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Elk Township Combined Planning and Zoning Board

Regular Business Meeting February 21, 2018

Minutes

Call to Order: meeting called to order at 7:30pm.

Roll Call:

Present: Matt Afflerbach, Bob Clark, Jay Hughes, Donna Nicholson,
Ed Poisker, Richard Schmidt, Eugene Shoultz Jeanne White, Wayne Swanson
Absent: Ed McKeever, Frank Goss

Open Public Meeting Act: was read by the Board Secretary

Flag Salute: Chairperson led the flag salute.

Swear in Board Professionals: Board Solicitor

Approval of Minutes:

- **December 20, 2017**

Mr. Shoultz moved to approve the minutes of December 20, 2017, Seconded by Mr. Schmidt.
With all members in favor, *the motion was carried.*

- **January 17, 2018**

Mr. Shoultz moved to approve the minutes of January 17, 2018, Seconded by Mr. Hughes.
With all members in favor, *the motion was carried.*

Resolution(s):

2018-07 – granting a 90-day extension of time to perfect a previously granted final major subdivision approval, block 44, lot 1, Hughes Drive and Vivian Lane off of Buck Road, to applicant Weona Pond, LLC. Application No. AD-18-03.

Mr. Swanson moved to adopt resolution 2018-07. Seconded by Mr. Clark.
With all members in favor, *the motion was carried.*

Roll Call:

Voting in favor: *Poisker, Clark, Hughes, Nicholson, Shoultz, Schmidt, White*
Against: *None* **Abstain:** *None* **7-0-0**

New Business:

Application #AD-18-02: Administrative Design Change for Aura II –
Request to permit the creation of a separate HOA for Aura II as this project is funded by a
different entity than Aura I.
Block 29/28, 29; blk 29.01/3; blk 31/2.02, 5.01, 7 & 22; blk 32/1-9; blk 58/1

An application was submitted by letter dated January 4, 2018 from attorney Joan Adams on behalf of the Applicant, Aura II Investors, LLC along with copies of resolutions # 2005-29, # 2014-09 (with exhibits), and # 2016-08.

Mrs. Adams gave the following overview:

The applicant, Aura II, LLC, is the original developer of Aura II, a subdivision consisting of 169 single-family building lots that was originally part of the larger development know as Latham Park.

At the time of Preliminary Subdivision application for Aura II, was the proposal that the homeowners' association for the adjacent community known as Aura I would be expanded to include Aura II. The Board at the time agreed with this approach and memorialized it in the approving resolutions for Aura II (#2014-09 for Preliminary and #2016-08 for Final).

Applicant, Aura II, LLC, requests an administrative design change modification to the original approval to permit the creation of a separate Homeowners' Association (HOA) for Aura II since the project is being funded by a different entity than is currently developing Aura I.

Separate HOA's would be more economical and more efficient as separation would allow the home owners in each section to have more control over their own properties. Nothing will change in terms of design, the HOA's will still have all the same requirements imposed upon them as was part of the original approval. One of the considerations for an administrative design change request, is whether or not this was an important topic of debate or discussion during the original approval process. In this case, it was not, the combined HOA was a suggestion made by the applicant at that time.

Board Attorney Dale Taylor commented this is not an unusual request and as a matter of law they are entitled to it, as two different entities are developing the projects. The HOA's must be filed with the Department of Community Affairs (DCA) following their regulations.

Board member Nicholson commented that in her review of the resolution of approval, the stormwater controls are interconnected. Which HOA would be responsible for the basin(s)?

Mrs. Adams responded that each project has its own stormwater design, its own basin. The outfalls are connected and the design is not changing. Each HOA will be responsible for their biannual basin maintenance, desilting, etc., and all other regulations that were imposed.

Board Planner, Steve Bach added that as part of any approval for separate HOA documents, there should be some cross easements, covenants & restrictions where common areas exist in one development, that would serve both developments (such as a common access and egress, and recreation area), as well as other recorded documents, as necessary.

