

Call to Order:

The regular meeting of the Monroe Township Planning Board was called to order at 7:05 p.m. by Chairman Schwaiger. The Board saluted the flag. Roll call was as follows:

Present – Mr. Cotton, Mr. Crane, Mayor DiLucia, Mr. J. Garbowski, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr., O’Brien, Mr. Scardino, Mr. Schwaiger. Absent – Mr. Helsel, (excused). Also Present – Mr. Boraske, Solicitor, Mr. Stettler, Engineer, Mr. DeFrank, Engineer, Mr. Kernan, Planner, Mrs. Farrell, Secretary, Mrs. Orbachewski, Clerk Transcriber.

Notice of this meeting was given as required by the Open Public Meetings Act in the Annual Notice of Meetings. In addition, notice of this evening’s public hearing was sent in writing by the applicant’s attorney.

Chairman Schwaiger 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.”

Redevelopment:

1. Landfill Redevelopment Plan

Present – Stuart Wiser, Vice President of Planning & Environmental Services for ARH.

Mr. Wiser introduced himself to the Board. He displayed the Landfill Redevelopment Plan that was in the Board member’s packets. He was before the Board in February to present the area of the landfill as an area in need of redevelopment which was recommended as such to the Township Council. Township Council adopted a resolution in March 2019 accepting the Planning Board’s recommendation which also directed ARH to prepare a redevelopment plan. The purpose of the redevelopment plan is to provide a mechanism for the planning and redevelopment of the landfill area as a solar or other renewable energy production facility. The Township has applied for a grant through the NJDEP Hazardous Discharge Site Remediation Fund which requires a redevelopment agreement limiting the use of the landfill to renewable energy and a deed restriction to that effect before the funding will be released.

Mr. Wiser stated that the requirement before the Board this evening is to refer the document to the governing body for adoption by ordinance. The Board was required to review and make sure it is in keeping with the Township’s Master Plan and to make any recommendations as they saw fit. He stated that this plan is consistent with the Township’s Master Plan since the goals and objectives of the redevelopment plan advance the Master Plan’s policies concerning conservation and the management of natural resources and to provide services and facilities without overburdening the taxpayers. He believes and presented to the Board that this redevelopment is consistent with the spirit if not the exact language of the Master Plan. The uses for the landfill are limited to solar facilities or another renewable energy facility. It provides for redeveloper solicitation as well as a redevelopment agreement.

Redevelopment: (continued)

1. Landfill Redevelopment Plan (continued)

It also provides for a redevelopment escrow that provides funding from the redeveloper to help the Township defer costs of executing the redevelopment plan and negotiating a contract with the redeveloper. Mr. Boraske noted that the redevelopment plan was marked as Exhibit P-1.

Motion passed to open the matter to the public. There being none, motion passed to close the matter to the public.

Mr. Boraske stated that there should be a motion to find that the redevelopment plan as entered into evidence and explained, is substantially consistent with the Township Master Plan, it effectuates the policies of the Master Plan, and meets the goals and objectives. This plan will be recommended to Council to be adopted by ordinance. Motion by Mayor DiLucia, seconded by Mr. R. Garbowski to recommend the redevelopment plan to the governing body. Roll call vote: Ayes – Mr. Crane, Mayor DiLucia, Mr. J. Garbowski, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr. O’Brien, Mr. Scardino, Mr. Schwaiger. Nays – Zero. Abstentions – Zero.

2. Acme Shopping Center Redevelopment Plan

Present – Tim Kernan, Planner, Maser Consulting.

