

September 18, 2007

The regular meeting of the Andover Township Land Use Board was called to order at 7:35 p.m. on Tuesday, September 18, 2007 by the Chairman Stan Christodlous.

Present: Members Thomas Walsh, Class I
 Gerald Huelbig, Class II
 Gail Phoebus, Class III
 Diana Boyce
 Michael Crane
 Lois deVries
 Suzanne Howell
 Ron Raffino, Alt. 1
 Stan Christodlous, Chairman
 Attorney Thomas J. Germinario, Esq.
 Secretary T. Linda Paolucci
Absent: Michael Lensak

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

ALTERNATE SITTING – Raffino for absent member.

The Chairman announced that the application for **John Haber, Block 111, Lot 19.05** was withdrawn in accordance with the applicant's request.

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public for discussion of items not on the agenda. Diane Gillespie questioned the disbanding of the Review Subcommittee which was decided upon at the prior Land Use Board's meeting. She continued that she thought it was important to have such a committee. Stan Christodlous explained that upon his reading of the minutes of the last meeting, which he was not present at, it is his understanding that the Board members felt that with the new checklists that are now in place, it is no longer necessary to have a Review Subcommittee. Other Board members agreed.

Bill Howell commented on his agreement with the Board's decision and indicated his confidence in our present Board professionals. Carla Kostelnik spoke of her past experience with Review Committee and how times and costs have now changed, and, therefore understood the reason for the disbandment of the committee.

MASTER PLAN REVIEW – Germinario stated that Chuck McGroarty, P.P. is our Special Consultant Planner who has an update report in terms of putting together a Master Plan Re-Examination Report and Progress Report on Plan Endorsement Process.

Stan stated to the Board members that the Board secretary passed out to them a copy of Master Plan information copied from Cox and to understand that this is one of the most important responsibilities that the Board members have.

Chuck McGroarty, P.P. of Banisch Associates explained that he is at the meeting to give the Board an update on the status of the Re-Exam Report and related items, including the Plan Endorsement process. He handed out a copy of an outline to the Board members and some to the general public in order to review the items during his discussion. He stated within approximately one month's time he will be presenting the re-exam report with some of the Board members and our professionals to go over some of the items that will be in the full re-exam report. Once this is done, it will be brought up in front of the Board members at a public meeting to have their input. He suggested that although there will be many items that will need to be considered for the Master Plan, there are three main principals that must be considered. They are as follows, that new development will take place in one or perhaps several vibrant centers. Centers which would be an accommodation of housing, retail and commercial space and, hopefully, employment opportunities. He stated that this is a concept that has been discussed for a long time and is not new, however, this is the direction of planning in New Jersey and we are looking in that direction as well. He continued that these new centers would be the prime location for the Township's affordable housing, both past, present and future. Secondly, very importantly, the rural and agricultural characteristics of the Township would be preserved. The third important principal is that Andover Township will become current with its affordable housing obligation.

McGroarty reminded the Board and the public that a periodic examination of the Master Plan in accordance with the Land Use Law must be done at least once every six years. He continued that Andover Township had a modified re-exam report back in October of 2005, but in any event, there are enough changes that have occurred on the State and County level and also within the Township itself to warrant a new re-exam report to set the stage for the Master Plan. Affordable housing is one of the primary things to look at as it is the driving force for so much of what is being done. He stated that on January 25, 2007 the Appellate Division's decision validated the Council on Affordable Housing (COAH) rules for the most part. He continued that what really matters is the growth share methodology that COAH devised for its COAH obligation for the Third Round was struck down by the Court. That growth share approach said that as a town chose to grow, the municipality would have control over its growth and in doing so it would then assume its obligation to provide affordable housing but it would have greater control over the process. He continued to state that the Court did not find that this was consistent with the Fair Housing Act and in fact contradicted the Supreme Court's decision in Mount Laurel I and II and, therefore, those rules are out and they are going through a process now of revising it. The Court has ordered COAH to have its new rules released by December 31st of this year and then there will be the public comments period and processing and, therefore, will be looking at sometime in early to mid 2008 for new Third Round Rules to be in effect.

He went on to explain that the Township currently has a prior COAH obligation of 47 units. He explained that this means that in Rounds I and II there was a 47 unit new construction obligation that Andover Township was responsible for. In starting with the existing 47 unit obligation, that number lessens because of an existing group home in Andover for which the township is eligible for up to eight credits. Therefore, we are in the 47 to 39 unit obligation range, which is a large number when it comes to trying to create affordable housing, coupled with the fact that the Township at present has \$17,369.17 in its affordable housing fund. He continued

that the Town is struggling to try and find ways to meet the housing obligation, which raises the question on centers and so on.