Mrs. Nicholson inquired if the current HOA was in agreement with this proposal, and did they have a say in this change.

Mrs. Adams responded that the current HOA is still owned by the developer and not all of the documents (easements, restrictions) have been filed yet because not all of the plats are filed for the project. Mrs. Adams added the owners of Aura I are aware of the request. The financiers and owners recently met with the Board's Attorney and Planner to hash out some of these details. The owners of both sections are separate legal entities, so they have to be separate by law. Mr. Taylor confirmed they did met but are still working out the details. Any approval granted could be conditioned upon all details being met to the satisfaction of the board's professionals. The applicant agreed.

Board Engineer added that he was told by the developer that as each section of the development is filed, amendments are added to the HOA documents at DCA (Department of Community Affairs). Mr. Bitgood cannot confirm as he has not received any proof that any documents were added. The HOA does exist and is in control by the developer.

Mr. Hughes inquired if the new "entities" were just changes of names with the same characters involved?

Mr. Taylor responded, "No", these are distinct entities. For financial reasons there has been a split between Aura I and Aura II. The investors of Aura II & Aura III do have the full rights to develop those sections.

Mr. Bach added the principal of Aura I is the Canuso family. Steven Patron is the principal (& developer) of Aura II and he also has acquired the rights for the rest of Latham Park (Aura III, for reference). Mr. Patron is the active lead in the development of Aura II and the area of Latham Park. The group name is Harvestate Group, LLC.

Mr Hughes also asked what happens if an HOA does not fulfil their obligations? Mr. Bach responded it's the property owners right against the HOA entity and each other. Mr. Taylor added the Governing body has legal remedies available to enforce the failure of an HOA to act properly.

Attorney Joan Adams commented the separation of the two HOA's does not affect the town's legal rights in terms of enforcement or the home owners in that community. The separation will actually make each community-section easier to enforce and maintain their own community as they will have their own governing body.

Member Afflerbach asked if any consideration was given to the possible financial burden on a smaller HOA if there was some kind of costly repair.

Mr. Taylor responded it's all scaled and it's a lot easier to control something when it's in smaller units. The bottom line is, its two separate and distinct developers and there has to be separate HOA's. Mrs. Adams added Aura II is 169 lots, Aura I is over 100 units.

Board Engineer commented right now the costly items that could fail would be parts of the storm water system and the basin which are still under the control of the developer and are bonded items. The bonds will not be released until those items are found to be satisfactory, everything is stabilized and in good condition. This is all on the developer until the bond is released from the Township. Applicant's attorney agreed this would be in a POS disclosure.

Attorney Adams added, whenever a Planning Board approves a project, the Phases can be sold independently and that's what's happening here. You cannot tie them together to develop the project. This is the reason the request is being made for separate HOA's. Further each section could stand alone as an independent project.

Board member Schmidt confirmed there is not a separate entrance for Aura II. Eventually all roadways will become public township roadways. An HOA cross responsibility would include signage, landscaping, etc. Mr. Bach stated this was not uncommon, Mr. Taylor agreed. The principals of Aura I and Aura II will hash out the details and present all the documents to the board's professionals for review and approval.

Board member Swanson asked about the HOA transition from developer to the residents. Mr. Bach replied that their HOA documents explain the transition procedure which is governed by state statue under the DCA (Department of Community Affairs).

Mr. Bach summarized that the request for separate HOA's will not affect the improvements and how the developments will function will remain unchanged. What each section has the rights to, remains unchanged. The developer of Aura II and Aura I will have to go to DCA (Department of Community Affairs) and demonstrate that the documents are in place and DCA's legal department will review against the state's statue.

Mayor Poisker commented his concern is with the common areas, bike trails, one entrance, who owns the assets of the basin, who maintains the basin. Mrs. Adams commented that all the basins for Aura II are in Aura II, the same applies to Aura I. The only thing that connects them is the underground piping. The trails in each project will be independently maintained by that HOA. This is no different than when a town receives a grant from Gloucester County or from the State for bike trails or walking paths. They go across lands that are owned by many different entities. In this instance the HOA's will own all the public

areas and be responsible to maintain them. The cross covenants in the revised HOA's will be in place to compel each other to maintain these shared areas.