Member’s packets included a copy of the proposed Acme Shopping Center Redevelopment Plan, Fourth Amendment, dated April 2019. Mr. Kernan stated that the redevelopment plan for the Acme Shopping Center goes back to 2006 that covered both sides of the Black Horse Pike. The original plan was for a mixed use on both sides of the pike, a traffic light at the CVS, a town center or town square on the Jamesway/Acme side. The plan was then amended in 2007 and then again in 2008 which added additional lots on the Acme side of the Black Horse Pike to extend the redevelopment area down to Corkery Lane. In the fall of 2010, the plan was again amended to separate the Acme side of the redevelopment area (the south side) from the north side, now known as the Williamstown Square Redevelopment Area. In 2012 the plan was amended again to remove most of the residential component due to the lack of cooperation by the owner of the property, RD Management, to develop the property consistent with the plan that was adopted by the town. By taking most of the residential component out of the plan, the Pinelands would not certify that redevelopment plan because it eliminated the need for the redeveloper to purchase PDC’s. The proposal is to now go back to the second amendment of the plan which is a mixed-use plan, still separated from the other side of the pike, but this plan takes the redevelopment area down to Corkery Lane and proposed the traffic light at Charm Road. The town has a meeting prior to the Council meeting on Monday evening with the owner of the property, RD Management, to discuss the execution of the proposed plan. Mr. Kernan stated that the town needs the residential component to satisfy their affordable housing obligations.

Motion passed to open the matter to the public. There being none, motion passed to close the matter to the public.

Redevelopment: (continued)

2. Acme Shopping Center Redevelopment Plan (continued)

Mr. Kozak asked Mr. Kernan if the owner gave any indication how soon they would be starting the redevelopment on the site. Mr. Kernan replied that RD Management came in for a meeting a year or so ago with some plans that were reasonable but they had to point out to them that the area has a lot of wetland and they should meet with the NJDEP and map out where the wetlands are and required buffers, etc. They have done that and now they will meet with the committee on Monday night. Mr. Boraske marked the plan as Exhibit P-1.

Motion by Mr. R. Garbowski, seconded by Mr. Masterson to recommend the Acme Shopping Center Redevelopment Plan to the governing body for adoption by ordinance. Roll call vote: Ayes – Mr. Crane, Mayor DiLucia, Mr. J. Garbowski, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr. O'Brien, Mr. Scardino, Mr. Schwaiger. Nays – Zero. Abstentions – Zero.

3. Williamstown, Square Redevelopment Plan

Present – Tim Kernan, Planner, Maser Consulting.

Mr. Kernan stated that the original plan for the Williamstown Square side of the pike was included with the Acme Shopping Center plan back in 2006. It was separated from the other plan in 2010 and at the same time the owner of that property wanted the plan to change to be all commercial. At the time they were working with Kohl's and they developed a concept plan for the Pinelands and the town was receptive to change the plan to all commercial. However, the market changed for retail and plans were never executed. In 2015 the Planning Board recommended to Council changes in the Williamstown Square Redevelopment Plan to revert back to a mixed-use plan and the plan was prepared but it never went before the governing body because the previous administration was not in favor of a mixed-use plan. This is basically the same amendment from almost three years ago with just a couple of changes. The plan for this redevelopment area will include PDC usage as well as compensate for affordable housing units towards the Summerfields West project where the Pinelands was requiring them to purchase PDC's after their approval and for the Katz tract they plan to develop in the future. There was a combined agreement/balancing act with regard to affordable units with Fair Share Housing, the Pinelands, and the owner to get more PDC usage on this redevelopment site as well as the Acme site.

Motion passed to open the matter to the public. There being none, motion passed to close the matter to the public.

Mr. Kernan added that he has received some comments from Sue Grogan from the Pinelands on the draft of the Williamstown Square Redevelopment Plan regarding section 8.7 of the plan where it speaks about the number of affordable units excluded from the PDC calculations. The number reads 76 units and she wanted it changed to 70 units. Mr. Kernan explained the calculation and noted that he was going to change the plan to reflect the correction.

Redevelopment: (continued)

3. Williamstown Square Redevelopment Plan (continued)

Motion by Mr. R. Garbowski, seconded by Mr. Kozak to recommend the Williamstown Square Redevelopment Plan with the noted changes to the governing body. Roll call vote: Ayes – Mr. Crane, Mayor DiLucia, Mr. J. Garbowski, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr. O'Brien, Mr. Scardino, Mr. Schwaiger. Nays – Zero. Abstentions – Zero.