McGroarty mentioned the fact that there are many environmental concerns that have always been present and credited the Environmental Commission and Lois DeVries in putting together the new Natural Resource Inventory (NRI) in getting us a viable resource guide. The NRI gets the Town one step closer to getting Plan Endorsement; however, there are some key issues that need the Town needs to bear in mind. He continued that there are new rules revolving on the State level – DEP rules with regard to surface water quality and stormwater management. Recently at a Township Committee meeting there was discussion about the C-1 Streams. McGroarty continued that the new C-1 buffers would affect 2,177 acres here in Andover Township and that number could increase for up to 2,500 or 3,000 acres if some other water bodies were to be included, such as Stickles Pond and some others. This new ruling is to protect those bodies of water and will affect some of the proposals that the Board has been looking at with regard to center designations. Stan requested that McGroarty explain what “C-1” means as some of the public may not be aware of what it entails. McGroarty went on to state that “C-1” is a Category 1, it is the highest ranking classification, not only for trout production, but for other ecological and habitat protection measures, and what it does is, it identifies streams and bodies of water throughout the municipality and the impact would be more than 300 ft. on each side of the property from the top of the embankment if approved.

He continued that with regard to Water Quality Management, part of what makes it difficult is that the rules are constantly evolving, and are moving forward on the premise that the proposed rules are going to be adopted. Some are already in place, such as the Flood Control Act and some of the others that will also impact streams. The issue now is to look at where the Town can create a new sewer service area or expand one of the existing four areas that Andover Township now has in place. There are currently four treatment facilities that are in operation here in the Township that are all operating with permits from DEP. However, what we are dealing with now are the rules that the DEP have just come out with and what we are guided by. There are five rankings all together, 1 through 5 they are identified in the NRI. Essentially, he continued, areas that fall within what is known as the 3, 4 and 5 rankings in a landscape project, essentially these are areas with threatened and endangered species habitats, 5 being the highest and most important areas that will need to be protected. Any areas that are designated as 3, 4 or 5, it is very unlikely that new sanitary sewer systems or new infrastructure are going to be permitted to expand in those areas. He stated that the Township is to keep the three broad guiding principals in mind when dealing with looking at areas for our new centers and to make sure that we are not dealing with the streams and water bodies and the habitat rank areas that will cause difficulties.

McGroarty went on to explain “what are centers”? He stated that in the past you were able to go to the State and tell them where you thought would be a good area for a town center, in fact the Township did that some years ago designating the Springdale area. The Springdale area was discussed and came very close to being designated as a center and then the rules changed back he stated. What happened was the State Planning Commission stopped designating individual centers and moved to a process called “Planned Endorsement” which meant they were

not satisfied to say an area of the township was to be identified as a center, they want the township to take a look at the entire town and to take a look at your planning and zoning and see if it is consistent with your own Master Plan and see if it is consistent with the policies of the State Plan. Therefore, he continued, now we are currently looking at centers in the context of what is called "Plan Endorsement". Essentially the Town needs to think about where it should concentrate if it is going to move ahead and control development in the environs throughout the Township that are blessed with agricultural soils and agricultural use with rivers and streams and all the wonderful characteristics of the Township. He continued that instead of going in and destroying those features, the Town will be trying to protect that; however, the Town cannot say "no development at all". So, he continued, development occurs in concentrated areas at densities that will require water and sewer, as opposed to septic and well, and at densities that will generate affordable housing.

McGroarty stated in looking at the 2005 Residential Land Use Plan Element, the idea of two centers was advanced, and they were the Transit Village and the Limecrest Road (Borough Expansion) which were essentially on either side of the Township. Neither of those proposals, he continued, is practical or feasible at this time. With regard to the Transit Village location, the problem is that the Lackawanna cut-off line is not in place and NJ Transit has advised that there is no funding in place, and without a rail line there cannot be a "transit village" at that location now. The fate of the Borough Expansion project is now linked to a general development plan in the Borough which is presently in litigation, or is headed that way, so it is not likely that this will happen in the near term either, he stated. Therefore, he continued, we will need to look for other places.

