

The October 17, 2005 semi-monthly meeting of the Planning Board of the Township of Chatham was called to order at approximately 7:30 p.m. by Chairman Joel Jacobson. The Open Public Meetings Act Statement was read into the record. The agenda for the meeting included Novick/Hagner, Fairmount Country Club and the Housing Element of the Master Plan.

#### Roll Call

Those present included Mr. Jacobson, Mr. Brower, Mr. Browne, Mr. Caprioglio, Mrs. Chambers, Mr. Ciccarone, Mr. Cohn, Mr. Hartford, Mr. McCutcheon and Mrs. Martinez. Also present were Board attorney Donald Malehorn, Board engineer John Ruschke and Board planner Frank Banisch.

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#### Minutes

The amendment to the minutes from the August 15, 2005 meeting was reviewed. Mr. Jacobson moved to accept the minutes with the changes and Mr. Cohn seconded, with all in favor.

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#### Other Business

##### Peapack-Gladstone Bank

Mr. Ruschke reported on the materials distributed at the September 12, 2005 meeting by the owners of the property, Mr. and Mrs. Goldberg. Mr. Ruschke stated that the documents presented by the property owners, even if presented timely, would not have affected the Planning Board's approval of the application. Mr. Jacobson suggested that the property owners follow up with the DEP if appropriate.

## Valle Estates

Mr. Ruschke reviewed the issues with the Valle Estates project. Mr. Ruschke stated Valle Estates was being fined on a daily basis for not complying with the required soil erosion and sediment control (SESC) measures or with the approved schedule on the drawings and for encroaching beyond the approved limits of disturbance (tree damage possible). Mr. Ruschke stated they were given a stop work order and October 17, 2005 was the deadline to complete the SESC measures and have not completed it, but are working diligently. Therefore, Mr. Ruschke stated that it was not appropriate for the Township to retain a contractor to complete the work using the performance bonds. Mr. Ruschke will continue to monitor the site. The stop work order will not be lifted until they fully comply with the SESC measures, build a retaining wall and reestablish the limits of disturbance. There was a discussion on the rate of fines, destruction of property, the order of the site and the silt fences. When asked about the communications issues on the site, Mr. Ruschke stated he felt the developer was sincere and that the developer was having problems with the contractor.

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## Executive Session

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## Applications

### Novick/Hagner

Board member Tom Ciccarone recused himself from the balance of the proceedings.

Mr. Malehorn stated this was to be a complete hearing and Mr. Jacobson pointed out that the Board would hear the amended application.

Attorney Ann Studholm stated this hearing was known as a “Whispering Woods” hearing; if a Board has rendered a decision and the applicant has appealed, the courts encourage a board to hear a

plan that would encourage settlement of the litigation. Ms. Studholm stated the plan to be presented was a modification of the original plan. Ms. Studholm stated the application was to subdivide a nearly 7-acre property; the property has an existing house in which the parents of the applicant reside.

Mr. Richard Schommer, engineer for the applicant, was sworn in. Mr. Schommer described the property as being located in a R-1A zone and stated it is an application for minor subdivision to create one new building lot for a single family dwelling, located on River Road near the intersection of Passaic Avenue. Mr. Schommer presented a set of the plans, which the Board had received and two exhibits: Exhibit A1 (10/17/05) is described as a colorized version of the prior plan and Exhibit A2 (10/17/05) is described as a colorized version of the current plan. Mr. Schommer continued that, in the past, the Board was concerned about limits of disturbance and disturbance of steep slopes. The issues regarding disturbance were dealt with in a couple of ways. First, in the old plan, the house was placed in the flattest portion of the property. While other sites were discussed, it was determined that the flattest part was in the center of the property. Mr. Schommer stated a number of retaining walls were added (referring to A2) along the bends of the driveway to conform with the maximum 6' height requirement, which allow the area of disturbance to be reduced.

In addition, everything was "tightened up" around the house to limit disturbance. Previously, there were two retaining walls across the back of the property, which have been eliminated in favor of a single wall, which brought the limit of disturbance closer to the house. The wall is at the maximum 6' height with some grading above it. He continued that on the east and west side, the limits were also brought in. In the prior plan, 61,872 sq. ft. of land disturbance was proposed; the current plan reduces it to 50,887 sq. ft. Previously, the proposed limit of disturbance was 24% and now it is below 20%. Mr. Schommer stated that this gave more open space on the property – from 75% to 80%. Mr. Hartford

asked about the removal of structures on the other lot; Mr. Schommer stated there was a structure to be removed and replaced with vegetation.

