

Chairman McGroarty called the regular meeting of December 11, 2006 of the Washington Township Planning Board to order at 7:40 p.m.

MEMBERS PRESENT

CLASS IV: Mark Bauerlein, Charles DiSalvo, William Leavens, Kathleen McGroarty, Howard Popper, Geoffrey Price
ALTERNATES: Lou Mont, Sam Akin
CLASS I: Kim Ball Kaiser
CLASS II: Eric Trevena
CLASS III: Kevin Nedd
OTHERS ABSENT:
STAFF PRESENT: Clerk Kesper, Attorney Buzak, Planner Banisch, Engineer Hall

Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 17, 2006 and posted on the Bulletin Board on the same date. Seven notices were mailed, as there were five requests.

****NO NEW CASES OR WITNESSES SHALL BE HEARD SUBSEQUENT TO 10:30 PM****

Pledge of Allegiance

MINUTES

1. Minutes from the November 13, 2006 Regular Meeting & Executive Session

Mr. Popper made a motion to approve the minutes, seconded by Ms. Kaiser. Minor corrections were made. A voice vote was taken; Mr. Leavens and Mr. Price abstained, all others were in favor and the motion carried.

RESOLUTIONS

None

The meeting was opened to the public for items not on the agenda. There were no questions or comments from the public and the meeting was closed to the public.

DECISIONS ON COMPLETENESS

None

PUBLIC HEARING/APPLICATIONS

1. Alcock – Block 17, Lot 6 – 679 Bartley Road – Request for Wavier of Site Plan to use existing cottage for farm labor housing

Laureen Alcock

Laureen Alcock was sworn in by Attorney Buzak.

Ms. Alcock stated that she is operating a farm. Her daughter is doing most of the farm work and is the caretaker of the farm and she would live in the cottage. The cottage was an approved home until they built the new house, at which time they had to remove part of the kitchen until they could get approval of the planning board. The lot is 12 acres in total of which 8+ acres are in Washington Township with four acres in Mt. Olive. The four acres in Mount Olive are all wetlands. The property in Mt. Olive is minimally assessed at \$500.00 a year, is adjacent to a stewardship forest on which they do woodland management. The new home received a Certificate of Occupancy in April. She obtained the Certificate of Occupancy for the new home after she gave a letter to Fred Jordan stating that they would not use the cottage as a dwelling unit until they received farmland assessment and approval from the planning board to use it a farm labor housing.

The farm labor housing ordinance was reviewed.

Ms. Alcock stated that her daughter would be employed by the farm.

Mr. Buzak answered the board that the property could be one deed describing the entire parcel or two deeds describing two separate lots. For the purpose of development the municipal line is not typically considered.

Ms. Alcock stated that they do have one deed and one description for the 12 acres. She stated the municipal boundary is not defined and it is shown differently on different maps. There is a number assigned to the Mt Olive piece but they did not have any details. The Mount Olive section does not have access from any other street either in Washington Township or Mount Olive. On the old survey Washington Township gave Mount Olive an access easement for a sewer, which was subsequently put into the woodlands preservation by Mount Olive. Ms. Alcock described the barn on the property as storage for hay, tractors and horse stalls. She stated that the Health Officer has okayed using the cottage as a dwelling unit. There is a well house on the property that services the cottage and the barn. She answered the Board that there are no bathrooms or kitchens in the barn.

Ms. Alcock answered Mr. Buzak that the cottage was the primary dwelling unit on the property until they built the new home. When she applied for the new house permit the arrangement was that in anticipation of being a legal farm the cottage, and barns could stay. They moved out of the cottage in April 2006. The property qualified as farm land this year, the fourth year of farming, which happened in the fall of 2005. The cottage is vacant now and they are seeking the right to occupy the cottage as farm labor housing, her daughter will be the farm labor.

