business will be started after 10:30 p.m. and the meeting shall terminate no later than 11:00 p.m."

Memorialization of Resolutions:

1. PB-9-13 – App. #1828 – Philadelphia Suburban Development – Completeness/Tabled

Motion by Mr. Agnesino, seconded by Mr. Kozak to adopt resolution PB-9-13. Roll call vote: Ayes – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Mr. O'Brien. Nays – Zero. Abstentions – Zero.

2. PB-10-13 – Blaze Mill Ordinance – Authorization to Kernan Consulting Engineers

Motion by Mr. Agnesino, seconded by Mr. Cooper to adopt resolution PB-10-13. Roll call vote: Ayes – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Mr. O'Brien. Nays – Zero. Abstentions – Zero.

Public Hearing:

1. #1828 – Philadelphia Suburban Development – Preliminary Major Subdivision

Present – Mark Nicoletti, applicant, Henry Haley, applicant's engineer, Robert Mintz, applicant's attorney.

Member's packets contained: 1. Report dated December 10, 2012 prepared by Ray Jordan. 2. Report dated December 12, 2012 prepared by Tim Kernan. 3. A copy of the applicant's preliminary major subdivision plan. 4. Letter dated February 25, 2013 prepared by Ray Jordan.

The applicant is proposing to subdivide an existing 80.3 acre tract into 105 lots. The proposed development will consist of 102 single family residential lots, a pump station lot, and two stormwater management/open space lots. The property is zoned RG-MR and is located on Malaga Road and Winslow Road, also known as Block 2702, Lots 11, 15, 17, 40, and 41. This application was tabled at the February 14, 2013 meeting so Mr. Jordan could compile some construction costs for recreation facilities required for this development per the Township ordinance.

Public Hearing: (continued)

1. #1828 – Philadelphia Suburban Development (continued)

Mr. O'Brien stated that this application had been tabled by the Board; a motion was needed to resume the hearing on application #1828. Motion by Mr. Agnesino, seconded by Mr. Sebastian; voice vote; all ayes, motion passed.

Mr. Nicoletti, Mr. Haley, Mr. Jordan, and Mr. Kernan were sworn in by Mr. Schwartz. Mr. Mintz stated that there was discussion at the previous hearing concerning recreation fees as well as the construction costs to install the recreational components required for this development. In follow up to that, Mr. Haley looked at the plan and was able to locate some recreational facilities onsite in one of the open space areas. Mr. Mintz displayed a new plan which showed the proposed recreation facilities. Mr. Haley testified that if the recreation is provided onsite the amount of open space still complies with the Township ordinance. The recreation shown on the plan is the amount of recreation required by the ordinance for a development of this size. In addition, the lots that require rear yard drainage easements have been adjusted so that they meet the minimum ten thousand square foot lot size exclusive of the easements. The applicant is still asking for the variances for lot frontage on the lots that are located on the curves of the interior roadways; however Mr. Haley testified that if need be, he could move those lots further into the open space so as to make the lots comply with the lot frontage requirements; it will reduce the amount of open space but the remaining amount of open space would still comply with the ordinance.

Mr. Mintz stated that the case law is very clear and the Township's ordinance is not enforceable. The question was raised as to whether it applies to Pinelands properties; so they have shown recreation on site on the new plan. The ordinance requires that that open space and recreation should be dedicated to the Township for public use; however Mr. Mintz felt that the Township was not eager to have tot lots or recreation lots to maintain. The ordinance also allows for homeowner's associations which would maintain the open space lots; however in that case the recreation and open space would become private. Mr. Mintz referred back to the case law with regard to the issue of the property being located in the Pinelands and being a cluster development; which is the type of project that was the subject of the lawsuit. He did note that there is a distinction of this being in the Pinelands and that the Board would vote on what was appropriately enforceable. The presentation was made at the previous meeting which included a variance request for the pump station lot, the phasing to be deferred to final, the sidewalk and fee being waived for Morgan Road with the understanding that the applicant would install sidewalk on Winslow Road and extend it to connect with the sidewalk in front of Marissa Estates; they are installing sidewalk along Malaga Road but asked not to have to install the sidewalk in front of the lots that do not belong to them and the one with the gas company facility on it. In addition the Board was to consider the type or if any fencing was needed around the basins. The lot frontage variances are still being requested for the lots that front on the curves of the interior roadways.

The Board asked Mr. Jordan to review the open space ordinance and determine exactly what recreation facilities are required for this development and the cost of installing those facilities. Mr. Jordan's report indicated that the ordinance would require this development to provide two tennis courts, a tot lot, and a basketball court on five acres of open space. The total cost of those amenities including the earthwork would be approximately \$662,383.00 or \$6,495.00 per lot. The estimate does not include the construction of a parking area. The total cost of the facilities without the earthwork is approximately \$475,320.00 or \$4,660.00 per lot.