McGroarty continued that any area for development clearly will need sanitary sewerage facilities and central water. In Sussex County, the County is the entity which controls wastewater management plan, he stated. In reading the County's Strategic Growth Plan, which has been adopted at the County level, and has received Plan Endorsement from the State Planning Commission, and the County's Draft Wastewater Management Plan, which has not been adopted yet, it is crystal clear in both of these documents that the County will not entertain any amendment to its county-wide wastewater management plan for individual municipalities, such as Andover Township, to create a new sewer area unless that area is consistent with the policies of the State Plan, he stated. In order for the township to establish that they are consistent with the policies of the State Plan, the township must go through "Plan Endorsement". Therefore, the Township is dealing with trying to find areas for centers, and the environmental issues that will affect them and areas that will be able to be served by sanitary sewer, and in recognizing that as this is being done the township must be sure that they are consistent and in compliance with the policies of the State Plan, he stated.

McGroarty went on to discuss the revised Land Use Plan and its priorities. He stated that the Re-Exam Report will lay out three areas that are being looked at for potential centers. He spoke of the Rolling Greens Golf Course as having been one of the areas considered and all of the positives in that area. However, there are some challenges that it will need to overcome, such as the C-1 Streams, which surround the golf course. He continued that there has been some testing

done in that area for soils to see if a new treatment facility would work on the site and some pre-applications meetings with the State Department of Environmental Protection.

He continued that the second area being looked at for a center is the Jump Airport site and vicinity. The Springdale vicinity in that area has concerns over the reliance that this site is on the Abbey property and if the owners are not interested in seeing this area redeveloped this could be a problem. This area once again will need to meet all of the criteria of the Office of Smart Growth. He stated that the third area that he would suggest that the Town examine is the Mulford Road, Life Care Mews site and that vicinity.

McGroarty stated that the Master Plan would recommend that certain lands outside of these centers be re-zoned. He stated that what the Re-exam Report will suggest is that the zoning in the environs (the areas outside of the center) will be zoned in such a way as to preserve the Town's rural character and the agricultural uses that are in place. He recommends that one of the areas that will need to be re-zoned is the Planned Retirement Community Zone, unless it turns out somehow that the zone up by Lafayette winds up in a center, it really does not belong where it is now with the kind of densities and the infrastructure proposed. It would not be endorsed today, as it is not part of a center.

He continued that the second area to be considered for re-zoning is the Mount Laurel Zone, which is up on the Abbey property on both sides of Route 206. There may still be some possibilities for part of the property to be zoned as the Mt. Laurel area, but not the entire area.

He stated although the Re-Exam Report will be done soon and will be adopted, he believes that immediate action by the Township can take place on four items on the basis of the planning that has been done by the Township for many years. To implement a capacity or constraints based density methodology, which is an ordinance that identifies environmental constraints, such as wetlands, steep slopes, etc. which are calculated out of the density equation, it recognizes that the land cannot be fully developed because of these constraints. He continued that such an ordinance is justifiable. The justifications for it are historically present in our planning documents that are in our 2005 Land Use Plan Element and Conservation Plan Element.

He continued that secondly on the Township's books we have both a growth share and development fee requirement, this is a good thing. However, the development fee regulation is not consistent with COAH's rules, although it was approved at the time. A development fee ordinance can still be adopted and COAH will have to review it once again before the adoption. He stated that the Growth Share part of the township's ordinance that is in effect will need to be changed and this will be guided by Germinario, Esq. for legal questions for guidance and advice. Both of these changes will be referred to in the Re-Exam report.

McGroarty brought up discussion regarding the Township's proposed tree ordinance, and suggested that something be done to implement such an ordinance. He referred to a case cited this July involving Ocean County where their tree ordinance was invalidated and it went to Superior Court where the trial judge said that it was overly vague and did not accomplish what that County's purposes were that was set forth in their ordinance. The Appellate Division also

agreed that the ordinance was invalid. The reason why it was invalid, he continued, is what was missing is that there was no basis in the Master Plan for such an ordinance. McGroarty, therefore, suggested that the Township take the 2005 Conservation Element that was adopted and modify it. This can be done very soon, he stated, and can be something along the lines of a "Forest and Landscape Development Plan" he suggested. He said that Stern has knowledge in this area and can help put it together as a short term fix to the conservation easement as there may be changes in the future.

McGroarty said that the Re-Exam Report will emphasize the point that the Township continue with the Plan Endorsement and the first step will be to appoint an Advisory Committee which will work with the Land Use Board to guide this process and to start with what is known as the Municipal Assessment Report, which is a first step requirement that the Office of Smart Growth has asked that the municipalities undertake. He continued that this report is required and shows the State that we are moving ahead on the project.