Mr. Buzak reviewed for the Board that the testimony heard is that the deed is for the entire property which refers to so many acres in Washington Township and so many in Mount Olive, but the line is unclear. The testimony is that the access is only through Washington Township. It was his opinion based on the testimony that the board could ignore the municipal boundary giving the applicant enough acreage in Washington Township to consider this application. He suggest that a condition of approval would be that the Mt. Olive property could not be used separately from the Washington Township property, at least as long as two dwellings remain.

Ms. Alcock accepted Mr. Buzak's condition.

Ms. Alcock answered the board that they do not intend and would not apply for anything other than farmland assessment. They will not expand the structure, but would further improve it, replace roof, remove rot, etc.

Mr. Akin stated that state farmland preservation has a different regulation for farm labor housing. And also that if the property were in farmland preservation the state would have to approve it.

Mr. Banisch reviewed the conditions under the farm labor housing ordinance and that the farm labor housing approval would extinguish if the need for farm labor housing ceased or farming ceased. He stated that under the Natural Resource Conservation Restraints Ordinance this lot may not qualify, but for agriculture the board may want to consider it. He noted that the property for a dwelling unit would be over the minimum 4000 sf area required under the natural Resource Conservation Restraint Ordinance. If a new Certificate of Occupancy is issued it may trigger an affordable housing requirement.

Mr. Buzak stated that as the cottage was in existence and the new home was counted as a new unit and paid the development fee it was his opinion that this unit would not count as new housing stock or issued a new C.O.

Ms. Alcock confirmed that she paid the 2% development fee on the new home.

Mr. Buzak stated that the resolution should be written in a manor that points out that this is an existing dwelling unit.

Mr. Banisch also suggested that a resolution include in the resolution that it is an agricultural building, as they are excluded from the COAH rules.

The meeting opened to the public. There were no comments and the meeting was closed to the public for questions and comments.

Mr. DiSalvo made a motion to instruct the board attorney to draw up a resolution of approval of this farm labor housing request subject to conditions discussed by Mr. Buzak and Banisch. Seconded by Mr. Nedd.

A voice vote was taken; all were in favor and the motion carried.

2. DeFilippo – Block 62, Lot 12 – 180 Black River Road – Request for Wavier of Site plan for apartment in existing barn for farm labor housing

Angel DeFilippo, Applicant

Angel DeFilippo was sworn in by Mr. Buzak

Ms. DeFilippo stated that she recently purchased the farm to breed horses. They built a barn in which they roughed in the plumbing and electric for an apartment. The septic system has been installed. She just became aware last week that she needed approval from the Planning Board for the farm laborer apartment. The apartment would be for the person who provides every day horse care. Ms. DeFilippo stated that the farm is 65 acres and is farmland approved and she stated that farmland preservation was aware of the apartment. She referred to the plans and pointed out the structure.

Mr. Price stepped down due to a conflict of interest.

Ms. DeFilippo described pictures she presented to the board which were marked A-1 through A-4. She stated that her husband took the photographs on December 9 and they accurately depict the current conditions. She stated that the barn is 80' x 40' and has two stories and includes two stalls and an apartment above the barn without the cupola. The septic as-built plan was marked A-5.

Ms. DeFilippo stated that the apartment would house only one person. She stated that aside from her home there is a dwelling with two one-bedroom rental units which are separate from the farm labor housing. The rental unit was on the property before she purchased it and it was rented out for about 25 years to people not employed on the farm. The foundation of the rental unit is a stone foundation.

Mr. Buzak answered Mr. Akin that the area of the primary dwelling, garage and rental structure are within the area non-severable exemption area.

Ms. DeFilippo stated that the stone structure has no roof but was a dairy milk house. The main garage has four bays as well as a workshop and old tack room with two apartments above it.

The meeting opened to the public. There were no comments and the meeting was closed to the public for questions and comments.

Mr. Banisch stated that this apartment may trigger a COAH growth share contributeion in lieu of development fee - \$30,000. He explained why this may not be considered an agricultural building. He answered the board that even if the apartment is low income housing, if it is in connection with employment of the property, it cannot be considered as a COAH unit.

