

**TOWNSHIP OF EGG HARBOR
PLANNING BOARD**

July 25, 2012

Solicitor: Christopher Brown, Esq.. (Teddy Strickland, Esq., in attendance)

Engineer: James A. Mott, P.E., of Mott Associates (no representative in attendance)

Planner: Vincent Polistina, P.P., of Polistina and Associates, in attendance

A special meeting of the Planning Board of Egg Harbor Township was held on the above date, 4:30 p.m., prevailing time, Egg Harbor Township Hall, Egg Harbor Township, New Jersey. The Chairperson opened the meeting by reading the statement in compliance with the Open Public Meetings Act.

Call to Order/Flag Salute/Public Notice/Roll Call:

Manuel E. Aponte, present

Committeeman John Carman, present

Milas Cook, Alt #I, present

Charles Eykyn, present

James Garth, Sr., Chairman, present

Frank Kearns, present

Robert Levy, on vacation

Mayor James J. McCullough, Jr., present

Peter Miller, Township Administrator, present

Paul Rosenberg, another engage.

MD Shamsuddin, Alt. #II, present

SUMMARY MATTER(S):

1. **Discussion/Review:** Amendment to the Housing Element and Fair Share Plan.

Planning Board Planner Polistina advised before the Board this evening is an amendment which will amend the Housing Element and Fair Share Plan of the Township. He advised many of the members will recall Remington and Vernick prepared the Housing Element and Fair Share Plan and was adopted by the Planning Board in December, 2008.

Planning Board Planner Polistina stated a portion of that Housing Element and Fair Share plan spoke specifically to the English Manor site, which has been under litigation with the Township since 2006, where the developer sued the Township under a "Builder's Remedy" suit to try to increase density at the site.

Planning Board Planner Polistina stated this litigation has been ongoing and Township Administrator Miller would be better to discuss the terms of settlement where the Township is today. There is a tentative settlement that the Township hopes will be approved and the amendment before you is to have the Housing Element and Fair Share Plan will reflect the terms of the settlement.

Planning Board Planner Polistina stated previously the Housing Element indicated a maximum of 552 units to be built on the site. He indicated that with the settlement being proposed it will now have a maximum of 223 units built at the site, a maximum of up to four (4) units per acre. Also involved would be the transfer of some property to the Township for the expansion of "Tony Canale Park". So this amendment amends the former Housing Element and Fair Share Plan to reflect what the terms of the current settlement agreement are. This would be the actual project that would be undertaken if the settlement gets approved by the Township, the Developer and the Court.

Planning Board Planner Polistina advised he is recommending this based upon the work that the Township has undertaken for many, many years in trying to settle this lawsuit and get this matter approved.

Mayor McCullough advised he would just like to make a comment. Even though no one is really thrilled about the fact the Township has been sued and we are now in court and we have to settle on something that we feel is unfair. He cannot imagine this being developed for many years. He explained that first there is no sewer or water in this area. In order for sewer and water to be brought to this area it will cost the developer about a million dollars. He also stated there is a glut currently in Egg Harbor Township of housing units that are available at a reduced price from what they use to be. There are also subdivisions that have been approved and they are sitting there. So, even though he is upset that the Township has

spent so much money on this lawsuit and we have to smile at 223 houses where we did not want them. He feels after speaking with the Township Attorney's this is about the best deal we will be getting out of the Court.

Chairman Garth asked if everyone received their copies of this information via email or regular mail? **May the record reflect:** no member of the Board indicated they did not receive the information. Planning Board Planner Polistina stated the process is that the Board tentatively approve tonight and the Board must still have a public hearing, which will occur on August 20, 2012, so there is another step that must be taken. He advised tonight the Board is saying yes, you received the information and you are tentatively approving for the purposes of a public hearing on August 20th.

Committeeman Carman stated everyone is aware he has opposed this all along. However, he would say this is a step in the right direction. Committeeman Carman stated it is probably one of the better deals the Township could get even though he will be opposing and still believes the Township should fight. He advised he will not be going into a long rant. He advised this is not good for the Township in the long run and that is what he is looking at, the long run. Committeeman Carman added he believes this proposal will not be constructed.

Chairman Garth asked if these 223 units won't be constructed without sewer? Planning Board Planner Polistina stated correct. He advised the sewer is not near to this site and he did an estimate at one point for this and the estimate came up to 1.6 million just for the sewer and it did not include the water or gas.