The Chairman asked if there were any questions or comments from the Board members. Mayor Walsh stated that he, Phoebus and other members of the Committee, along with the Township attorneys have been working on trying to take care of some of the Township's COAH obligations. He questioned McGroarty that if the 47 or 39 units were taken care of will it still be necessary to put a town center in? McGroarty responded that at this time he doesn't know as he is not sure of what the Third Round ruling will be. McGroarty continued that the State may no longer use the growth share methodology for COAH obligations, but may just assign a municipality a number for its obligations, there is no positive way of knowing at this time. Walsh stated that his concern is if the Township does not know what the Third Round ruling will be and development continues you, will this growth exacerbate the requirement of COAH obligations. McGroarty stated again there is no way of knowing and it may be a case that the Town will just be assigned a number regardless of growth.

McGroarty continued to discuss the parameters of Plan Endorsement, which he stated is voluntary, except in COAH's rules it says after you get substantive certification, within three years you have to either secure plan endorsement or demonstrate that you are well on the way. What exists at the State level is a "memorandum of understanding" between the State Planning Commission and COAH, and they essentially agreed to link their rules, he stated. This is where the idea came from that if the Township wants to protect their substantive certification and housing element, then you have to go and get Plan Endorsement, and vice-versa, McGroarty said. Whether or not this requirement might change in the future, the Township will still have the prior round obligation and some Third Round obligation, whatever that may be, and unless there is some solutions that the Township hasn't found yet to satisfy these numbers in other ways, the Township may be looking at least one, if not more, Town Centers, he continued.

Christodlous pointed out that the number of COAH obligation that the Township used to have before the last Court decision was 58, however, he questioned McGroarty whether or not he believes that that number will go higher, and not less. McGroarty stated that he agreed that the numbers will be something like 50 or more in addition to our current numbers, but this is just a guess at this point in time.

Gail Phoebus asked McGroarty whether or not we have 11,700 acres that are protected in our Township between the C-1 Streams and the areas that fall into the 3, 4 & 5 rankings. McGroarty answered by showing areas on an exhibit that is a composite of two separate exhibits that are in the NRI, an area of surface waters, such as Stickle Pond, will be protected and 2,177 acres will be protected if the rules are adopted. McGroarty suggested that the NRI be amended to include all the areas that will be protected habitats. McGroarty continued that although the areas of development are limited, the Township still needs to exhaust its possibilities or there is the possibility that an outside agent may do so, such as a "builders remedy" and the township does not want to be put in that position.

Phoebus went on to question McGroarty whether or not the way the Township is proceeding in their quest for using existing buildings and trying to work with non-profits whether or not it is the right way to go. McGroarty answered "yes" the Township is going about it the proper way, as the Town is showing the State that they are actively working on trying to find places of development and incorporating all of the rules and regulations that were previously discussed.

Carla Kostelnik of the public asked the question "what is the premise behind the COAH rulings"? McGroarty answered that the States do not need to be governed by a zoning rule, however, if they chose to adopt it, then they must make allowances for people of moderate and low income means, or you cannot zone in such a way that only people of a certain income level could live in the community. Kostelnik questioned how the State comes up with the numbers for the COAH units. McGroarty stated that in part it has to do with the housing stock, levels of deterioration in the housing stock, population growth, job growth, population projection, are all these interrelated factors and from that the numbers are generated.

Phoebus mentioned that on September 4, 2007, she, McGroarty, Christodlous, Golden and Germinario were at an Office of Smart Growth meeting in Trenton and met with different agencies like, the Department of Environmental Protection, Agriculture and Transportation, except for COAH, as they could not come to the table that day. McGroarty stated that he inquired about COAH and said that they needed to be there as they needed to know how some of the Township's proposals to meet the requirements are going to play out. Phoebus said that the answer from the Director of the meeting was that it was Tuesday and they (COAH) don't like to meet on Tuesday. Germinario stated that he asked about the process of TDR's (Transfer of Development Rights) while at the meeting and questioned McGroarty whether or not it would be wise to include this process in the Re-Exam Report. McGroarty answered "yes" the TDR's should be included in the Re-Exam Report. He explained that Transfer of Development Rights is that the property owners are being encouraged through incentives that are designed in the zone to sell development rights. The property owners are giving up their ability to develop their property based on the zoning that is established, instead of developing their property, to sell the development rights to that property to a bank, which is an entity to be formed. Therefore, if someone wishes to build in a new place in town, (like a town center for example) he or she would be able to build at lower densities or go and buy the development credits and build at higher densities.

