

Elk Township Combined Planning and Zoning Board

Regular Business Meeting August 17, 2016

Minutes

- **Call to Order:** Board Secretary called the meeting to order at 7:30pm.
- **Roll Call:**
Present: Phil Barbaro, Robert Clark, Jay Hughes, Ed McKeever, Donna Nicholson, Ed Poisker, Richard Schmidt, Eugene Shoultz, Jeanne White, Frank Goss (Alt. 1), Wayne Swanson (Alt. 2)
- **Open Public Meeting Act:** was read by the Board Secretary
- **Flag Salute:** Secretary led the flag salute.
- **Swear in Board Professionals:** Board Solicitor
- **Approval of Minutes:** None
- **Resolution(s):**
2016-17 Denying application for a minor subdivision with bulk variances to Thomas Rosa, regarding property located at West Boulevard, block 162, lots 6 & 7, application no.: SD-16-04

Mr. Hughes moved to approve resolution 2016-17, Seconded by Mr. Shoultz.

Roll Call:

Voting in favor: Poisker, Clark, Nicholson, Hughes, McKeever, Shoultz, White, Schmidt, Goss
Against: None Abstain: 9-0-0

2016-18 Granting preliminary major subdivision approval for Silvergate phases 5 and 6 of a previously approved General Development Plan, regarding property located at Buck Road, Clayton-Aura Road and Fairview Road, block 65, lots 4.02 & 5, block 170, lots 14 & 18, and block 171, lot 9, to applicant Silvergate Associates, c/o The Quaker Group, application no.: SD-16-02

Mrs. Nicholson moved to approve resolution 2016-18, Seconded by Mr. Schmidt.

Roll Call:

Voting in favor: Poisker, Clark, Nicholson, Hughes, McKeever, Shoultz, White, Schmidt, Goss
Against: None Abstain: 9-0-0

2016-19 Resolution to memorialize the adoption of the Master Plan Re- examination report and amendments to the Master Plan of the Township of Elk.

Mrs. Nicholson moved to approve resolution 2016-19, Seconded by Mr. Hughes.

Roll Call:

Voting in favor: Poisker, Clark, Nicholson, Hughes, McKeever, Shoultz, White, Schmidt, Goss
Against: None Abstain: 9-0-0

➤ Postponement Announcement:

James Gaglianone - "D(1)" Use Variance & Site Plan waiver request, Block 33, lot 12.01, 719 Whig Lane. Application #ZB-15-09. The postponement date was mistakenly announced as August 17, 2016, the correct postponement date is September 21, 2016. Notice required.

Kevin Eaise - Use Variance – proposed landscaping business in Residential zone, 1198 Aura Road, block 175, lots 8&9, application number ZB-16-09. Postponement date is September 21, 2016. Notice required.

➤ **Old Business:** None

➤ **New Business:**

- 1) **Smith Orchards, LLP**, extension of time request to file minor subdivision deeds for 257 & 251 Union Street, Block 67, lots 23 & 25. Resolution 2015-17, application number ZB-15-05

Attorney William Ziegler, Holston McDonald, was present on behalf of Smith Orchards, LLP. The deeds for the minor subdivision were not filed within the 190 day time period due to a delay at the County level concerning the rights of way. The applicant requests an extension of 7 months from the 190 day expiration date. Board solicitor recommended granting an 8 month extension and to add a sentence within the deed stating an extension of time was granted along noting the resolution number.

Mrs. White moved to grant the 8 month extension from the original 190 day deadline to file the deeds. Seconded by Mr. Schmidt.

Roll Call:

Voting in favor: Barbaro, Clark, Hughes, Nicholson, McKeever, Poisker, Schmidt, Shoultz, White

Against: None Abstain: 9-0-0

- 2) **Valley of the Sun**, Administrative Design Change Request to Resolution 2008-14, application number AD-16-06

Attorney William Ziegler, Holston McDonald, on behalf of Valley of the Sun. The following individuals were sworn in to provide testimony: Bob Pacilli, principal member of Valley of the Sun, Kevin French, Valley of the Sun HOA President, Bob Johns, local Realtor, and John Kornick, Engineer, K2 Consulting Engineers, Inc.

Mr. Ziegler explained the original approval for this solar development, in 2008, had granted bulk variances in order to allow all the houses to be oriented in such a way to allow solar panels on the front or back peak of the roof. After receiving planning board approval, Mr. Pacilli sold the project to another builder. The project failed and was taken by a bank. Mr. Pacilli has recently purchased it back from the bank to complete the project. The applicant wishes the Board to consider only one of the Administrative Changes included in their application and that's to permit the use of supplemental energy of propane gas or natural gas. The other requests are more substantial in nature and should the applicant wish to move forward with those requests, they would return to the board and provide proper public notice.

