

Florence, New Jersey 08518-2323
April 19, 2010

The regular meeting of the Florence Township Planning Board was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairperson Hamilton-Wood called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Chairperson Hamilton-Wood then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the municipal complex."

Upon roll call the following members were found to be present:

Mayor Bill Berry	Paul Ostrander
Mayor Hamilton-Wood	Councilman Sean P. Ryan
Tim Lutz	Charles Bauer

ALSO PRESENT: Solicitor David Frank
Engineer Dan Guzzi

ABSENT: James Molimock
Wayne Morris
Charles Bauer

Chairperson Hamilton-Wood stated for the record that Planner Petrongolo was excused from the meeting.

RESOLUTIONS

There were no resolutions scheduled for approval at this time.

MINUTES

Motion of Lutz, seconded by Berry to approve the Minutes from the March 15, 2010 meeting as submitted. Councilman Ryan and Member Wainwright abstained from the vote since they were not present at the March meeting. The motion was unanimously approved by the remaining Board members.

CORRESPONDENCE

- A. Review letter from Engineer Guzzi dated March 31, 2010 regarding Whitesell PB#2009-07 for 290 Daniels Way, Block 158, Lot 1.
- B. Review letter from Planner Petrongolo dated March 29, 2010 regarding Whitesell PB#2009-07 for 290 Daniels Way, Block 158, Lot 1.

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- C. Letter from Whitesell attorney Lynn McDougall regarding Resolution PB-2010-04.
- C-1 Follow-up letter from Lynn McDougall regarding Whitesell Resolution PB-2010-04.
- D. Resolution PB-2010-06 from Florence Township Planning Board opposing legislation amending the time of decision rule.
- E. Review letter from Engineer Guzzi dated March 12, 2010 regarding CoFlow, Inc.
- G. Letter from Burlington County Soil Conservation District dated April 8, 2010 regarding Whitesell Construction Co., Inc. 290 Daniels Way, Block 158, Lot 1.

Councilman Ryan asked if there had been a resolution regarding Correspondence C and C1. Attorney Frank stated that he had had numerous telephone calls with Whitesell's attorney regarding Whitesell Resolution PB-2010-04. He said that the issue is that the Township is faced with constant flux as to what the affordable housing obligation is and what the means of fulfilling the obligation can be. The effort in the resolution and the language that has been used has been to take the snapshot at the last possible minute before the township issues a certificate of occupancy. The specific objection to the language by Ms. McDougall is a statement that the current statute does not require that snapshot to be taken at issue of CO but is based upon a different time with limitation on the obligation. Essentially it does away with the obligation at the moment. We know that there is a history of legislature from the courts making things retroactive, so Solicitor Frank stated that he is not willing to put the township in a position where it can't look back and make adjustments. Solicitor Frank stated that he is going to work with Marybeth Lonergan, the Board's COAH planner, to come up with the best language that would protect the township but still be acceptable to Whitesell.

Motion of Berry, seconded by Lutz to receive and file Correspondence A-G. Upon roll call the Board voted as follows:

YEAS: Berry, Hamilton-Wood, Lutz, Ostrander, Ryan, Wainwright
NOES: None
ABSENT: Molimock, Morris, Bauer

OLD BUSINESS

There is no Old Business to be discussed at this time.

NEW BUSINESS

Chairperson Hamilton-Wood called for the Public Hearing for an Amendment to the Certified Third Round Housing Element and Fair Share Plan of the Township of Florence's Master Plan.

The Board's COAH Planner, Marybeth Lonergan from the firm of Clark Caton Hintz was sworn in by Solicitor Frank. Ms. Lonergan stated that she was a senior associate with Clark Caton Hintz, which is an architectural and planning firm located in Trenton, NJ. She stated that she was a New Jersey licensed professional planner.

Chairperson Hamilton-Wood stated for the new Members of the Board that Ms. Lonergan has been the township's resident expert on COAH and has come to the Board on numerous occasions regarding the COAH issues.

Attorney Frank stated for the record that Ms. Lonergan and the Board's clerk had mailed and published proper and appropriate notices and posted appropriate notice to satisfy the statutory requirements to have a hearing on the Master Plan amendment.

Ms. Lonergan said that the Township of Florence has a certified Housing Element and Fair Share Plan from the Council on Affordable Housing (COAH). Florence Township is one of 80 or 90 certified towns out of the 566 municipalities in the State. Florence Township had certification from Round 1 in the 1980's, Round 2 in the 1990's and Round 3 was certified in July of 2009. This puts Florence Township in a good position with all of the uncertainty that is surrounding affordable housing. She said that the good news is that Florence Township has a certified plan. Most draft legislation from the Legislature and word coming from the Governor's office is that they are going to reflect that a town has received substantive certification, which Florence has.