Mr. Afflerbach moved to open to the public, seconded by Mayor Poisker
With all members in favor, the motion was carried.

The following members of the public were sworn and provided testimony:

Jeff Laidlaw, 113 Cortland Blvd.,
Testified that he lives in Aura I, raised questions about the current HOA for Aura I and the number of affordable housing that is planned for Aura I.

Mr. Bach confirmed the total number of approved units in Aura I is 121 single family homes and 52 affordable townhomes. Townhomes will have a separate HOA.
Mr. Bach & Mr. Taylor explained how the number of affordable units was calculated to be in compliance with the State's affordable housing requirement. The location of the units was proposed by the developer at the time of application and approval was given. The townhomes will use the same main entrance.

Sarah Campbell, 118 Cortland Blvd.,
If the HOAs are divided, when would it happen?

Mrs. Adams couldn't give a definite time frame. The documents must first be approved by the by the Boards Professionals, then sent to the state DCA for their approval and also filed on the land record. It will not come before the Planning Board again, the Board's professionals will complete the review and final approval.

Anthony Natale, 409 Crispin St.
Commented he wants the community to succeed. He added the common areas are currently not being taken care of and part of dues payment go toward maintenance His concern is that one HOA doesn't function properly and now a second HOA may be created. Who will make the decision to create a second HOA?

The home owner was told to contact his HOA directly for an explanation of how dues are used. He can also contact the DCA directly (in writing, so it's documented) if he feels the monies are not being spent properly. The developer should be contacted first showing a good faith effort was made, then send a letter by certified mail.

The Planning Board will make a decision this evening whether or not there will be two HOA's.

Mr. Afflerbach moved to close to the public, seconded by Mr. Swanson.
With all members in favor, the motion was carried.

Board Attorney, Dale Taylor, summarized the new entity of Aura II, Aura Investors, LLC, has reached an agreement with the developer of Aura I (Canuso) to have two separate and distinct HOA's. Aura Investors is asking the Board for an amendment to the original approval to permit this change. If approved, there will be conditions for example, the applicant must develop and submit all HOA documents proposed for Aura II, in addition to any and all cross easements, etc., to the Board's professionals for their review prior to documents being filed with the N.J. Department of Community Affairs (DCA), or any recording in the office of the County Clerk (as to any easements, separate covenants, and restrictions, etc.). Additionally, the developers of Aura II must also prepare for review the Point-of-Sale (POS) documents/disclosures to be given to each prospective purchaser of a home in Aura II (prior to the purchaser signing a sales contract) that will fully disclose the relationship, rights, responsibilities, common areas, etc., between Aura I and Aura II to said purchasers. All documents will

be subject to the Board's Professionals formal review and acceptance via a resolution. The applicant will not have to come before the board again. The board members were in favor. The Applicant's attorney, on behalf of the Applicant, agreed to comply.

Mr. Hughes moved to grant approval of separate HOA's for Aura I & Aura II, with the conditions & board's professional's recommendations as discussed, seconded by Mr. Clark.

Roll Call:

Voting in favor: Afflerbach, Clark, Hughes, Nicholson, Poisker, Schmidt, Shoultz, White, Swanson

Against: None Abstain: None 9-0-0

For the record, Board member McKeever left at 9:14 pm.

Public Hearing:

- Pliskin, Matthew & Renee- Bulk variances - in-ground pool
Block 29.02, lot 4, 216 Winesap Way, application #ZB-17-09

Matthew Pliskin, 216 Winesap Way.

Rosemary Franco, Anthony Sylvan Pools representative.

Both remain sworn from December 17th hearing.

Mr. Pliskin was before the board on December 17, 2017 and the application was deemed complete subject to three conditions which have since been satisfied.