Public Hearing: (continued)

1. #1828 – Philadelphia Suburban Development (continued)

Mr. Mintz stated that there isn't a provision in the ordinance for a contingency, there is in the bonding, but not in the cost. If the earthwork is removed, the contingency is removed, and \$200,000.00 of lighting is removed, the number is approximately \$165,000.00 or \$170,000.00. The applicant previously discussed with the Board a reasonable and good faith proposal. The applicant is withdrawing that proposal and would like to provide the recreation onsite.

Mr. Masterson commented that since the applicant is proposing the recreation onsite that meant he was not going to make a recreation contribution. Mr. Mintz stated that the applicant prefers to provide onsite recreation; however the Board has the call. Mr. Nicoletti stated that he wants the option to have either one with the Board determining the amount of the contribution. He has taken the \$160,000.00 offer off of the table; if the Board wants to put a number on the table, then he will respect that number, but they want the option to either pay that amount or put the recreation onsite. Mr. Heffner commented that the applicant did not provide parking for the recreation area. Mr. Haley stated that the ordinance only requires parking if the development has over four hundred and fifty units. Mr. Nicoletti stated that there was a lot of discussion at the last meeting as to whether they make the contribution or if they put the recreation onsite. He stated, after looking at the plan and the old sand pit located on the property, they felt installing the recreation on the site provided a visual barrier to the pit. He stated that he felt comfortable that it will cost approximately \$160,000.00 to install and that it's a good idea to install the recreation onsite. If the Board wants to give them another figure for the recreation contribution, but give them the right to do one or the other, they are acceptable to that scenario.

Mr. O'Brien stated that if the recreation is installed onsite, then it becomes the responsibility of the homeowner's association. Mr. Gabbianelli stated that it has to be open to the public. Mr. Schwartz stated that if it were open to the public, then parking must be provided. Mr. Nicoletti stated that is was his understanding that, unless they dedicate the recreation area to the Township, which they are not required to do, that the homeowner's association takes responsibility and it will not be open to the public. Mr. Mintz stated that he didn't think the Township wanted the responsibility for the recreation. It cannot be made public if it's owned by the homeowner's association due to the liability on the homeowners in the development. Mr. Nicoletti asked if he is required to dedicate the recreation area to the public. Mr. Mintz stated that they are not. Mr. Heffner stated that he did not want another tot lot for the Township to take care of; he stated even though there is a homeowner's association, eventually it will fall to the Township because they won't maintain it. He stated a fair number for the contribution to the recreation fund is \$4,000.00 for every unit not in COAH. The \$165,000.00 that was offered does not even come close to what it costs the Township to maintain the facilities they have for the kids. Mr. Kozak agreed with Mr. Heffner.

Mr. Crane asked Mr. Jordan about the figures in his report regarding the cost of the recreation. Mr. Jordan stated he was comfortable with the figures they presented; they do include the cost for prepping the area and something will have to be done with the pit in order to get the amenities in that area. The ordinance does include lighting at the discretion of the Board and those figures were included as well. Mr. Masterson stated that he did some research on the cost as well and his figures are very close to Mr. Jordan's.

Public Hearing: (continued)

1. #1828 – Philadelphia Suburban Development (continued)

Mr. Masterson stated his figure was between \$350,000.00 and \$400,000.00 to install the recreation onsite. Mr. Nicoletti asked if those figures included the lighting. Mr. Masterson stated they did. Mr. Nicoletti commented that it would go from \$400,000.00 to \$200,000.00 without the lighting. Mr. Masterson commented that lighting may or may not be required by the Board. Mr. Crane stated that the homeowner's association is not going to want to pay the light bill so they won't turn them on if they installed. There was further discussion by the Board on the recreation being private or public. Mr. Gabbianelli stated that the Township can take control of the recreation area. Mr. Heffner stated the \$4,000.00 per unit number he mentioned was without adding in the lighting. Mr. Schwartz commented that what exists is the plan before the Board with the recreation onsite. There is not an offer from the applicant to make a contribution in lieu of installing the recreation.

Mr. Nicoletti stated that he would put the offer of \$160,000.00 back on the table as an alternative to installing the recreation. Mr. Schwartz commented that if COAH is no longer required at the time of construction, then the \$2,000.00 per unit is required for all of the units. Mr. Agnesino put a motion on the table to accept the offer of \$160,000.00. Mr. Nicoletti stated as long as he has the option to either pay the money or install the recreation. Mr. Agnesino stated he did not understand the applicant's offer and withdrew his motion.