McGroarty continued discussion regarding the narrative that was provided by the DEP in understanding the new sanitary sewer rules. He stated that the Department (DEP) selected four environmental features to be used in determining centralized sewer service *as inappropriate* for an area: threatened and endangered species habitat; natural heritage priorities sites; Category-1 Streams; buffers and wetlands. He continued that these four environmental features are unique and sensitive features whose protection is central to the department's mandate to protect ecological integrity and water quality.

There was discussion amongst the Board members with regard to the cost of the documentation necessary for the Plan Endorsement process. Diane Gillespie of the public questioned whether or not we will be able to use the same documents for Plan Endorsement as part of our Master Plan process so that there would not be further expense for duplication. McGroarty answered that as the Township does the various plans they will be sharing the information with the people in the State and the County. In this way, he continued, we are positive that the Township is proceeding along the proper lines and there should be no further expense for the same items that will become part of the Master Plan. There also was discussion regarding ordinances as part of the Master Plan. Germinario and McGroarty discussed a constraints ordinance and said that they would review one that is in the process of completion which will be ready for the Board for consideration of approval in the near future. DeVries had questions regarding the constraints ordinance proposal and the fact that it does not address the carbonate rock district and how it could be incorporated into the ordinance.

DeVries questioned the Conservation Plan Element with regard to water and proceeding with a hydrology study. Germinario stated that the question of the water and hydrology study will be done sometime in the future.

Christodlous said that in the State phosphate model he learned from the DEP for Andover Township, the average should be no denser than 4 1/2 acre without sewers. McGroarty commented that what is now being said with the rules is that the application of the nitrate planning standards in development proposed on septic systems will result in required average lot sizes approximately doubling in size with new average lot sizes of between four and seven acres for single family dwelling, depending on local conditions.

DeVries stated that according to the Nature Conservancy she was told that Andover Township has a globally unique environment and wants the different state departments, such as COAH and the DEP, to be made aware of the fact that the Township has environmental and constraints issues. McGroarty said that the way to do that is through analysis reports and the Plan Endorsement process.

Vic Capo, a member of the public, wanted the Board members to consider the fact that Newton-Sparta Road is a highly traveled road, especially by the schools, and had concerns regarding discussions at previous meetings as to where the proposed town centers would be that would generate more traffic. McGroarty answered that any potential development and any potential centers would need to be carefully planned to incorporate this type of concern. He

continued that the Highway Access Code will also have to be taken into consideration during the analysis. Capo also questioned the 47 units that are being required by COAH and McGroarty explained the credit methodology and the existing conditions, which is subject to change according to the Third Round ruling. McGroarty explained the differences between the COAH obligation and the Build-Out Analysis, which has to do with the zoning. Capo also questioned "joint zoning" and the possibility of it. McGroarty went on to explain the problems with this type of zoning and that this type of zoning will not help the township with its COAH obligations at this time.

RESOLUTION - OUTLAW OUTFITTERS/Joseph G. Colonna – Block 157, Lot 8.02, C & B Variances & Site Plan. Extension of time for complying with resolution requirements. A motion was made by Sue Howell, seconded by Gerald Huelbig to adopt the resolution memorializing the approval of this application. In favor: Crane, Howell, DeVries, Huelbig and Raffino. Motion carried.

MINUTES – July 17, 2007. A motion was made by Walsh, seconded by Phoebus to approve the minutes as distributed. In favor, Crane, Howell, Phoebus, Walsh, DeVries, Huelbig, Boyce, Christodlous.

August 7, 2007. A motion was made by Walsh, seconded by Huelbig to approve the minutes as distributed. In favor, Crane, Howell, Phoebus, Walsh, Huelbig, Boyce. Opposed: None. Abstained: Christodlous. Motion carried.

VOUCHERS - See Schedule A. A motion was made by Phoebus, seconded by Walsh, to approve the vouchers submitted. All in favor. Motion carried.

NEW BUSINESS – DeVries requested that the Board have discussion regarding the letter received from Eric Snyder regarding karst topography on the western portion of township lands to be brought up at the next meeting.

MATERIAL RECEIVED, GENERAL INFORMATION - See Schedule A.

RESOLUTIONS– Resolutions adopted during this meeting are made a part of these minutes by referral to the specific file.

ADJOURNMENT - Time 10:00 p.m. A motion was made by Walsh and seconded by Raffino, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

Stan Christodlous, Chairman

T. Linda Paolucci, Assistant Secretary