

MINUTES

The April 12, 2010 meeting of the Planning Board of the Township of Chatham was called to order at approximately 7:30 p.m. by Chairperson Joel Jacobson. The Open Public Meetings Act Statement was read into the record. The agenda for the meeting included Dudley, 72 Southern Estates and Rolling Knolls.

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Roll Call

Board members present included Mr. Jacobson, Mr. Brower, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Ciccarone, Mr. Cohn, Ms. Hagner, Mr. Hurring and Mr. Furbish. Board professionals present included Planning Board attorney Bill Robertson, engineer John Ruschke and planner Frank Banisch.

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Hearings

Dudley

Mr. Jacobson stated that this Application was a reconfirmation of a prior subdivision Resolution. Mr. Robertson stated that in July, 2008 the Applicant appeared before the Board seeking a minor subdivision for the property located on Meyersville Road. Mr. Robertson stated that the Board granted the subdivision with a couple of variances. At the time of the subdivision, there was a representation that as part of the subdivision there was a driveway easement that had to be obtained from the adjoining property, a Dudley relative.

A deed of minor subdivision must be filed within 190 days of the Resolution date. Mr. Robertson stated that it is his understanding that the driveway easement took some period of time to resolve and therefore, they were unable to record the subdivision deed.

Mr. Robertson said it was his understanding that the easement issue has been resolved, but the 190-day period had elapsed. The Applicant is back to re-confirm the minor subdivision as granted.

Mr. Ruschke stated that there were some amendments to the plan and that the county made some changes; however, Mr. Ruschke stated he had no concerns about this Application.

Mr. Cooper, attorney for the Applicant, confirmed the information presented by Mr. Robertson.

Ms. Hagner moved to re-confirm the prior subdivision approval and Mr. Brower seconded. At roll call vote, all eligible Board members voted in favor, except Mr. Ciccarone, who abstained and the motion passed.

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72 Southern Estates

Mr. Jacobson stated this Application was a request to confirm that the Permanent Extension Act applies to the approval for 72 Southern Estates.

Mr. Robertson stated the Applicant's attorney, Mr. Teijico, had contacted Mr. Robertson about this subject. Mr. Robertson stated that in July 2007, the Applicant received minor subdivision approval. There was amended approval on April 14, 2008. The MLUL NJSA 40:55D-47 protects a minor subdivision from changes in the zoning

requirements for a period of two years from the date of the Resolution of Approval. That time period was coming up the week of April 12, 2010.

In the interim, there has been the creation of the Permanent Extension Act of 2008 (PEA), which was recognition of the economic situation that currently exists. The extension period according to the Act is January 1, 2007 through December 31, 2012. Mr. Tiejico stated that the Application falls within this period and was looking for an affirmation from the Board that the Permanent Extension Act would apply to his client's subdivision approval so there is no jeopardy of losing the zoning protection.

Mr. Robertson stated the difficulty for the Planning Board is that he is not certain it falls within the Board's charge to be giving out advisory legal opinions. Mr. Robertson stated that the definition of approval in the Permanent Extension Act includes preliminary and final approval granted in connection with an Application for development. Mr. Robertson suggested to Mr. Teijico that the definition in the PEA includes preliminary and final approvals granted pursuant to the MLUL, which this Application did and that the time period fell within the extension period. But, Mr. Robertson is concerned that it goes beyond the Board's charge to give a legal advisory opinion.

Mr. Teijico stated he wanted to have the Applicant's position on the record and get some opinion from the Board. It was suggested that Mr. Teijico might approach Township Attorney Carl Woodward.

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Rolling Knolls

Mr. Jacobson stated that there would be a public hearing to investigate whether the area is an area in need of redevelopment.

Ms. Hagner recused herself from this and all discussion of the Rolling Knolls site because of her employment with Novartis.