Land Management Ordinances:

1. Chapter 175-89.1 – Affordable Housing

Mr. Kernan stated that this ordinance is almost identical to the one recommended by the Planning Board last year and adopted by the governing body; however it was not certified by the Pinelands because of the PDC issue. After the ordinance was adopted they also received comments from Fair Share Housing which recommended the addition of language noted on page twelve, item eight. This added section states that the Township shall provide notice to Fair Share Housing, the New Jersey NAACP, the Latino Action Network, and the Gloucester County Chapter of the NAACP of all available affordable housing units and require other entities such as developers or companies retained to do affirmative marketing of affordable housing to comply with this section. In addition, Fair Share Housing wanted a section included on monitoring and reporting requirements which was added to the ordinance. Another new section was added concerning density in mobile home parks changing it from the maximum density of four and a half units to seven and a half units per acre. With regard to PDC usage the ordinance was changed to say that PDC's shall be used for ten percent of all market rate mobile home units but eliminates that requirement for low and moderate income units including the ones being constructed in connection with the Summerfields West project in accordance with the Consent Agreement. In the RG-RA Zoning District, the Pinelands is requiring that Pinelands Development Credits be used for twenty-five percent of all market rate units, excluding any required to be low and moderate income housing.

2. Chapter 175-125 – Open Space and Recreation

Mr. Kernan stated that some changes to the ordinance were recommended by the Open Space Committee and when the Township Solicitor reviewed the ordinance he noticed that it was outdated with regard to the requirement that a developer must provide open space and recreation. A court decision was handed down sometime after the town's ordinance was adopted that struck down that requirement except in planned residential developments. The only planned residential development currently in town is the Arbours. The draft ordinance presented is consistent with that case law. It does still have the same recreational components and the set aside for open space and allows for contributions in lieu in planned residential developments

Land Management Ordinances:(continued)

3. Chapter 175-130 – Resource Extraction

Mr. Kernan stated that the Township ordinance is more restrictive than the Pinelands Comprehensive Management Plan. This ordinance brings the resource extraction standards to be consistent with the Pinelands standard in their CMP. These changes were suggested and sent to the Township by the Pinelands Commission.

Motion passed to open the proposed ordinance changes to the public. There being none, motion passed to close the proposed ordinance changes to the public.

Mr. Boraske reviewed the ordinances for the Board. Motion by Mr. R. Garbowski, seconded by Mayor DiLucia to recommend the proposed ordinance changes to the governing body. Roll call vote: Ayes – Mr. Crane, Mayor DiLucia, Mr. J. Garbowski, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr. O’Brien, Mr. Scardino, Mr. Schwaiger. Nays – Zero. Abstentions – Zero.

Site Plan Waiver:

1. #WSP-05-19 – Thomas Nahf

Present – Thomas Nahf, applicant, Justin Severance, Steve McNamara.

The applicant is proposing to rehabilitate existing Block 11702, Lot 2 and provide an outside beer garden with seating, cornhole games, firepit, and stage area along with landscaping and fencing. This lot is located behind the 13th Child Brewery, at 353 S. Main Street, also known as Block 11702, Lot 1 in the RG-TC Zoning District.

Mr. Nahf, Mr. McNamara, and Mr. Severance were sworn in by Mr. Boraske. Mr. Severance stated that they are proposing to provide an outside seating area for the brewery which includes picnic tables for seating, a firepit, cornhole games, a stage area, and landscaping. There are two phases proposed for the plan. The initial phase is to clean up the lot and provide the outside seating area. The back gate is the existing gate and the front gate is proposed to be a four-foot temporary fence. The other four-foot fence is between the public seating area and the workable space. To get from the brewery to the outside area, the applicant is proposing a removable fence/gate so they can leave the building and walk down to the back outside seating area.

Mr. Cotton asked if anyone will be able to access the back outside seating area when they are not open. Mr. Severance replied that the gate will be locked. Mr. Schwaiger asked how the back lot is currently used. Mr. Severance replied it is used mostly for employee parking and after they clean it up and create the outdoor seating area, the employees will park over at the Pfeiffer Center. Mr. Schwaiger stated that they were granted approval to use the Pfeiffer Center parking lot with certain conditions by the previous administration and asked if those conditions are still being met. Mr. Severance stated that they spoke with the person at the Pfeiffer Center to clear up any miscommunications on how they use that parking area.