Ms. DeFilippo stated that the horses and their caretaker are in Florida from Thanksgiving until after Easter.

Ms. DeFilippo stated that she paid the 2% development fee for the new barn.

The board discussed exempting farm labor housing from the development.

Mr. Banisch was directed to draw up a draft ordinance exempting farm labor housing from the growth share ordinance for consideration by the Township Committee.

Mr. DiSalvo made a motion to direct the Board attorney to draw up a resolution of approval for the waiver of site plan for an apartment in existing barn subject to conditions set forth this evening including farm labor housing. Seconded by Mr. Popper.

A voice vote was taken; all were in favor and the motion carried.

3. Elegant Homes -- Block 42, Lot 11 - Hacklebarney Road - R/5 Zone, 66.8 acres -Two Lot Minor Subdivision - Elegant Homes vs. Washington Township Planning Board and Washington Township Settlement Agreement

Jay Bohn, Applicant's Attorney

Mr. Buzak stated that this application was originally approved earlier this year, the approval was then challenged. The applicant challenged a condition in resolution 6-17. After pre-trial activities the attorneys attempted to work out a settlement of the outstanding issue and tentatively worked out a settlement currently before the board. He explained that the applicant had some comments and concerns and some proposed revisions were made and drafted. Assuming that the changes were acceptable to the applicant the Board needs to know that the agreement has been signed.

Mr. Buzak stated that the first step the board needs to take would be a resolution approving the settlement. The substance of the settlement, if the board is in agreement and approves the resolution, provides an obligation that before the board does anything it must hold a public hearing on the issue of the conservation easements and compensation. There has been notice given to the property owners within 200' and the newspapers. He stated that after the hearing the board could adopt the resolution, if they are inclined to approve it. If it is not adopted the board and applicant would go back to court. He explained that if the board approves the resolution amending the original approval the litigation would go away. He distributed a resolution that approves the settlement agreement with amendments.

Mr. Bohn stated that the revised settlement agreement is acceptable to the applicant and will be signed.

Mr. Buzak gave execution copies of the settlement agreement to Mr. Bohn.

Mr. Buzak reviewed the changes for the board, which he stated were also approved by the Township Attorney. The first change was on the bottom of page 2 adding and further eliminating the delineation of the easement to the Township...; next change is after whispering woods within 45 days of the acceptance of the settlement. There is a new paragraph 4 no charges made by the municipal officials against the applicants escrow; ... paragraph 5 last sentence all new which ties it to the appeal date...; next change paragraph 10 is intended to affect only this particular application and not any redevelopment of the property nothing herein shall prevent applicant regarding any other property within the township.... the last change is a deletion of the confidentiality section.

Mr. Popper wanted to see the confidentiality section remain and he thought that this was an important part of the settlement agreement and have this done in conjunction with a consent order.

Mr. Buzak stated that the difficulty is that this is an open hearing, the settlement is done in open session and it is required that it be done in public as part of a public record and in fact when a hearing is held the terms of the agreement are part of the public hearing. He answered Mr. Popper that the Open public Meeting Act and Open Public Records Act require this to be an open process. This type of resolution or settlement does not fall into any of the exemptions. He answered the board that an appeal from the public would be to the resolution, not the settlement agreement. It was his opinion that retrospectively we are not opening the township to challenges to previously granted easements. He concurred that this application had unique characteristics that allowed the board to settle the case by removing conservation easements.

Mr. Bauerlein was concerned that the confidentiality clause was removed and the risk to future application.

Mr. Nedd stated that the committee also discussed this issue and the Township Committee was in agreement with the settlement as well. The Committee was not aware of the confidentiality clause and it was not discussed as a confidential settlement, but the settlement was approved because of the unique aspects of this case.

Mr. Banisch stated that this case is unique because of the peculiar DEP permit that existed that allowed for access through regulated area.