Mr. Schommer stated there was a conservation easement created in the rear portion of the property in the steeper slope area. Mr. Brower clarified that no construction, tree removal or recreation can be conducted within the easement area; Mr. Schommer agreed. Mr. Hartford questioned assurances that other areas were not developed; Ms. Hagner, the applicant, stated that she did not want any future development. Mr. Schommer stated that any additional construction would be subject to ordinances/variances and Mr. Malehorn concurred. Mr. Ruschke suggested the imposition of a deed restriction on the property to prohibit further development (i.e. no further subdivision based on storm water calculations).

Regarding storm water management, Mr. Schommer stated the storm water management plan had been submitted and reviewed by Mr. Ruschke and the plan has been considered satisfactory. Mr. Schommer stated drywells were proposed in the front of the house, a storm water collection system used for recharge and a series of drywells were planned off of the driveway. The installation of the dry well system accounts for an increase in the area of disturbance in slopes. Mr. Schommer stated that the greatest reductions of disturbance of steep slopes is in the 15-20% range and has gone from 56% to 40%. In the 20-25% slope category, there was a minor increase because of the dry wells. There was a reduction in the greater than 25% category to less than 6% from 7.5%.

Mr. Schommer referred to Lot 85.01 and stated there was no construction planned for that lot. There is a building proposed for demolition. Mr. Browne referred to Lot 85 and stated that the application is asking for a disturbance in the 15-20% slope range is 135% of what the ordinance calls for; in the 20-25%, the request is also 135% of the ordinance; and in the greater than 25% range, the request is over 500% of the ordinance requirements. Mr. Browne concluded that a strong case has to be

made for these variances. Mr. Schommer stated that the application was attempting to provide a comprehensive storm water plan.

Regarding tree removal, Mr. Schommer stated in the prior plan, 142 trees were proposed for removal. In the current plan, 98 trees are proposed for removal – 17 trees of these are dead. Mr. Schommer stated that of those 98 trees, there are 25 of trees over 18". Mr. Jacobson asked if the Tree Committee has commented on this application to Mr. Ruschke; Mr. Ruschke said he had not heard from them at this time. There were questions about how this fit in with the pending tree ordinance; Ms. Hagner stated she would make concessions to restore the property, but the ordinance has not yet been adopted. Mr. Caprioglio asked about the sequence of construction and protection of the slopes during construction; Mr. Schommer stated that as part of the SESC control plan, there is a construction sequence that was reviewed with Mr. Ruschke to keep the area stabilized during construction. Mr. Caprioglio also asked if Mr. Schommer had experience building in a steep slope area like this; Mr. Schommer stated he had full confidence that this project could be developed as shown. Mr. Caprioglio asked Mr. Ruschke if he felt everything had been done to secure the slopes; Mr. Ruschke stated the applicant has incorporated all the conventional techniques to minimize erosion. Mr. Hartford asked about the installation of a sprinkler system; Ms. Hagner stated she hadn't considered it to date, but had spoken with the Fire Department.

Township resident Donald Thompson, 33 Huron Drive, made comments relative to the discussion.

Planner for the applicant, Elizabeth Buckley (an associate of Peter Steck) was sworn in and qualified (Ms. Buckley's resume was submitted as Exhibit A3). Ms. Buckley gave a brief description of the surrounding land uses. Ms. Buckley described it as fully developed as residential as per the zoning ordinance. The area to the north of the property is single-family, one acre lots; to the east is a home on a

4-acre lot and then a subdivision; west of the property is a high density, multi-family development. Along River Road are a series of single-family houses on smaller lots. Ms. Buckley described the policies in the MLUL behind lot averaging ordinances; lot-averaging ordinances allow a developer to create a scenario where, if there are environmental constraints, they can be dealt with in an environmentally sensitive way. Ms. Buckley continued that this is done specifically to allow a developer to change the bulk variances (frontage, side yard, lot area) without giving them a density bonus. When questioned by Ms. Studholm, Ms. Buckley stated that without lot averaging, the minimum lot would be 2 acres and if lot averaging applies, the minimum size could be 1 acre. Ms. Buckley's testimony continued that with bulk flexibility, the subject lot could contain three houses. Ms. Buckley's testimony continued that topography and physical conditions are two of the reasons in Chatham's ordinance for permitting lot averaging. Ms. Buckley stated there would be no traffic conditions created by the driveway or road access and there is county approval. Ms. Buckley stated the storm water features and engineering are very sophisticated for the site.

Mr. Malehorn stated lot size averaging does not apply here as the applicant cannot meet the other requirements of the zoning ordinance and will still need variances, but concedes that it is a viable conceptual argument that lot size averaging principle makes sense in this situation given the steep slopes and size of lot; however, the application for a variance from the area requirement is still required. Ms. Studholm agreed to do so. Ms. Buckley stated the intent of the land use law is to take a site, look at it with its environmental constraints and draw the line to do the best that can be done so the least amount of steep slopes is disturbed.