Site Plan Waiver: (continued)

1. #WSP-05-19 – Thomas Nahf (continued)

Mr. Schwaiger stated he passed by the site today and noticed a food truck in the back lot. Mr. Severance replied that they recommended that the food truck park there for now due to the issue at the Pfeiffer Center with regard to trash being left by the patrons of the food truck as well as the food truck using electricity from the Pfeiffer Center. They have been approved for the food truck to park on Main Street as long as they do not park within the yellow area near the corner. The access driveway off of Blue Bell to the back lot is strictly for grain pick-up and any other deliveries to the brewery. Mr. Schwaiger inquired about the permit for the food truck. Mr. Severance replied that the food truck gets their permits from the town, they are not associated with the brewery. The operators of the food truck know that breweries cannot serve food so they will message them and ask if they mind if they sell food outside the brewery. Mr. Severance stated that they do tell them to make sure they get the proper permits from the town.

Mr. Schwaiger inquired as to the ADA requirements with regard to the step down to get out of the brewery as well as the width of the sidewalk with the fencing in place. Mr. Severance replied that they measured and there is enough room for pedestrians to walk by the fence as well as enough room for their patrons to walk to the back lot. Mr. Schwaiger also inquired about the orange construction fence. Mr. Severance replied that in Phase I of the project they are proposing to install a picket fence. In Phase II there will actually be a permanent wall, four foot in height, and it will match the façade of the building. Mr. Schwaiger asked the purpose of the fence/gate at the door. Mr. Severance responded it was to control the alcohol so someone leaving the brewery to access the back lot cannot just walk out onto the street. Mr. Nahf stated that per State regulations they have to have the entrance and exit manned at all times. The collapsible fence is just to corral the patrons from the building to the back lot.

Mr. Crane asked if the applicants would be willing to put a door from the back of the building to the back lot so the patrons would not have to walk down the sidewalk. Mr. Nahf responded that they are planning to do that but it will take a little more time to get accomplished because where the door will be is by a staircase, the gas main, and power that has to be relocated. He commented that they would prefer to do that and are planning to do that but it will take a little more time. Mr. J. Garbowski also expressed his concern with pedestrians having to walk around the fence and possibly getting hurt if there isn't enough room for safe passage which would include someone in a wheelchair or pushing a baby stroller. Mr. Masterson asked if they are even allowed to block the sidewalk since they do not own the sidewalk. He stated the sidewalk is a public right-of-way and it's not the Planning Board's jurisdiction to say whether or not they can block part of the sidewalk. Mr. Kernan commented that Mr. Masterson has a good point since the applicant does not own the sidewalk and he questioned whether the Board has jurisdiction to allow them to block part of the sidewalk. Mr. Masterson also commented on the legality of carrying the alcohol from the building to the back lot on public property. Mr. Schwaiger commented that he didn't the Board can be allowed to grant them permission allow someone to bring alcohol from their building onto public property and then back onto their property. There was further discussion on the legality of bringing alcohol out onto the sidewalk.

Site Plan Waiver: (continued)

1. #WSP-05-19 – Thomas Nahf (continued)

Mr. Boraske stated that when the applicant's met with the committee concerning this proposal prior to coming to the Board, the Township Solicitor advised that the applicant should enter into an indemnification and hold harmless agreement so if there were any issue with this use then the applicant will be responsible not the Township. This would provide the Board and Township with some protection; also the applicant will be required to add the Township as a named insured on their policies. Mr. Boraske asked Mr. Kernan if the sidewalk issue was brought up at the meeting with the committee. Mr. Kernan replied it was brought up and the applicant asked to allow this proposal for Phase I of their project but he didn't know if the issue was completely resolved as they were told they had to come before the Board for the site plan waiver. He also added a concern with regard to the curb cut being right near the proposed fenced in area so that someone with a stroller will be forced to go up to the steepest portion of the sidewalk. Mr. Schwaiger concurred as he witnessed someone having to do that today.