The resolution of approval states, but is not listed as a condition of approval, the following sentence: *"the applicant further agreed that each home shall be powered by electric either generated by the solar system or supplemented by public electric service. There shall be no other power sources, e.g. natural gas, propane, oil"*. Mr Ziegler added, he had reviewed his notes and transcript from the original hearing and couldn't find anything pertaining to this statement and missed that it was included in his review of the original resolution at that time.

Township officials have interpreted this statement to mean that the following items are not permitted in the development: outdoor gas grills, outdoor gas fire pits, gas hot tubs, gas pool heaters, gas fireplaces, gas heaters, gas water heaters, etc. This has been a problem and perhaps one of the reasons why only one house per year has been sold in the last eight years. The applicant does not wish to abandon the solar component of the project, but rather allow the supplemental use of propane or natural gas in order to make this project successful. This change would also allow current residents to install propane or natural gas if they choose too. Presently, there's one house in the development that's waiting to receive a Certificate of Occupancy but can't be issued because a gas stove and gas heater have been installed.

Bob Pacilli testified it's difficult to compete with other builders in the area if you can't offer propane or natural gas as an option (supplement). He added solar was not originally a component of this job. The Township was installing solar panels on the municipal building under a state rebate program, that was available at the time, and a former committee person asked if he would consider adding solar to the project. As a proponent of solar power, he agreed to do so. This was the first solar community and it didn't work, it failed miserably.

He will be moving into the Valley del Sol community but is unable get a C.O. because the house has gas appliances. He asked the board to consider the gas component as an administrative change as he did install the propane without getting the board's approval first.

Mr. Pacilli added that all the energy codes in NJ changed in April, 2016- the insulation has doubled, 2x6 walls, the houses are tighter and using two sources of energy will make the homes even more energy efficient. His new home will have a larger size solar system than what's required.

Chairwoman White asked if there was a particular reason why this particular "solar only" restriction was in place from the original approval. Mr. Ziegler replied he did not recall the applicant agreeing to have only solar power. He did work closely with the board solicitor at the time, reviewing the conditions of approval, but this was not listed as a condition and he didn't notice it in the body of the resolution.

Mr. Bach inquired if solar was currently installed on the house seeking the relief.

Mr. Pacilli replied, he has a contract with RCL to install solar panels on his home. The panels cannot be installed until after the CO has been issued. The State approvals also come after CO issuance.

Mr. Ziegler added, the relief requested is not only for Mr. Pacilli's circumstance, its relief for the entire community as natural gas lines are being installed in the area. The solar component will remain standard.

Mr. Bach mentioned the minimum amount of solar to be provided on each home is 5.2 kilowatts. This amount would offset the electric usage of the home and if the homeowner chooses to supplement their energy source it would be for convenience.

Mrs. White asked if there were any technical reason not to permit the gas or propane. Mr. Bitgood responded there was not and allowing the gas or propane would not interfere with the positioning of the homes on the lots relating to solar. Presently there are no gas mains in the development. Mr. Bitgood had the opinion that the other residents of the development should have an opportunity to comment on the change requested. Discussion followed. Members commented that the supplemental energy would be voluntary and didn't feel that would impact the value of the homes.

Board member Swanson commented that one of the reasons the development approval was granted was because it was solar and this particular tract of land was not large enough to comply with the cluster ordinance.

Mr. Ziegler responded that was correct. The clustering requirement in this area is 25 acres and this property is 23.5 acres. The applicant is not removing the solar component from the development. The

only reason for the clustering approval was to allow the homes to be placed in the southerly position for the solar panels.

Discussion followed as to the procedure of obtaining a C.O. and how that requirement relates to installation of solar panels on homes. State regulations/requirements have changed over the last eight years.

Kevin French, HOA President at Valley of the Sun.

Mr. French testified the community is a solar assisted community. It's not only "solar." He added that the solar has not been as efficient as everyone wants to believe that it is. There have been some winter months where his electric bill has been over \$700 a month. Mr. French is in favor of having the choice of supplemental energy. He added, there is presently a home in the development with a propane tank in their yard (not sure what it powers). The development is for 18 homes, Mr. Pacilli's home, when completed, would be the 8th home. Ten homes remain to be built.

