

RESOLUTION OF THE JOINT LAND USE BOARD OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING AN ADMINISTRATIVE DESIGN CHANGE REGARDING STREET LIGHTS TO A PREVIOUSLY APPROVED MAJOR SUBDIVISION GRANTED TO VALLEY DEL SOL, REGARDING PROPERTY LOCATED ON BLOCK 6, LOTS 14 & 15 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: AD-16-10

WHEREAS, an Application Request # AD-16-10 (the "Application") for an administrative design change regarding street lights was received from John W. Kornick, PE, K2 Consulting Engineers, Inc., 918 Kings Highway, Haddon Heights, NJ 08035, engineer for Valley of the Sun, LLC, 181 High Street, Mullica Hill, N.J. 08062, a/k/a Valley Del Sol (the "Applicant"), to the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey (the "Board"), regarding property located on Ewan Road (the "Subject Property"), and being further shown as Block 6, Lots 14 & 15 on the tax maps of the Township of Elk (the "Township"), as to a Final Major Subdivision approval granted to the Applicant that had been approved by the Board in 2007, and was memorialized by the Board's adoption of Resolution No. 2008-14 on February 20, 2008; and

WHEREAS, the Applicant did appear at a meeting and public hearing held by the Board on the Application on December 21, 2016, at which time were the following present on behalf of the Applicant: John W. Kornick, PE, K2 Consulting Engineers, Inc. (the Applicant's professional engineer); William F. Ziegler, Esquire, Holston, MacDonald, Uzdavinis, Ziegler & Myles, 66 Euclid Street, Woodbury, NJ 08096, (the Applicant's attorney); and Robert Pacilli, the Principal of Valley of the Sun, LLC, a/k/a Valley Del Sol, developer of the Subject Property; and

WHEREAS, Mr. Kornick was stipulated by the Board as an expert in the field of engineering and was qualified to testify as such on behalf of the Applicant for the purposes of the Application, after which were Messrs. Kornick and Pacilli, sworn and provided testimony on the Application;

NOW, THEREFORE, BE IT RESOLVED by the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

FINDINGS OF FACT

1. The Application was deemed to be complete and properly before the Board. Therefore, the Board had jurisdiction to act on the Application.

2. The Board's professional engineer, Stan Bitgood, P.E., C.M.E., Federici and Akin Engineers, and the Board's professional planner, Steven M. Bach, PE, RA, PP, CME, of Bach Associates, had been sworn as to any testimony that they would give on behalf of the Board with respect to the Application.

3. The Applicant submitted, and the Board entered into the record, the following:

A. Letter dated November 1, 2016 from John W. Kornick, P.E., K2 Consulting Engineers, Inc., the Applicant's engineer.

B. Twelve copies of a lighting plan prepared by K2 Consulting Engineers, Inc., dated October 31, 2106.

C. Twelve copies of a Traditionaire lighting specification sheet by Eaton.

D. Twelve copies of a specification sheet for Shakespeare S-Series fiberglass street lighting poles.

E. Twelve copies of correspondence between Atlantic City Electric and K2 Consulting Engineers, Inc., regarding available light fixtures within the ACE territory.

F. Twelve copies of the Valley Del Sol Homeowners Association meeting minutes dated September 29, 2016.

G. Check in the amount of \$500.00 to cover the Administrative Change Application Fee.

H. E-Mail dated November 18, 2016 from the Board's engineer, Mr. Bitgood, to the Applicant's engineer (Mr. Kornick) regarding the Applicant's request for administrative relief regarding street lights.

3. At an August 17, 2016 hearing before the Board, wherein the Applicant requested administrative relief to permit natural or propane gas as a supplement to solar power for the Valley Del Sol Development, Mr. Ziegler had provided background information regarding the Application. Mr. Ziegler stated that Mr. Pacilli had previously initiated the development known as Valley Del Sol and then another entity took over the development. Thereafter, the other entity was not

able to finalize the development and so Mr. Pacilli stepped back in and took over the development. The Applicant's engineer, John Kornick, P.E., had submitted his letter of June 10, 2016 in which were listed requested changes to four items that had been in the prior resolution of approval, (Resolution No. 2008-14), as well as requested changes to the Declaration of Covenants, Conditions and Restrictions for Valley Del Sol, and changes to the overall subdivision plan. Mr. Ziegler stated that he understood that these requested changes were significant in number and context, and that they should not be addressed by the Board until the public had been noticed as to a public hearing on the matter, so that the public would have the opportunity to come forward and participate in discussion on the Applicant's request. Therefore, the requests made in the Application for Administrative changes were temporarily withdrawn, save one: a previous condition under Resolution No. 2008-14 at page 4, item #2 of the Resolution, as follows: "Whereas, the Applicant further agreed that each home shall be powered by electric either generated by the solar system or supplemented by public electric service.

4. A hearing on this limited change was held by the Board at the Board's said meeting and public hearing on August 17, 2016. The Board granted relief to the Applicant to permit natural and propane gas as an additional source of power for residents in the development. The grant of relief was memorialized by the Board's adoption of Resolution # 2016-21. At the August 17 hearing, the Board, the Applicant, and members of the Valley Del Sol community, voiced concerns regarding the issue of street lighting being inadequate and possibly causing a safety problem. The Board agreed to address this issue and any administrative relief that was requested regarding same, at a subsequent meeting. On August 18, 2016, the Applicant's attorney, William Ziegler, Esquire, had notified the Board via e-mail, that the Applicant was withdrawing its request for all other additional relief as was set forth in Mr. Kornick's letter of June 10, 2016, without prejudice. It was understood by the Board that this communication assumed that the street lighting issue would still be heard by the Board.