Ms. Buckley presented Exhibit A4, which showed a breakdown of the site by slope. Mr. Browne objected to this document, as the gradations are not presented as they are in the statute. Ms. Buckley stated in essence the 0-20% should read 15-20%. Ms. Buckley stated that she felt that in granting this

variance, the house will be in character with the surrounding area. Mr. Hartford asked about the shared driveway and Ms. Buckley reminded the Board that there was another access point. Mr. Browne expressed concern about the future of the smaller lot, which is non-conforming and undersized; Mr. Malehorn stated the owner would have to come back to the Board for variances. Mr. Jacobson asked why the lot line couldn't be re-drawn so the smaller lot conforms; Ms. Hagner, who was sworn in, responded the line was drawn to try to keep the slope of the existing driveway to 15% and there would have been a need for more steep slope variance. Jim Novick (applicant) made comments relative to the discussion. Mr. Banisch stated that if two lots were to be permitted, this was the best way to do it.

Mr. Hartford expressed concern over the areas marked in dark green on the exhibit that are not marked for the conservation easement. The Board discussed protection against additional development and steep slopes, in addition to the existing restrictions and regulations of the town, including deed restrictions and an extension of the conservation easement. The applicants stated their preference was to stick with the existing regulations and ordinances and felt additional restrictions would be onerous.

Township residents Peter Scanti, 392 River Road and Mrs. Thompson, 88 Huron Drive, made comments relative to the discussion.

Following discussion of the conditions including the need to outline the extraordinary measures the applicant has gone to in their planning, Mr. Jacobson asked Mr. Malehorn to draft a resolution to frame the issues for review and discussion at the next meeting.

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Fairmount Country Club

Mr. Brower moved to approve the Resolution and Mr. Browne seconded, with all in favor.

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## Housing Element

Mr. Banisch referred to his memo dated 10/13/05 and stated the Housing Element is a document that has specific requirements under the COAH rules, the Fair Housing Act and MLUL. Mr. Banisch stated the 2000 census information indicated that the Township's second round obligation from 1997-99 dropped to a total of 52 units, with no rehabilitation units. The new obligation under COAH consists of three parts: the recalculated second round, the growth share from new housing units and a rehabilitation obligation. The compliance period is from January 1, 2004 to January 1, 2014, a 10-year period instead of the usual 6-year period. There was discussion about projecting obligations and the penalties for inaccuracies. Mr. Banisch stated the Township must submit its conforming plan for certification by December 20, 2005.

There was discussion of the 75 units of Chatham Glen. Mr. Banisch indicated these units were rental units and counted as a two for one bonus; Mr. Hartford and Mr. Malehorn pointed out that the Chatham Glen units were not rental properties, but condominiums. Mr. Brower asked if a second floor over the Shop Rite would be recommended for rentals; Mr. Banisch stated that would be recommended. Regarding Chatham Glen, it was determined that Mr. Banisch needed to recalculate the figures; the COAH obligation of 77 surplus units will be diminished. It was determined that the first step is to understand the COAH obligation and then to plan accordingly. Mr. Banisch stated that with the new information about Chatham Glen, the surplus will be approximately 25 units.

The growth share obligation accrues to the Township unless the Township can pass it along through inclusionary zoning or through fee oriented techniques (i.e. developer fee ordinance, which existed in the Township, but was discontinued). If new construction proceeds without any fee ordinance/inclusionary zoning, the taxpayers are going to have pay the cost to meet the compliance techniques. A payments-in -lieu of construction ordinance is another strategy and is based on the cost of

1/8 of a new affordable unit – estimates in the Princeton area state a new affordable unit would cost \$450,000. In lieu monies can only be spent in the town; developer fee money can all be used to fund RCA's that go out of town.

Mr. Jacobson stated that the COAH issues seemed uniquely legislative and questioned the procedure. Mr. Banisch responded that the Fair Share plan has to be endorsed by the governing body. The Planning Board has to recommend the compliance plan. Mr. Banisch stated this did not have to be approved at the time of submission; ordinances that need to be adopted can be in draft form and can be adopted as a condition of certification. However, it must be adopted by the Planning Board and endorsed by the governing body. Mrs. Chambers reviewed the discussion of the subcommittee's ideas for meeting the Fair Share requirement, including age-restricted and half non-age-restricted, all in Chatham Township. Mr. Brower expressed concern that there would be available areas for sale in the profitable, developable range. Mr. Brower suggested coming up with a worst-case scenario and then determining how to finance it. The Board determined Mr. Banisch needed to update the numbers and then meet with the subcommittee.

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There being no further business, the October 17, 2005 meeting of the Planning Board of the Township of Chatham was adjourned.

Respectfully submitted,

Katherine T. Hollerith  
Recording Secretary