Mr. Buzak referred to the release provided to the board, which becomes part of the settlement agreement. He pointed out the changes to paragraph 2 - 2 a through d, which were added to clarify what was being released. He stated that these changes were also approved by the Township Attorney.

The Board considered resolution 06-27 as discussed this evening.

Mr. DiSalvo made a motion to adopt 06-27, seconded by Mr. Nedd. A roll call vote was taken:

Ayes: DiSalvo, Kaiser, Leavens, McGroarty, Nedd, Price, Trevena
 Nays: Popper Abstentions: Bauerlein Absent: None
 Ineligible: Akin, Mont

Mr. Bohn stated that the condition asked to be modified from resolution 06-17 in resolution 06-28 is condition 1-R, which has been modified in accordance with the settlement agreement, there will be no township imposed conservation easements or notes referring to them. He stated that to the extent the Township ordinance requires the state regulated areas to be on the map they will be.

Mr. Buzak read condition 1-R as written in resolution 06-17. The section on the requirement of dedication of easements to the township over state regulated areas will be removed. The language on compensation will be deleted. The third item is plan revisions showing the easements to the township over state regulated areas will not be required. He read the revised condition.

The meeting was opened to the public for questions or comments. There were no questions or comments and the meeting was closed to the public for questions or comments on the Elegant Homes application.

Mr. Buzak reviewed resolution 06-27 and passed out a copy for the boards review accepting the settlement agreement.

Mr. DiSalvo made a motion to approve resolution 06-28 amending 06-17, seconded by Mr. Nedd. A roll call vote was taken:

Ayes: Bauerlein, DiSalvo, Kaiser, Leavens, McGroarty, Nedd, Price, Trevena
 Nays: Popper Abstentions: None Absent: None

Ineligible: Akin, Mont

4. US Homes – Greenbriar at Riverview – Block 19, Lots 5, 6 & 7 – Schooley's Mountain Road and Newburgh Road – Discussion on Minor Subdivision, Final Site Plan and Amended Preliminary Site Plan Approval granted with Resolution 05-17 and 06-22

Joel Kobert, Applicant's Attorney
Doug Angoff, Applicant
Barbara Shoor, Applicant's Planner

Mr. Kobert stated that this is not a noticed hearing but a presentation to the board about the fact that US Homes has gone back and looked at this project and has concluded that it does not work in the context of the approval. The applicant will show the board changes they propose and will have to come back to the board for an amended approval. The COAH units and the architecture and underground parking will be addressed. He explained that the way the applicant will propose the COAH units would also have to be addressed at the Township Committee level.

Doug Angoff stated that they are not reducing the number of units. The architectural plans have changed. Currently approved are 24 three story buildings with 15 units in each building with a garage underneath the building for 25 cars. The COAH units would have two in each building. This type of building, because of the underground parking, is a very expensive building. The market has housing sale prices going down and the building costs are going up. There will still be 24 three story 15 unit buildings, but they would have three one car garages in the front three 5 garages on the other sides. All but two units would have their own secure garage. The height was 46' now it will average between 44'-45'. The size of the building changes slightly. The other change is everything is on grade, which may eliminate need for pavers around the back. With the proposed amended plan every unit will have their own one car garage and one open space in the front of the buildings. The amendment will have a higher impervious coverage, but within ordinance requirements, unless the pavers in the rear are eliminated. Also the size of the common area will be reduced about 25,000 sf to about 12,000 sf. He explained the landscape berms to defuse the visual impact of the garages. He stated that circulation is almost identical to the previous plan. He stated that this style development has been successful in other projects in Middlesex County, Essex County and Livingston.

Mr. Kobert stated that developers are walking away from projects around the state and this is an attempt to make this project work.

Ms. Schoor stated that her company is a developer of COAH housing in the state of New Jersey with 800 owned and managed and 350 being built and another 1200 being planned. They are teaming up with Lennar Homes for the second time. Lambertville was the most recent project they opened. Their proposal is to create a community within a community to congregate the 45 units into their

own building with an on site community manager and a superintendent. She stated that the average age of a senior in affordable housing is 72 – 73 years old who do not want to purchase a home. They provide high end maintenance free apartments. The seniors are predominately women. The tenants are often parents of the home owners in the development. They would have their own community center and activities director. The affordable apartments will be within the community but not have access to the clubhouse, they would have access to the outdoor trails.