Mr. Schwaiger asked if the applicant has the insurance right now for the parking at the Pfeiffer Center. The applicant replied that they do have the insurance for the parking at the Pfeiffer Center and they will add the Township on the insurance for the proposed use. Mr. Crane expressed his concern with the proposal and stated that regardless of the insurance, if something happened out there and someone wanted to sue they will still go after the Township. Mr. Kozak stated that there are a lot of questions that came up in this site plan waiver that Mr. Kernan would have to investigate further. So with all the questions be raised, if the Board denies the waiver, then the applicant will have to come back with a site plan and these things would be addressed. Mr. Kernan responded that a site plan will not solve the problem being raised. He stated ABC would not allow someone to walk out of the building and down the sidewalk and he didn't think that the Board has the ability to waive the site plan with the condition that someone can leave the building with alcohol. He stated that perhaps the only way to waive the site plan is if the door to the back lot is proposed in Phase I along with all the other substantial improvements proposed. Mayor DiLucia commented that there is a law on the books that does not permit open alcohol on a public street.

Mr. DeFrank asked if the applicants are permitted to serve alcohol on the proposed outside sitting area. Mr. Severance replied that they are permitted to serve on the back lot. Mr. DeFrank suggested they remove the fencing and allow the patrons to leave the building without any alcohol and purchase their beer directly from the sitting area. Mr. Severance commented that they do want to install the door to the back lot but they were trying to get this sitting area and other amenities done for the season. He stated they can serve out in the sitting area using jockey boxes which is what they use at beer festivals. They are in agreement to not have the fenced area to corral the patrons to the back lot and to just serve the beer directly from that lot. Mr. Boraske commented that it is clear the Board cannot approve the applicants to encroach into the public right-of-way with the fence or allow the patrons to leave the building with alcohol. If the applicant wants to amend the application to remove the fencing and to state they will serve the alcohol directly from the back lot, they can do that.

Site Plan Waiver: (continued)

1. #WSP-05-19 – Thomas Nahf (continued)

Any approval will still include the comments concerning the insurance and hold harmless agreement. There will also be a condition in the resolution stating that patrons cannot walk out the door with open containers and access the back lot. Mr. Severance agreed that they would remove the fencing and that they will have someone posted at the door so that no one can leave with an open container of beer. Mr. Kozak commented that they are only here for a site plan waiver and the Board should not be making suggestions on how to design their site. He stated that he is not comfortable with all the unknown issues and thought the applicants should do a site plan. Mr. DiLucia asked for clarification on the insurance issue concerning the Pfeiffer Center. Mr. Severance replied that they do have the insurance to include the Pfeiffer Center and they purchased it a little over a year ago. Mr. Schwaiger asked how a patron will get back into the building to use the facilities if they are in the back lot with an open beer. Mr. Nahf replied that there will be an employee stationed out in the back lot to insure no one leaves the back area with an open container.

Mr. Boraske commented that the building is owned by the applicant's landlord and the lot for the proposed outside seating area is owned by Mr. McNamara. The actual brewing company is owned by 13th Child Brewery, whose owners are Mr. McNamara, Mr. Nahf, and Mr. Severance; there are no other investors or owners in the brewery. Mr. Kernan commented that the applicant will need a road opening permit for the proposed driveway as well as lot grading.

Motion passed to open the matter to the public. There being none, motion passed to close the matter to the public.