Board Solicitor commented that he didn't agree with an earlier statement that the homes could not have such things as outdoor grills or pool heaters. He read from the resolution of approval the following: *"the applicant further agreed that each "home" shall be powered by electric"* this doesn't mean you can't have an outside gas grill, pool heater or an accessory building. It definitely means you can't have a gas fire place in the house or a backup generator. Mr. Taylor had no objection to the supplemental energy request before the board as long as the remaining homes to be built include the minimum solar of 5.2 kilowatts.

Mr. Hughes had a concern about at what level the oversight occurred that allowed the gas to be installed. He added without the supplemental source those residents couldn't have backup generators.

Mayor Poisker commented the conversation about adding supplemental energy and the completion of the development began with Mr. French about two years ago. Mr. French relayed his concern about the collapsed SREC (Solar Renewable Energy Certificate) program. People are not interested in buying these homes and how would this development ever get completed. The Mayor added the request before the board is for all the residents in this community, not specifically Mr. Pacilli. The Board should consider the quality of life for the existing residents that have to look at piles of dirt for the next ten years because houses can't be sold. Further, the Mayor felt it would be for the betterment of the community to permit the use of supplemental energy.

Mr. Pacilli testified that as the builder, he has formally transferred rights over to the HOA. He added if supplementation is not granted, he will not be able to compete with other builders in the area. Further, he does not recall at the time of original approval that propane would not be permitted. Mr. Pacilli apologized to the Board indicating that at the time he installed the appliances he had not remembered that the power source for the home was limited to solar and electric power as he had not been involved for some time with the individuals actually developing the site. He installed the propane because he thought it was a mistake in the resolution.

Discussion followed concerning heat pumps and their efficiency. Mr. Pacilli stated the homes are mostly powered by solar. A lot of gas use will not be necessary. Gas doesn't come on until the temperature drops below 40 degrees. Most people prefer to use gas for cooking, water heater and dryer usage. Mr. Pacilli also commented on generator usage and explained when the electric goes out, the solar arrays de-energize.

Member Barbaro asked the advice of the Board Solicitor as he wasn't sure about making a determination on this matter without the other residents being present from this community.

Board Solicitor confirmed that Mr. French was the President of the HOA and that all the members of the HOA reside in the community. Mr. Taylor asked that he provide some background information and had this matter been discussed with the other members? Further, as the HOA President, Mr. French is a representative of its members.

Mr. French responded as to the sentiment of permitting supplemental energy, all the members of the community are aware and that a resident has installed gas. No one has voiced a concern about it. Requiring solar on every house – the HOA has mixed opinions on this topic which is mainly driven by maintaining the values of their homes. With the average sale of one home per year over the past eight years, the residents are eager to get the development completed.

Board Solicitor clarified that the solar requirement isn't going away, the issue is supplemental gas. Mr. Taylor confirmed that Mr. French's testimony, as President of the HOA, is that the existing residents would support a supplemental energy source of gas.

Chairwoman White asked to hear from the Realtor present. Would allowing the supplemental energy source really help in selling the homes?

Bob Johns, licensed Real Estate broker since 1988.

Mr. Johns testified that he has sold a few thousand homes in his almost 30 year career & is the owner of a Century 21 office in South Jersey. Most people hire a realtor to solve a problem. The "perfect" home is to find or sell is a 4 bedroom, 2 1/2 bath, 2 car garage, full basement, with public water/sewer and gas. If you can't offer one of these options, you now limit your buyers. As for fuels, oil and electric are less desirable. Mr. Pacilli had contacted him to help sell the homes in this community. The more ingredients we can get toward the "perfect" home, the more successful we will be at completing this community. In his opinion and experience, a home owner would rather have a natural gas or propane powered home with solar assist rather than only electric due to the affordability. For a buyer, everything boils down to the cost to live in the house. Part of that cost will be energy. To his knowledge, there are no successful solar communities in Gloucester, Camden or Salem Counties.

Mr. Hughes inquired if natural gas had been made available along Ewan Road? The answer was "no," not yet. Mr. Hughes also asked how long the applicant would have to wait to get the CO if supplemental gas was approved tonight. Mr. Taylor responded that if the Board votes to approve tonight, it would be up to the code official. The code official doesn't have to necessarily wait for the resolution to issue the C.O. The board secretary could let the official know it was approved. If the applicant chooses to move into the house right away, it would be at his own risk as there is a 45 day appeal period before the resolution is memorialized. Mr. Taylor confirmed the supplemental energy will only be for natural gas and propane gas. Oil is not included although it was listed in the original application request. The applicant agreed.