Mr. Pliskin submitted a current signed and sealed survey, a current certification of taxes paid and nine colored photographs that were marked into evidence as Exhibits A-2 through A-10.

The Application was then deemed to be formally complete.

In addition, Mr. Pliskin introduced into evidence Exhibit A-1, which was a survey of the Subject Property dated 11/22/16, prepared by James Sassano Associates, Inc. (unsealed), on which he hand drew the location of his proposed pool and other dimensions. Mr. Pliskin testified as to the changes requested, including setbacks, location of pool equipment, patio, and distance from the house.

Board Engineer, Stan Bitgood's referred to his letter of December 5, 2017, and had reviewed the Applicant's revised plan (Exhibit A-1) and testified that he had no objection to the proposed changes. Mr. Bitgood testified that the proposed plan met the intentions of the zone code, provided adequate clear distances for proper grading, presented the necessary area for impervious needs, and that the changes made by way of Exhibit A-1 were acceptable. As a condition of approval, Mr. Bitgood indicated the Applicant must submit a detailed grading plan.

Board Planner, Steve Bach, recommended a ten (10) foot setback from the rear property line to the coping of the pool would be acceptable, the pool could be backwashed by channeling the water away from any neighboring properties toward the open space and basin to the rear of the property, and that the grading as proposed would comply with the ordinances. Mr. Bach supported the revised plan and necessary variances, as submitted.

Based on the revised plan as submitted, the following variances/waivers are required:

(A) R-E Zone Bulk Requirements (Code 96-71): Maximum Impervious within the R-E Zone coverage – 20% required, 23% existing, <34% proposed.

(B) Swimming Pools (Code 96-81 B): property line to waterline min. - 25 ft required, 10 ft rear proposed; property line to waterline min. – 25 ft. required, 8 ft. side proposed.

(C) Lot Grading Plan (Code 96-66 m): lot grading contours extending 50 ft required, 0 feet proposed

Mr. Afflerbach moved to open to the public, seconded by Mr. Schmidt. With all members in favor, the motion was carried. With no comment from the public, Mr. Clark moved to close to the public, seconded by Mrs. Nicholson. With all members in favor, the motion was carried.

Mr. Afflerbach moved to grant the variances with the following conditions as recommended by the Board Planner and Engineer: (A) Lot grading plan for in-ground swimming pool, signed and sealed by a professional engineer, who is licensed in the State of New Jersey, (B) Plan of Survey and topography, signed and sealed by a Professional Land Surveyor licensed in the State of New Jersey; (this can be a certified update of the prior as-built survey for the lot), (C) Both of the above plans shall conform to Elk Twp. Code 96-66, et. seq., but topographic information need not extend to 50 feet beyond the property lines. Both of the above plans shall be on the same datum as the plans for the Aura Development and as was used for the Lot Grading Plans prior to the first occupancy of the Subject Property, seconded by Mr. Schmidt.

Roll Call:

Voting in favor: *Afflerbach, Clark, Hughes, Nicholson, Poisker, Schmidt, Shoultz, White, Swanson*
Against: *None* **Abstain:** *None* **9-0-0**

➤ Discussion - Affordable Housing Settlement Agreement and updated Housing Element and Fair Share Plan – Bach Group

Mr. Bach gave an overview:

A settlement agreement was reached on February 21, 2018 with all the parties involved with Elk Township’s affordable housing plan which included the following interveners: Fair Share Housing Center, Silvergate & Canuso. Our agreement will be going before the Court in March, 2018. The Fair Share Housing Center and Elk Township have agreed that Elk’s affordable housing obligations are as follows:

- 1) Rehabilitation share- 9
 - 2) Prior round obligation- 127
 - 3) Third Round projected need- 282
- Total: 418 units

The only change (the amendment) is the number of affordable units in round III was “x” number and has now increased by approximately 30-40 more units. Our plan shows that we are fair. We have prepared a plan that provides opportunities for the provision of affordable housing complying with the State’s regulations. This plan protects the town from any builder’s remedy lawsuits (where they ignore our zoning and place affordable housing anywhere and at any density).