Mr. Boraske stated that the application has been modified this evening by the applicant. He asked the applicant if he was comfortable moving forward with the vote this evening or if they wanted to table the application and revisit some issues such as adding the door. He advised the applicant he had that option or he can move forward with the Board's vote on the site plan waiver, however, if the site plan waiver is denied, then they would have to submit for a site plan in order to move forward with their plan. The applicant stated they will move forward with the vote on the amended application which does not include fence/gate area at the door to corral the patrons to the back. Mr. Boraske stated the conditions of approval as the following; the applicant must enter into an indemnification and hold harmless agreement with Township as well as naming the town on their insurance; the applicant will not be utilizing the proposed fence/gate at the door in order to move patrons from the building to the back lot; the entrance/exits of both lots will be manned at all times; a lot grading plan and road opening permit. Mr. R. Garbowski made a motion to approve with the condition that a permanent door be installed within three to four months. The applicant agreed that they can have the door done in about four months. Seconded by Mr. Scardino to grant the site plan waiver with the conditions stated. Roll call vote: Ayes – Mayor DiLucia, Mr. R. Garbowski, Mr. Scardino, Mr. Schwaiger. Nays – Mr. Crane, Mr. J. Garbowski, Mr. Kozak, Mr. Masterson, Mr. O'Brien. 4 ayes, 5 nays, motion failed.

Public Hearing:

1. #1723 – Morgan Development Group, LLC – Preliminary Major Subdivision

Present – Ken Schatz, applicant, Richard Hoff, applicant’s attorney, Jay Simms, applicant’s engineer.

The applicant is proposing a residential cluster subdivision of 82 single family lots, one open space lot, one pump station lot, and two stormwater management basins. The property is located on Morgan Road, also known as Block 2901, Lots 3 and 3.01 in the RG-MR Zoning District.

Mr. Hoff introduced himself to the Board. He stated that this is the third time they have been before the Planning Board with a plan in one form or another. The applicant did receive final major subdivision approval in September of 2005 for 82 single family units, two open space lot with two stormwater management basins, and a pump station lot. The applicant is asking the Board to reconsider the approval in order to create smaller building lots which will provide units that are more affordable. Mr. Hoff stated they received feedback from the Board and the public at meetings they had in October and November of last year. They have incorporated those comments into a plan that they hope will meet the approval of this Board. Mr. Hoff also stated that this is only for preliminary and that many details will still have to be provided to the Board’s professionals if preliminary is approved. They understand those issues are required however it does not make sense for the applicant to move forward if the Board does not grant approval on the proposed plan.

Mr. Schatz and Mr. Simms were sworn in by Mr. Boraske. Mr. Boraske asked if there are submission waivers that need to be granted by the Board. Mr. DeFrank reviewed the submission waivers listed in his report. Mr. Hoff indicated that they would be provided at final. Mr. Schatz commented that they have a fully approved subdivision from the Pinelands and they have redeemed the PDC’s. Mr. Boraske commented that if there were no objections from the Board or the professionals, the Board should deem the application complete. Motion by Mr. Masterson, seconded by Mr. R. Garbowski to deem application #1723 complete. Voice vote; all ayes, motion passed. Mr. Schatz displayed the previously approved plan for the Board which was marked as Exhibit P-1; the proposed plan was marked as Exhibit P-2 and he distributed reduced sized copies of both plans to the Board members. He referred to the previous plan and indicated that all approvals have been obtained for that plan including approval from the Pinelands. He stated they could start building that approved subdivision immediately. They came to the Board in November and the request at the time was to cluster the development down to smaller lots. There were questions at that meeting in November concerning the buffers and the open space and they agreed at the time to add the buffers to the residential lots. They have amended the plan which is before the Board. The previously approved plan has a minimum lot size of 10,000 square feet. The request this evening is to cluster the development down to 8,000 square foot lots. By reducing the lot sizes, they are able to provide a buffer from the existing homes as well as the auto body yard. The buffer will also decrease the lot widths and total roadway which reduces the development costs and home prices.

Public Hearing: (continued)

1. #1723 – Morgan Development Group, LLC (continued)

Mr. Schatz indicated that they reduced the lot size to 8,000 square feet on the Holly Oak project and the Board approved that amended plan. With this development, half of the lots are at 8,000 square feet, some are over 9,000 square feet, and twenty-three exceed 10,000 square feet. The plan does include the buffers but the minimum lot sizes do not include the buffer area. The shaded buffer areas on the plan are preserved areas and are not included in the lot size but will be part of the individual lots. The buffer area will be restricted as to clearing and will be maintained by the homeowners. There are variances required for the proposed plan for lot size, lot width, lot frontage, and lot coverage. Mr. Schatz commented that they do not have any issues with the comments in the Board professional's reports with the exception of the basin maintenance fee. They will submit all other documentation and such at final if the preliminary plan is approved.