Board Planner, Steve Bach, reiterated this approval was from many years ago and the basis of approvals to cluster, have smaller lots, setbacks etc were all based on the need to make the solar work. The request tonight has to remain intact with the solar component of a minimum of 5.2 kilo watts. To change this, the applicant would have to submit a formal amended application with public notice.

Mr. Bach confirmed with the applicant that his home will have solar panels installed and will generate the minimum 5.2 kw required. Therefore, with the solar component remaining, the relief given as part of the positive criteria of the original approval still remains intact. Additionally, Mr. Bach made the board aware of a developer's agreement in place in regard to the right to delay the release of the performance bond until solar energy packages are installed on each house. Therefore, there is protection in place for the solar component of the project. The board needs to decide whether adding the supplemental energy choice, takes away anything from the project and would there be any detriment to allow it.

Mr. Bach asked Mr. French as the HOA President, if he believed the addition of supplemental energy would be detrimental to his community, himself or to any of the neighbors. Mr. French responded, it would not be a detriment and that he has informally canvassed about half of the residents and they are in support of a supplemental energy source.

Mr. Taylor added, other than Mr. Pacilli, there are 7 other home owners and he doesn't have a problem with the HOA President providing testimony and representing that he has talked with half of them and represents that they are in support of it.

Mr. Hughes moved to open to the public, seconded by Mrs. Nicholson.

With no comment from the public, ***Mr. Hughes moved to close to the public, seconded by Mr. Nicholson.***

Discussion followed and the Board concluded that a very limited administrative change was appropriate to allow the developer to supplement the solar and electric energy sources with either propane gas or natural gas, but no other energy source and that it's in the best interests of the Township to have the Development be completed. The addition of either natural gas or propane gas would reduce the homeowner's costs, which is a direct benefit to the citizens residing or to reside in the development. The Board also found no substantial detriments to permitting the supplemental energy sources and that the relief requested could be granted as an administrative change to a previous condition of approval.

Mrs. White moved to approve an amendment to resolution 2008-14, to permit the solar community homes in Valley of the Sun to have one supplemental source of energy (not mandatory) of either natural gas or propane gas only. The solar requirement of a minimum of 5.2 kw remains and all other terms, conditions, bonds, etc. remain in effect. Seconded by Mr. Schmidt.

Mr. Barbaro asked why oil was not included as an option. Mr. Bach replied this community is an energy efficient community. Propane and natural gas are more efficient and a cleaner source of fuel than oil. The request from the applicant does not include oil. Other board members agreed.

Roll Call:

Voting in favor: Clark, Hughes, McKeever, Nicholson Poisker, Schmidt, Shultz, White

Against: Barbaro (felt the applicant created the problem and would like to have heard from the other residents)

Abstain: 8-1-0 approved.

3) Redevelopment Resolutions R-98-2016 & R-99-2016 from Township Committee directing Planning Board to prepare Redevelopment Plans.

Mr. Bach explained this is notice that the Governing Body is asking the Planning Board to prepare those plan. The plans will not be prepared until there is appropriate authorization for the funding source from the Governing Body. The Board is acknowledging receipt of these resolutions and acknowledging acceptance of the task but cannot move forward until we receive a certification of funds from the CFO.

➤ **General Public Portion**

Mr. Hughes moved to open to the general public portion, seconded by Mr. Barbaro.

With all members in favor, *the motion was carried.*

Joe Dresbres, 104 Thirty- Second Avenue

Inquired where the Silvergate Project would get their water from.

Board Engineer replied that it's their intention to connect to the NJ American/sewer system. They do have some wells, but it may not be feasible to use them.

Mr. Hughes moved to close the general public portion, seconded by Mrs. Nicholson.

With all members in favor, *the motion was carried.*

➤ **Correspondence:** None

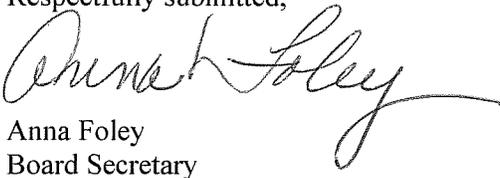
Adjournment:

Mr. Barbaro moved to adjourn, Seconded by Mrs. White.

With all members in favor, *the motion was carried.*

Adjournment time: 9:08pm

Respectfully submitted,



Anna Foley
Board Secretary