Mr. Robertson outlined that this is a hearing on a preliminary investigation to determine if the subject property is in need of redevelopment. Mr. Robertson stated the New Jersey Constitution provides for the redevelopment of blighted areas. The framework provided states that a governing body may determine that an area is in need of redevelopment after investigation, notice and hearing in front of a Planning Board. Specific criteria will be considered by the Planning Board.

Mr. Jacobson stated the Board would review the statutory criteria and, in addition to looking at the statute, Mr. Jacobson would like the Board to consider if it thinks it is a good idea to begin this process from a public policy perspective, so the public can understand the context.

Mr. Robertson swore in planner Frank Banisch and qualified him as an expert to provide testimony. Mr. Banisch stated he had prepared a report in reference to Rolling Knolls dated March 20, 2010 that has been submitted to the Planning Board as an official document. Mr. Robertson asked Mr. Banisch to mark a copy of the report as Exhibit A1. Other photographs were later entered as Exhibits A2, 3, 4, 5, 6, 7.

Mr. Banisch stated the site was operated as a landfill for a period of 30 years prior to being closed in 1968. During that time, material was accepted from a variety

of contributors and the ongoing operation, while it was conducted according to protocols that were accepted at the time, were found to be far from the standard that ultimately was set for a facility of its kind. The property was accessed by Britten Road, which Mr. Banisch described as a narrow, winding cul-de-sac that terminates at the Superfund site. The residences on the road are in good condition. Mr. Banisch said he would not rule out access from another point.

Mr. Banisch presented a slide presentation on the subject of Rolling Knolls. The presentation included the four figures that were part of the preliminary investigation report and a series of photographs that were taken on April 3, 2010 to show the condition of the land. Mr. Banisch said that there is a pervasive implication throughout the site even though not all courses of the site display the same level of contamination that was seen in some photos.

Mr. Banisch identified the regional location of the property in question. Mr. Banisch stated the property consists of two lots (Block 48.20, Lots 184&189) and is located on the western central boundary of the municipality and on the northern limits of the Great Swamp. An aerial photograph depicts the extent of the site. There is an irregular pattern of vegetation that has resulted from the landfill operations - some area is fairly wooded and other areas are substantially open.

Mr. Banisch continued that Britten Road provides access to the site from Green Village Road. The property has several bodies of water and is extremely lowland. The driveway system comes through the main road, down around the lake, past the hunting lodge, down through a series of buildings and containers and extends out to a

point on the east. While it has been off limits to residential development, the site is in a residential zone.

Mr. Banisch reviewed the photos and showed a fenced in area that is being managed by the contractor that is working on the site. Mr. Banisch stated it is the contractor (engaged by the PRP's) managing the materials and equipment they work with on the site using the hazardous management protocols. According to Mr. Banisch, the example photos are trying to give a representation of the areas with dense patches of spoiled areas and more random areas. Mr. Banisch's opinion of the land was that the nature of the land has been spoiled and that for it to be retrieved and put to any productive use will require considerable expense and removal of a lot of materials.

Mr. Banisch's finding is that this Superfund site is eligible for designation as an area in need of redevelopment and does qualify under the local redevelopment and housing law under subsection NJSA40a:12-5 and four of the criteria C, D, E and H.

Mr. Banisch said that as a Superfund site and with the surface water contamination, it would be difficult to clean the site up to residential or better standards on which to build a neighborhood. Mr. Browne asked if the site were cleaned up to less than residential standards, could the area be used for another purpose that would attract private capital. Mr. Banisch stated he felt this was the reason the state had alternative standards for non-residential uses.

Mr. Jacobson asked if the designation of this property as a redevelopment area would assist in getting state funding to clean up the brown field site; Mr. Banisch said that assuming there would be some kind of state funding for that, this would be one

of those actions under the state plan where state agencies would be guided to help the Township more because it is acting in accord with the state plan. Mr. Banisch doubted there was anyone with money to come in and help clean up the area, on the public side of it.