Mayor McCullough stated the developer will have to do road work, They will have to expand road ways. He advised he does not see any of the Township Engineer's approving this without expanding the transportation needs in this area, which will be an additional cost.

Planning Board Planner Polistina stated the Board should also keep in mind this is around 100 acres in round numbers within the RG-1 zone, which allows one (1) unit per acre with one and half (1 ½) units with the purchase of Pinelands Development Credits. Therefore, 150 units could have been constructed without any of this, so it is really not that much of a difference.

Committeeman Carman stated true but it would not have included attached housing with eight (8) units being together and town homes. This is a whole different animal. Planning Board Planner Polistina stated the Township has been through a lot of work to make sure there was not that much of a difference. Committeeman Carman stated he agrees and this is a better deal then what has been on the table before. Mayor McCullough stated the 150 homes is a good point. Planning Board Planner Polistina stated this is under current Zoning.

Township Administrator Miller stated when the Board did the 2008 Housing Element and Fair Share Plan it was with the presumption of the Court was that they were entitled to six (6) units per acre for an affordable housing project. He indicated that is where the 572 unit number was coming from. When the public hearing was held a year and a half ago for the ordinance for that type of density the resident's came out opposing it and it was not adopted.

Township Administrator Miller stated it was back to the drawing board and as the Mayor indicated this is the best that we are going to get for the 223 units. He indicated when you place into context that it was 572 units it is a pretty significant drop of 350 units and the Township will be obtaining 40 acres of land adjacent to Tony Canale Park. Committeeman Carman wanted to be clear the developer is not giving the Township the property adjacent to the park. The Township will be purchasing the land.

Board Member Eykyn asked if the 223 are locked into? He asked what would happen if another ten (10) to fifteen (15) years the Township wanted to purchase more property. He asked once this area is approved for 223 is that it. That's for houses only and it cannot be used for a park later. Township Administrator Miller stated it all depends upon the COAH rules and regulations going forward. He stated if they were to be significantly changed or eliminated then the developer may be interested in selling to the Township.

Township Administrator Miller indicated the developer has locked themselves into this lawsuit and they must produce affordable housing. He indicated they may have wanted to possibly sell more acreage to the Township, however, the Fair Share Housing Council became involved and they were unhappy that we went from producing 104 affordable housing units to 45 in this settlement.

Township Administrator Miller advised the Master did not believe he could recommend any number less than the 45. Therefore, if the rules do change in the future the option may exist at that time. Committeeman Carman advised the Township did try to purchase property in question.

Board Member Aponte stated what he understands is that the Board needs to provide a motion to schedule the Amendment to the Housing Element and Fair Share Plan for Public Hearing on August 20, 2012 at 5:30 p.m.

Motion Aponte/Kearns **to schedule Amendment to the Housing Element and Fair Share Plan for public hearing on August 20, 2012, 5:30 p.m., prevailing time. Vote 9 Yes:** Aponte, Carman, Cook, Eykyn, Garth, Kearns, McCullough, Miller, Shamsuddin.

Chairman Garth advised he agrees with Committeeman Carman. He indicated there is no reason why the Township cannot say “no you cannot build this here” and then they go to Court and the Court says you have to take it. You have to let them build it. Mayor McCullough stated it could be worse. The Court could say the Township turned down a settlement that everyone worked on for a long time so we are going back to the original and we could go back to 572 units.

Chairman Garth stated this is not fair and it is certainly not fair to the resident's of Egg Harbor Township and the tax payers that we have to go through this. Committeeman Carman stated this is a classic case of spot zoning and any other Court would throw this out, however, since it is Court ordered we have to do it.

Township Administrator Miller stated the ordinance from 18 months ago would have generated 572 units, however, the elements referenced 552 units because there was a debate over how much acreage the property had. He indicated that based on the six (6) units per acre criteria the applicant somehow managed to have an additional 3 ½ acres, which is how the 572 units became necessary versus the 552.

Township Administrator Miller stated there are two (2) other items of business that are not referenced on the agenda but he would like to discuss with the Board. Township Administrator Miller stated attached to the agenda you should find a memorandum from Planner Polistina's office concerning residential districts, He advised this information was actually brought to the Planner's attention by Committeeman Carman. Township Administrator Miller stated that maximum impervious coverage between the R1 – R6 zone and the RG1 – RG5 are significantly different. He asked the members to look at the first page of the memorandum noting the R1 zone allows 10% coverage and the RG1 allows 20%. He indicated most of the Pinelands Jurisdictional area permit twice as much impervious coverage than what the non-pinelands area permits.