Mr. DeFrank asked if the applicant can describe the proposed utilities such as how water and sewer are being accessed for this site. Mr. Schatz replied that water and sewer are being brought to the site from Fryer's Lane and Christina Lane. The pump station lot, which is similar to other pump station lots, is on their property and can be accessed from the proposed roadway. Mr. Kernan commented on the reduced lot sizes and the variances required. He also agreed that the proposed lot sizes do not include the open space/buffer area. The lot width and frontage variances are due to the smaller lot sizes. With regard to lot coverage, the maximum permitted lot coverage is thirty percent and the applicant is proposing thirty five percent. Mr. Kernan stated that he calculated some of the lots to be about thirty-seven percent or so. Mr. Hoff agreed and stated they will amend the plan for the 8,000 square foot lots. Mr. Schatz commented that he didn't think they would exceed the thirty five percent lot coverage anyway. Mr. Kernan replied that he thought the applicant should ask for the variance to be forty percent because the owners may want to put an accessory building, pool, deck, etc. and all these items will take up additional lot coverage. He stated it will prevent the future owners from having to get a bulk variance for lot coverage. There are design waivers that must be granted by the Board with regard to the open space and buffers. At the hearing last year, the Board requested the perimeter open space be incorporated into the building lots, so the design of the open space and buffers will require a design waiver. Mr. Kernan stated that an HOA is not proposed for this development since it is less than one hundred units; however since the basins will be dedicated to the Township, there is a basin maintenance fee that is required by ordinance. According to the calculations the fee would be approximately \$150,000.00. A waiver is also required from the conservation easements to front on a public right-of-way. There are several other waivers required dealing with the open space requirements due to them being part of the individual lots.

COAH fees will be satisfied by way of a contribution to the Housing Trust Fund. In addition, the applicant agreed to construct five townhouse units on Main Street as part of the COAH requirement for this project and Holly Oak.

Public Hearing: (continued)

1. #1723 – Morgan Development Group, LLC (continued)

There was a recreation fee proposed at the previous approval of \$2500.00 per lot. Mr. Kernan restated the court case that struck down the ability of towns to require open space/recreation or a fee in lieu except in Planned Residential Developments. He didn't think the agreement is still enforceable; however, if the applicant offers the fee then it would be a greater fee than the basin maintenance fee. Mr. Schatz commented that they made the commitment for the recreation fee and they will honor that commitment. Mr. Hoff replied that they are in agreement to pay the recreation fee but they would request a waiver not to pay the basin maintenance fee.

Mr. Schwaiger asked how many lots will be deed restricted. Mr. Hoff replied all of the lots shown on the plan that have a dark green area behind them. He stated that he will provide the conservation easements to the Board's attorney and the future homeowners would be advised that the lots are deed restricted so they will not be able to clear the trees that are part of the easement. Mr. Cotton asked if the future homeowners will be paying taxes on the property they can't use. Mr. Hoff stated that the property will be assessed and the future homeowner will know how big the lot is and what part of the lot they cannot use. It will all be disclosed to them before they purchase the lot. Mr. Schatz commented that those lots with the extra buffer will be nice lots. Mr. Kozak asked if the smaller lots will accommodate a shed and a pool, etc. Mr. Schatz stated that there is still a minimum of 8,000 square feet without the conservation easement. Mr. Hoff stated that the rear yards for the lots with the conservation easements are the same size as the ones in the center of the site without the easement. In addition, they do not need a rear yard variance as the rear yard setback conforms to the cluster development requirements. Mr. Boraske asked if the applicant's engineer is going to testify as to the positive and negative criteria for the variance requests. Mr. Schatz replied that he has testified to that at the November meeting. They had a full presentation at that meeting and the only reason the matter was tabled was because it was hard to visualize what the lots would look like with the open space included.