Mr. Kozak addressed the issue of sidewalk along Malaga Road. He thought there should be curbing along Malaga Road and an area of sidewalk at the entrance on Malaga Road to provide an area for the children to stand while waiting for the school bus. Mr. Kozak stated that landscape berms can be placed along Malaga Road with trees and bushes to shield the resident's backyards and fencing from the roadway. There are residents in the development across from this proposal who have sidewalk along Malaga Road who wish it was never put there because it does not serve any purpose. Mr. Masterson asked if the sidewalk is installed, will the homeowner's association be responsible. Mr. Kernan stated that they would be. There was discussion concerning the curbing not being required in front of the properties the applicant does not own. The contribution in lieu of putting sidewalk along Malaga Road would be \$22,500.00. Mr. Mintz stated that applicant will put the sidewalk and curb along the Malaga Road frontage but that they couldn't put it in front of the properties they do not own. Mr. Kozak commented that they are installing it offsite along Winslow Road so what is the difference. Mr. Schwartz commented that they agreed to extend it on Winslow Road.

There was discussion regarding fencing around the basins. The Board wanted to know the depth of the basins. Mr. Haley stated that the one along Malaga Road has a depth of approximately seven to eight feet; the larger one in the back is approximately five to six feet. The side slopes are three to one which is typical for all basins. Mr. Kozak stated that the pit is an attraction for the kids. Mr. O'Brien commented that the pit is their property and the homeowner's association will be responsible for that area. After some discussion, the Board decided they wanted the applicant to install fencing around the basins. It was determined that the fencing would be black chain link four or five foot high. Mr. Agnesino inquired as to the stormwater drains and if the Township will only be responsible for the ones in the right of ways. Mr. Jordan replied that the homeowner's association will be responsible for all of the others.

Public Hearing: (continued)

1. #1828 – Philadelphia Suburban Development (continued)

Mr. Heffner inquired as to the variances requested for lot frontage; he stated the requirement is seventy-five feet and asked what the applicant was proposing for those lots. Mr. Kernan replied that most of them are approximately fifty-seven feet. He stated that they meet the seventy-five feet right off the forty foot right of way line.

Mr. Schwartz reviewed each waiver and variance being requested and requiring a vote. Motion by Mr. Crane, seconded by Mr. Cooper to grant the waiver from showing the existing lighting. Roll call vote: Ayes – Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Mr. O'Brien. Nays – Mr. Agnesino, Mr. Kozak. Abstentions – Zero. 8 ayes, 2 nay, motion passed.

Motion by Mr. Agnesino, seconded by Mr. Cooper to grant the sidewalk waiver on Morgan Road and waive the sidewalk fee conditioned upon the applicant extending the curbing and sidewalk along Winslow Road to Marissa Estates. Roll call vote: Ayes – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Mr. O'Brien. Nays – Mr. Heffner. Abstentions – Zero. 8 ayes, 1 nay, motion passed. Mr. Gabbianelli asked Mr. Schwartz to make sure the resolution contained the language that the homeowner's association is responsible for the sidewalk along the frontage of their property on Winslow and Malaga Roads.

Motion by Mr. Agnesino, seconded by Mr. Sebastian to grant the lot frontage variances for Block A, Lots 3, 4, 5, 6, 31, 32, 33, 34, 41, 42, 43, 49, 50, and 51, Block B, Lots 14 and 15. Roll call vote: Ayes – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Sebastian, Mr. O'Brien. Nays – Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson. Abstentions – Zero. 5 ayes, 4 nays, motion passed.

Motion by Mr. Agnesino, seconded by Mr. Crane to grant the lot area variance for the pump station lot with the condition that the MMUA approves of the size of the lot. Roll call vote: Ayes – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Mr. O'Brien. Nays – Zero. Abstentions – Zero.

Motion by Mr. Agnesino, seconded by Mr. Crane to grant preliminary major subdivision approval conditioned upon the applicant acquiring and redeeming the necessary Pinelands Development Credits, complying with COAH regulations in force during permitting, homeowner's documents being submitted and reviewed by the Board's Solicitor, all the requirements listed in the Pinelands Certificate of Filing, all existing structures, underground tanks, wells, and septic systems being removed, all outside agency approvals, the comments listed in Mr. Jordan's and Mr. Kernan's reports, phasing will be provided at final, approval by the fire official for the radius of the cul-de-sacs, architectural plans being submitted prior to final, fences around the three basins, open space, basins, and recreation to be dedicated to the homeowner's association, submission of revised plans, all drainage not located in the right of ways will be the responsibility of the homeowner's association, as well as all sidewalk along both road frontages along their property. There was further discussion concerning the lighting in the recreation area. The Board stated that they wanted the lighting with restrictions on the timing. Roll call vote: Ayes – Zero. Nays – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Gabbianelli, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Mr. O'Brien. Abstentions – Zero. 9 nays, motion failed.