Mr. Jacobson opened the meeting to the public for questions and comments for Mr. Banisch. Margy Capocilatro of 30 Britten Road asked about the difference between the terms brown field site and Superfund site; Mr. Banisch replied that brown field is more generalized term so Superfund would be a subset. Superfund would be a higher level of contamination than what might be found on other brown fields. Mr. Jacobson indicated that Superfund designation is an EPA determination and brown fields is whether or not it qualifies for a particular state funded program.

Sally Ruben, Director of the Great Swamp Watershed Association, commented that while she did not have a problem with the classification of the area in need of redevelopment, she was not sure the decision should be made until the EPA is further along in the process of determining what exactly should be done in terms of clean up on the site.

Ms. Capocilatro asked about the difference in the terms area of rehabilitation versus area of redevelopment; Mr. Robertson stated the Board was directed by the Township Committee to have a preliminary investigation to see if the site meets the criteria for redevelopment. Ms. Capocilatro asked if the Township had a conflict of interest with the redevelopment as it is a PRP; Mr. Robertson indicated this was a preliminary investigation. Mr. Jacobson indicated there were pros to the municipality

going through this process (tax abatement; greater control over development) and that this is a unique property.

Tom Heyl of May Drive commented that he wants a developer to help pay the costs of the clean up. Mr. Heyl stated he had heard there was a developer interested (wind farm) in the site if the site was designated an area of redevelopment. Mr. Jacobson said it was important to go into the process without a fixed view of what it looks like.

Ken Casey, 49 Britten Road, feels that if the site is labeled as a redevelopment area, it would help to get the ball rolling toward resolution of the issue.

Angelo Santoro, Meyersville Road in Harding, congratulated the town for discussing this site and taking the first step. Mr. Santoro feels it will help both the Township and the neighboring communities.

Mr. Jacobson outlined the steps involved in the process. Mr. Jacobson stated the first step was taken by the governing body in directing the Planning Board to undertake the investigation. The second step is the preliminary investigation that is currently underway. The final result would be a Planning Board Resolution memorializing results of the recommendation from the hearing and referring it to the governing body. Once the governing body receives the recommendation, a Resolution may be adopted to designate the area as an area in need of redevelopment. Then, the governing body directs the Planning Board or other redevelopment entity to prepare a redevelopment plan. The redevelopment plan is then referred to the governing body; the governing body may enact an ordinance adopting the plan; and the governing body or designated redevelopment entity oversees implementation of

the redevelopment plan. The redeveloper is designated to undertake the redevelopment project.

Mr. Caprioglio asked about the Superfund label and if it affects the plan Mr. Jacobson outlined; Mr. Jacobson said no. Mr. Caprioglio asked if there was a time frame for the EPA to issue a report; Richard Ricci, counsel for the Rolling Hills Landfill Group (Chevron, Novartis and Lucent) said there was a report that was supposed to go in this month reporting on the activity at the site. Mr. Ricci said that report was held up for technical issues. Mr. Ricci reported that the EPA has to evaluate samples and perhaps move to the next phase, which would be the remedial phase. Additional sampling may be required. The group must wait for the EPA.

Mr. Jacobson suggested the Board vote on whether or not this site is an area in need of redevelopment and then discuss the criteria. The recommendation would then go to the governing body.

Mr. Brower moved to vote on whether it is area in need of redevelopment because it meets one or more of the criteria that Mr. Banisch has enumerated in his report and Mr. Browne seconded. At roll call, Mr. Jacobson, Mr. Brower, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Ciccarone, Mr. Hurring and Mr. Furbish voted "yes" and Mr. Cohn abstained.

Mr. Robertson will prepare a draft Resolution for consideration at the next meeting.

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There being no further business, the April 12, 2010 meeting of the Planning Board of the Township of Chatham was adjourned.

Respectfully submitted,

Katherine T. Hollerith
Recording Secretary