Mr. Masterson commented that a few weeks ago an attorney came back to the Board on a matter Mr. Schatz agreed to on another project, which he sold to someone else, and now they do not want to honor the agreement made by Mr. Schatz. He stated that Mr. Schatz is agreeing to pay the recreation fee but if he sells the project the new owner will not necessarily honor that agreement. Mr. Boraske stated the resolution and developer's agreement can state the agreement would apply to any successors so that if the project is sold they would be bound to the agreement. Mr. Kozak stated that it probably wouldn't hold up in court since it's not legal to have the recreation fee, so the Board should not base any approval on that agreement. Mr. Schatz stated that he would be willing to pay the fee before they convey the ground or before a builder starts building. He stated he will honor the commitment he made and make sure the fee gets paid up front rather than on a lot by lot basis. Mrs. Farrell asked if it will be paid prior to the plans being signed. Mr. Schatz agreed they would make the payment prior to the plans being signed along with the bond and the escrows.

Public Hearing: (continued)

1. #1723 – Morgan Development Group, LLC (continued)

Motion passed to open the hearing to the public.

1. Barry Savoie, 990 East Malaga Road, was sworn in by Mr. Boraske. Mr. Savoie stated that he is a certified organic produce farmer. He farms a property within 500 feet of this property. He stated that the State monitors his farming operation to insure there isn't any chemical contamination and he expressed his concern with the runoff from this development. He stated that the applicant is trying to put too many homes on a small piece of property and would like to see them reduce the number of homes from 82 homes to 65 homes. He was concerned about his livelihood and his farming operation.

2. Susan Jengehino, 1110 New Brooklyn Road, was sworn in by Mr. Boraske. She confirmed that she leases her property to Mr. Savoie for his farming operation. She also expressed her concern with the runoff from this property onto the farm property. She stated she has thirteen acres of property and is only allowed to have one home and expressed her concern with regard to the impact the amount of homes will have on the surrounding area.

3. Thomas Toner, 1095 Morgan Road, was sworn in by Mr. Boraske. Mr. Toner stated he was present in order to confirm the applicant is going to honor the barrier between his home and the development along with a fence. Mr. Schatz replied that he will honor the agreement for the buffer and the fence. The applicant also asked to be notified before any clearing begins. Mr. Schatz agreed to notify Mr. Toner.

4. Cazie Perry, 1105 Morgan Road, was sworn in by Mr. Boraske. Mr. Perry stated that there is an easement to the left of his property that no one maintains. Mr. Schatz stated that that easement was dedicated to the Township by deed. He spoke about getting fined for an overgrown bush. He commented that he was asked to sell some of his property and he declined and ever since he declined to sell, he has been harassed and discriminated against as he has received letters about his grass being too high and his bush being overgrown.

Motion passed to close the hearing to the public.

Mr. Boraske reviewed the application for the Board with the conditions. He also reviewed the waivers and variances required and being requested by the applicant and stated that the Board should vote on those waivers and variances first. Motion by Mr. Masterson, seconded by Mr. O'Brien to grant the variances and waivers listed in the professional's reports and stated on the record. Roll call vote: Ayes – Mr. Crane, Mr. Masterson, Mr. O'Brien, Mr. Scardino. Nays – Mayor DiLucia, Mr. R. Garbowski, Mr. J. Garbowski, Mr. Kozak, Mr. Schwaiger. 4 ayes, 5 nays, motion failed. Mr. Boraske stated that since the variances and waivers were not granted, the subdivision cannot be voted on or approved.

Public Portion:

Motion passed to open the meeting to the public. There being none, motion passed to close the meeting to the public.

Reports:

No reports.

Approval of Minutes:

1. April 25, 2019 regular meeting.

Motion by Mr. Crane, seconded by Mr. J. Garbowski to approve the minutes from the April 25, 2019 regular meeting. Voice vote; all ayes, motion passed.

Adjournment:

The meeting was adjourned at 9:49 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.

Respectfully submitted by:
Ninette Orbaczewski
Clerk Transcriber