Township Administrator Miller stated the Township changed the definition for impervious a couple of years ago to include driveways, swimming pools, etc. not just the buildings. So taking this into consideration Committeeman Carman asked that I look into it and circulate something to you. The Governing Body is going to talk about it for the first time tonight. So probably at the Planning Board's August, 20th meeting there may be an ordinance circulate for review. He indicated since the Township Committee is meeting tonight he just wanted to bring it past the Board before the Governing Body makes a decision.

Committeeman Carman stated he has two (2) comments to make. He advised that yes, he did bring this issue up. He stated he is usually against more dense projects, however, if you are going to place people in more dense areas then at least let them use their property. He indicated that since we changed the definition of impervious coverage, which now includes the driveway, decks, swimming pools in a lot of

these areas if you have your house and driveway and maybe a deck you would be unable to place a pool in or a shed without spending \$8,000.00 to \$10,000.00 to for a variance. So essentially people cannot use their properties for what you would consider normal.

Committeeman Carman stated he has not spoken to Planner Polistina concerning this study since he just received it a couple of days ago, however, he believes the numbers are still a little low. He suggested they be increased at least another 5%. Planning Board Planner Polistina stated he has no problem with adding another 5%. Township Administrator Miller stated his objective was whatever minor conversation this Board had would be discussed with the Governing Body at their work session, if this is what you are proposing. Committeeman Carman stated this is what he is proposing. Township Administrator Miller stated that is what the Planning Board will see coming back as a proposed ordinance.

Board Member Aponte asked if a recommendation needs to be made. Township Administrator Miller stated he needs nothing at this point just wanted to discuss. Committeeman Carman indicated the Township is placing people on these tight lots and in the RG districts within the Pinelands Zones where we allow for higher coverage and they can use it. However, since we changed the definition the others areas of town are being squeezed. He advised if someone wants to place a little addition on their house they could be spending \$8,000.00 or more for a variance. Committee Carman stated he does not want to hurt people like that.

Township Administrator Miller advised he saw something from the Engineer concerning impervious coverage. He indicated there will be a minor ordinance amendment to change the definition within the zoning for impervious coverage to be identical with the existing definition in the design standards. He indicated the Township just went through some issues with Pinelands over impervious coverage so as we were looking at the two (2) chapters in the Township Code, Township Engineering representative, Bob Watkins saw that the definitions were not the same ones. He indicated Chapter 94.3 is more technical then Chapter 225.3, so he felt this change should occur so they both read the same way. He indicated the Board will see this proposal next month before the public hearing for adoption.

Committeeman Carman stated what Township Administrator Miller is referring to is scheduled on the Township Committee agenda this evening for introduction. Township Administrator Miller advised both ordinance proposals will be heard by Township Committee on August 22, 2012 and the Board has a meeting on August 20, 2012. We did not want the Township Committee introducing something and we are not keeping the Planning Board up-to-speed.

Planning Board Planner Polistina stated the last thing is that there will be a public hearing next week on something that has been hanging around with State Government for fourteen (14) years now. The Map Amendment for West Atlantic City, which finally seems to be getting done. He advised it began in 1998 when they called this area a barrier island and they said it was separated by water. The State considered it a bay island community and a bay island corridor and ever since we have been banging around with them. Finally there will be a public hearing and we hope this issue will be getting this fixed in West Atlantic City. Chairman Garth asked that did not consider West Atlantic City attached to the rest of the mainland? Planning Board Planner Polistina stated it is attached but in 1998 the State said it was not. We have been fighting since and finally we are having a hearing.

Township Administrator Miller stated the Township had paid for a map amendment and presented it to the Department of Environmental Protection back in 2004 and they still did not accept. He indicated the Township reached out to the new Director of the Department of Environmental Protection and she has moved the process along to the point where we are currently at.

Motion Aponte/Carman to adjourn at 4:57P.M. Vote 9 Yes: Aponte, Carman, Cook, Eykyn, Kearns, McCullough, Miller, Shamsuddin, Garth

Respectfully submitted by,

Theresa Wilbert, Secretary