Mr. Bach distributed a draft Amended Master Plan - Housing Element & Fair Share Plan for the Board’s review. The Board will hold a public hearing in April.

➤ **General Public Portion**

Mr. Hughes moved to open the general public portion, seconded by Mr. Swanson. With all members in favor, the motion was carried.

Aranya Dickson, 114 Cortland Blvd.,
Had the following concerns: common entrance for Aura I and Aura II, sidewalks not built along Cortland Blvd. & barrier that has been removed around the model home area. She was also in favor of relocating the affordable units and wasn’t made aware of their location when she purchased her home.

Engineer responded to the fence/barrier being removed- he would investigate as this was without his permission. The one entrance was part of the original approval.

Leslie Rodriguez, 401 Crispin Way, was also concerned with only having one main entrance, incomplete sidewalks & that school children have to stand in the street for the bus. She was also in favor of relocating the affordable housing units. Ms. Rodriguez added she had spoken with Mr. Canuso and was told there would be 3 entrances, 2 more in phase II and that he did consider relocating the affordables but was waiting to hear back from the township.

Mayor Poisker confirmed Mr. Canuso said the other entrances would be in phase II & pointed out that he is no longer the developer/owner of that section. Further, to date, there is no formal application before the board to relocate the affordable units.

Mr. Bitgood added the general development plan under Orleans-Latham Park project did have 3 entrances but that project has changed a lot since then. Aura II (which was part of Latham Park) had amendments made to their plan to make it work with Aura I for the water/sewer and drainage components. Aura II with Aura I was demonstrated satisfactorily to handle the traffic through the existing one entrance. Board Engineer explained that internally, the State's RSIS (Residential Site Improvement Standards) have been met. The Board does not have the authority to deviate from the State's requirements. By state law and regulation, the development size, roadway size & the divided entrance all comply with the State's standards supporting the amount of traffic within the two phases. Everyone's comments are appreciated but the professionals cannot require additional entrances when they comply with the State's requirements.

Mr. Bitgood commented that the sidewalks leading out from the development to Aura Road are bonded and Mr. Canuso had promised to put them in last fall. Ultimately, if he fails to install them, the Township could install them using the bond money. That process would take some time, but it could be done. Sidewalks did not have a specific phasing plan for installation. Moving forward Mr. Bitgood would like to have a timeline for sidewalk installations with specific dates.

Ms. Campbell, commented the entire roadway situation with only one entrance is scary & a safety hazard with over 100 homes approved in phase I and then another 169 units in phase II. Additionally who can they petition for another entrance? Should it be the new developer?

Mr. Hughes added ultimately any roadway openings on to a County Road has to be approved directly by Gloucester County. Mr. Taylor added it is the County's practice to limit the number of entrances and exists on to their roadways as many curb cuts generate traffic congestion & increase rates of accidents. Then follows the installations of traffic signals, intersections, etc.

Ms. Campbell confirmed the current dirt road was for construction vehicle access and not another entrance. Mr. Bitgood confirmed it would not be an additional entrance.

The development's plans are available for review in the planning board office.

Monika Gacutan, 407 Crispin Way,

Asked if Aura I had to be completed before starting Aura II & when would the recreation areas be completed.

The answer was "no," and now its two separate entities. There is bond money available to complete the recreation areas if necessary. However, there is a process to follow before bond money can be used. Board Planner added there is a specific time line for when the recreation amenities have to be installed, but he didn't know what it was at this moment. It should be outlined in the resolution of approval.

Mr. Shoultz moved to close the general public portion, seconded by Mr. Schmidt. With all members in favor, ***the motion was carried.***

➤ **Correspondence:** None

➤ **Adjournment:**

Mr. Shoultz moved to adjourn, Seconded by Mrs. Nicholson. With all members in favor, ***the motion was carried.***

Adjournment time: 10:29 pm

Respectfully submitted,


Anna Foley, Board Secretary