5. Mr. Kornick testified that the original lighting plan for the development contemplated that the street lights would include one cobra head light and a series of solar lights. Mr. Kornick testified that solar lights were no longer available.

6. Considerable discussion took place by and between the Board, the Board's professionals, the Applicant, and the Applicant's engineer. The Board reviewed the proposed revised lighting layout, brightness levels of proposed lights, and the need for two lights to be provided at the entrance to the development from Ewan Road.

7. The hearing on the Application was open to the public at which time the following members of the present as to the administrative change requested:

A. Donald Whitesell, 124 Daylight Drive, emphasized the need to have two street lights at the Ewan Road entrance to the development.

B. Kevin French, 100 Daylight Drive, supported the revised lighting plan.

8. There being no other members of the public wishing to speak, the public portion was closed.

CONCLUSIONS

A. The same number of lights should be provided as per the original plan, but that the prior solar lights are to be changed to LED lights, if Atlantic City Electric permits the same.

B. The light that is currently located at the basin area should be moved to the entrance to the development so that there are now two lights at the entrance, if Atlantic City Electric will permit the same.

C. A revised lighting plan must be submitted to the Board's engineer before the end of 2016, and then will be filed by the Township to Atlantic City Electric for their review and approval.

D. Upon Atlantic City Electric's approval of the revised lighting plan, the Applicant shall submit the necessary funds to implement the lighting plan to the Township Clerk within 45 days of their approval and an estimate being received from ACE.

E. If Atlantic City Electric does not agree to the relocation of the basin light to the Ewan Road entrance to the development, then the sole light at the entrance to the development must be a cobra light.

F. The Applicant, upon approval of the revised plan by Atlantic City Electric, shall request ACE to install as soon as possible, and shall assist in every possible way, ACE to effect the installation. The Applicant shall construct and backfill any additional trenches for ACE to use in order to relocate the proposed street light from the basin to the entrance

G. The Board concluded that that the requested revised lighting plan should be approved, as it was in the best interests of the development, the zone plan and the master plan of the Township of Elk. In particular, the need for a revised lighting plan was a safety issue, as considerable concern about the safety of school children at the entrance to the development at Ewan Road, was of paramount concern, as was the need to effectively illuminate the street in the development at the appropriate locations.

CONDITIONS

1. The Board presumes that the Applicant's Application, all maps, Exhibits, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for relief. In the event that it appears to the Board, on reasonable grounds, that the Application, exhibits, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied on by the Board as they bear on facts that were essential in the granting of the relief requested by the Applicant, the Board may rescind its approval and rehear the Application, either upon the request or application of an interested party, or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.

2. At any time after the adoption of this resolution of memorialization, should a party on interest appeal to the Board for an order vacating or modifying any term or conditions as set forth herein, upon the proper showing of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the fact(s) at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems to be appropriate at that time, including but not limited to a rescission of its prior approval, a rehearing, a modification of its prior approval, or such other action, as appropriate.

3. The Applicant shall indemnify and hold the Township harmless from any claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to N.J.S.A. 40:55D-12.c., and publication of the notice of public hearing in this matter in accordance with law, if applicable.

4. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.

5. The Applicant must obtain all approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief. The Applicant is solely responsible

for determining which governmental and/or public agencies, if any, such approvals are required of. The Applicant is further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Attorney, Engineer and Planner.

6. The Applicant must maintain an escrow account with the Township and pay the costs of all professional review and other fees required to act on this Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law. The Applicant's escrow account must be current prior to any permits being issued, or constructions or other activity commencing on the approved project, or any certificate of occupancy being issued.

7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

8. The Applicant must comply with the understandings set forth under Findings of Fact above.

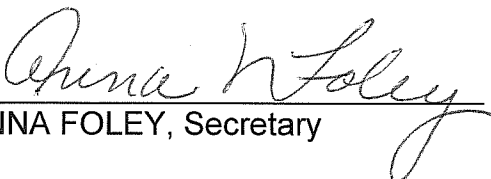
WHEREUPON, a motion was made by Board Member Goss, which was seconded by Board Member Barbaro, to grant the Applicant's request for an administrative change as to a previously approved lighting plan, at a meeting following a public hearing held by the Board on December 21, 2016, with the following Board members voting in favor of the motion to approve: Clark, Hughes, McKeever, Shultz, White, Barbaro, Goss (Alternate Member # 1) and Swanson (Alternate Member # 2). There were no abstentions or recusals. Board members Poisker, Nicholson and Schmidt were absent.

THIS RESOLUTION WAS ADOPTED by the Joint Land Use Board of the Township of Elk, County of Gloucester, State of New Jersey, on January 18, 2017 as a memorialization of the approval granted herein as set forth above at the Board's regularly scheduled meeting held on December 21, 2016.

**JOINT LAND USE BOARD OF THE
TOWNSHIP OF ELK**

By: 
JEANNE WHITE, Chairperson

ATTEST:

By 
ANNA FOLEY, Secretary

CERTIFICATION

I hereby certify that the foregoing Resolution is a true copy of a Resolution adopted at a regularly scheduled meeting of the Elk Township Joint Land Use Board, County of Gloucester, State of New Jersey held on the 18th day of January 2017 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:30 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on December 21, 2016 on the above cited Application.


ANNA FOLEY, Secretary