The board did not like the concept of segregating the COAH units off by themselves without access to the homeowners association and their amenities.

Mr. Banisch answered the board that the Township gets more COAH credit for rental units then owned units.

Ms. Shoor stated that they are offering a different product that fills another need. She answered the board that this is different then assisted living because they would have services offered but not a medical facility – it is an in-between point. She answered the board that this would not be creating a ghetto because it feels a need at a different point of a seniors’ life. The building would esthetically fit within the community. This is a quality community. The apartments would be \$825 – \$850 for one bedrooms and \$1050 – \$1075 for two bedroom. She explained to the board that moderate income is \$35,460 or less to qualify and that income is not based on assets, but only income. The tenants would be certified each year. Her firm would monitor all this and would not be a responsibility of the township. She explained the payment in lieu of taxes. She explained some of the other projects they have completed. Lambertville is the most comparable as well as one in Monmouth County and one to be started in Lacy Township. The apartments would be aged restricted such as the US homes development. She explained the federal program that would guide this development.

Mr. Buzak asked if a project such as this has been built.

Ms. Shoor stated that yes, in Jackson, NJ they have 150 COAH units and 1000 units in another area. In West Depford they have a 26 unit development which had single family homes and 290 multi-family units. She enumerated other areas as well.

Mr. Buzak noted that financing under this would be by federal programs.

Ms. Shoor stated that some of the costs would be financed by US Homes, but she did not have that number. The land under the COAH apartments and structures would be controlled by her organization. She answered the board that there are problems even when senior COAH units are interspersed throughout the community. Her company will maintain the buildings and units. They still own most of the units they built although the companies because of a merger and split.

Mr. Banisch stated that the need of this community must be addressed.

The meeting was adjourned to January 8, 2007.

***DISCUSSION /
CORRESPONDENCE***

1. Vouchers

Mr. Bauerlein made a motion to approve the vouchers reviewed by the Chairman and Vice Chairman and found in order and send same on for payment. Seconded by Ms. Kaiser. A voice vote was taken; all were in favor and the motion carried.

2. RO-25 – Create the position of municipal housing liaison

Ms. Kaiser made a motion to send RO-25 back to the Township Committee with the comment that it is not inconsistent with master plan as it relates to the housing element and recommending that it be adopted. Seconded by Mr. Trevena. A voice vote was taken; all were in favor and the motion carried.

3. RO-26 – Amending Chapter 217 Zoning with regard to the C-1 zone and the C-2 zone and to rezone block 28, lots 19.01 and 20 to the C-1 zone

Mr. DiSalvo made a motion to send RO-26 back to the Township Committee with the comment that it is not inconsistent with the land use element and recommending that it be adopted. Seconded by Mr. Mont. A voice vote was taken; all were in favor and the motion carried.

4. Highlands Master Plan

Ms. Kaiser stepped down from the discussion.

Mr. Banisch distributed a handout on the Highlands Master plan and briefly described the handout.

Ms. Kesper was directed to send a letter to the Highlands Council that a 60 day public comment period is too short and recommend it be extended 90 to 120 days.

5. Woodlands

The Board discussed the further review of this ordinance.

Mr. Nedd stated that the ordinance was not received well by the Township Committee and it is not likely to be adopted in its current form.

The Board decided that because the Highlands will regulate the vast amount of the Township and it being unlikely to be adopted by the Township Committee they would do not spend any more money on it and no longer review a woodland ordinance.

Mr. Mont made a motion to adjourn the meeting, seconded by Mr. Akin. A voice vote was taken; all were in favor and the meeting was adjourned at 11:25 p.m.

Virginia R. Kesper, Clerk