Public Hearing: (continued)

1. #1828 – Philadelphia Suburban Development (continued)

Mr. Mintz asked if the Board would consider a vote separating the recreation from the subdivision since that is the issue of contention. Mr. O'Brien stated it was up to the Board, but he was not in favor of the request because there has been a lot of discussion on the matter. Mr. Sebastian questioned whether the Board could since the application was voted on already. Mr. Mintz stated that they are asking for reconsideration on the application without the recreation. Mr. Sebastian stated that the plan before the Board includes the recreation; he did not have a problem with the applicant coming back and asking for reconsideration. Mr. Mintz stated that there is precedent for reconsideration the same evening. Mr. Schwartz commented that it can be done, but you just can't pull the recreation out; if the applicant wants the Board to reconsider the whole thing with a different plan, the old plan, it can be done. Mr. Mintz stated that the applicant would like to offer the \$165,000.00 recreation contribution per market rate unit. Mr. O'Brien stated that the plan before the Board was voted on; if the applicant wants to make another offer he can come back with another plan. The Board is not going to go back and forth on the issue; the vote was taken and the Board is going to stand.

Approval of Minutes:

1. 1/24/13 regular meeting. Motion by Mr. Agnesino, seconded by Mr. Kozak to approve the minutes from the January 24, 2013 regular meeting. Voice vote; all ayes, motion passed.

2. 2/14/13 regular meeting. Motion by Mr. Agnesino, seconded by Mr. Sebastian to approve the minutes from the February 14, 2013 regular meeting. Voice vote; all ayes, motion passed.

Site Plan Waiver: for Board Action:

1. #WSP-01-13 – New Cingular Wireless, PCS, LLC – Site Plan Waiver

Present – Warren Stillwell, applicant's attorney, Jay Kruse, applicant's engineer.

Member's packets contained: 1. A copy of the applicant's site plan waiver application. 2. A copy of the existing compound layout plan.

Mr. Stillwell introduced himself as the applicant's attorney. Mr. Gabbianelli excused himself from voting on this application. Mr. Stillwell stated that the application before the Board concerns the upgrading of existing equipment located on an existing telecommunication tower.

Mr. Stillwell stated that new legislation passed by the State of New Jersey in January of 2012, provides that in the event a wireless carrier is proposing to co-locate on an existing support structure, and as long as they meet certain conditions, such as the height is not increased by more than ten percent, the width is not increased, and the equipment compound is not increased beyond 2500 square feet, no site plan is required. He presented the law to the town's Zoning Officer and to other staff and the Zoning Officer did not feel he could make a qualified blanket determination that they qualify for waiver of site plan. The federal statute essentially states that if an applicant is making an eligible request on an eligible facility, and the application does not substantially increase the physical dimensions of the tower, it cannot be denied. He noted that the other towns they have been dealing with have been permitting these applications with just zoning permits

Site Plan Waiver: (continued)

1. #WSP-01-13 – New Cingular Wireless PCS, LLC (continued)

Mr. Kruse was sworn in by Mr. Schwartz. He displayed the existing site plan for the Board. The existing facility is located at 2610 South Black Horse Pike, also known as Block 5501, Lot 5. The existing tower is 194 feet high and the applicant's equipment is installed at 180 feet. The proposal is to install one additional antenna in each of the three sectors, currently there are six, for a total of nine antennas. They are not increasing the tower height or width. With regard to the equipment compound, the applicant currently has four equipment cabinets; they are proposing to remove one cabinet and replace that cabinet with a slightly taller model and place a smaller cabinet on an existing post. They are not increasing the size of the concrete pad or the area where their equipment is currently located. The proposal meets all the criteria of the co-location statute for approval.

Motion by Mr. Agnesino, seconded by Mr. Crane to approve the site plan waiver. Roll call vote: Ayes – Mr. Agnesino, Mr. Cooper, Mr. Crane, Mr. Heffner, Mr. Kozak, Mr. Masterson, Mr. Sebastian, Ms. Hui, Mr. O'Brien. Nays – Zero. Abstentions – Zero.

Mr. Stillwell commented that they will have three more upgrades/co-location applications; he asked if the Board could give authority to the staff and or Zoning Officer to issue permits without the applicant having to come back for site plan waivers. Mr. Schwartz asked for a copy of the federal statute. Mr. Stillwell provided Mr. Schwartz with a copy of the statute.

Adjournment:

The meeting was adjourned at 8:32 p.m.

These minutes are an extract from the meeting that was held on the above date and are not a verbatim account or to be construed as an official transcript of the proceedings. The tape of the meeting is stored in the office of the Board.

Ninette Orbaczewski
Clerk Transcriber