Ms. Lonergan stated that the Amendment before the Board tonight is dated March 30, 2010 and amends the December 2008 certified plan. The amendment is to add a few new family rental and sale units and transitional housing units that are reflective of agreements that the township has entered into with Salt & Light. By doing this plan amendment the Board is formalizing these agreements with Salt & Light (an experienced affordable housing provider in Burlington County) and doing it in a financially responsible manner. The agreements are calling for the township to fund these affordable housing units (credits) at \$35,000 per unit. In comparison the township was thinking that it would be spending \$120,000 per unit so you can see that these agreements are really allowing Florence Township to produce affordable housing and address its obligation in a fiscally prudent manner. In addition 5 of the 12 new credits coming into the plan are at \$28,000 per unit and the balance of 7 units are at \$35,000 per unit.

Councilman Ryan asked Ms. Lonergan to clarify for the record where the contributions come from. Ms. Lonergan stated that Florence Township has an affordable housing development fee ordinance that is charged to developers. Many non-residential developers and some residential developers have paid affordable housing development fees into this account for almost 20 years now. The township has generated millions of

26.

dollars that is earmarked for this fund for affordable housing purposes. This funding does not come from general revenue.

Ms. Lonergan submitted exhibit A1 labeled Affordable Housing Sites Pursuant to this Amendment. This is an enlarged copy of page 4 of the submitted plan. Ms. Lonergan said that the various sites that were certified by COAH as part of the 2008 plan are highlighted in white. The sites highlighted in yellow are the new sites to be added to the plan.

The new sites consist of 111 Norman Avenue. This site is proposed to be 4 affordable rental apartments. The Zoning Board had previously approved the conversion of this building into 4 apartments in 2005. 301 Norman Avenue is proposed to be one modular affordable sale unit. 300-320 Alden Avenue, which is an attached building, will be a total of 7 units consisting of 2 family rentals and 5 transitional housing units. This brings a total of 12 credits and 5 new Third Round rental bonuses.

Ms. Lonergan said that 300-320 Alden is an existing building, 111 Norman is an existing building and 301 Norman is the new site for a modular housing unit.

Chairperson Hamilton-Wood asked what the difference was between transitional housing and affordable housing? Ms. Lonergan said that transitional housing is supervised and licensed by the Department of Community Affairs (DCA) and Salt & Light has an agreement for operating revenue to come from DCA. It is the first step into rental housing or home ownership.

Ms. Lonergan referred to the chart on page 17 of the amendment plan showing how the new units will continue to satisfy the 158 unit Third Round obligation by allowing the township to substitute this cost effective \$28,000 or \$35,000 per affordable housing unit for a very expensive program – the market to affordable program. So this is eliminating what could be a very expensive program for the township. This is a cost effective solution. The township will be working with a very experienced affordable housing provider that has oversight over all of the tenants or the ownership units. Florence Township has worked with this affordable housing provider for a number of years now.

Chairperson Hamilton-Wood stated that she was looking at the plan amendment and noticed that Florence Township has a surplus right now based on units that are approved. She asked what happens if these sites never get built out. Ms. Lonergan answered that the key for getting COAH certification is that you have provided the realistic opportunity to address your Fair Share Obligation. The Board has approved a number of applications, if at the end of the day they don't build out in the Third Round, then COAH (or the affordable housing entity in existence in 2019) will look at the unbuilt units and see if they still present a realistic opportunity. If approvals are extended and are still valid approvals, they should be deemed to present a realistic opportunity.

Chairperson Hamilton-Wood stated that with the housing market the way it is some of these houses are not getting built. Ms. Lonergan stated that the Board has approved or

has built everything on this list. She stated that there is no doubt in her mind whether it is the courts, COAH or some other entity in the future they will ask if the township could have done anything else? She stated that the township couldn't the units were approved.

Chairperson Hamilton-Wood asked for a motion to open the hearing to public comment. Motion of Ryan, seconded by Berry to open public comment. Motion unanimously approved by all members present.

Seeing no one wishing to comment, motion was made by Ryan, seconded by Berry to close the public comment. Motion unanimously approved by all members present.

Solicitor Frank stated that he had approved a resolution in the event that the Board approved the amendment to the certified Housing Element and Fair Share Plan.

Motion of Wainwright, seconded by Berry to adopt the amendment and approve the resolution.

Upon roll call the Board voted as follows:

YEAS:	Berry, Hamilton-Wood, Ostrander, Ryan, Wainwright
NOES:	None
ABSTAINED:	Lutz
ABSENT:	Molimock, Morris, Bauer

OTHER BUSINESS

- A. Review and recommendation of Florence Township Ordinance No. 2010-07. An Ordinance of the Township of Florence amending Chapter 91 of the Florence Township Code and specifically amending Section 91-74 to require sidewalks as a condition of Land Use approval and of construction permits.

Chairperson Hamilton-Wood stated that she was not exactly sure why this ordinance was before the Board and asked what action was required? Solicitor Frank answered that all Land Use legislation is adopted on first reading by the governing body and is sent down to the Planning Board for comment and review. Essentially the Board should discuss whether or not the particular ordinance is consistent with the town's Master Plan.

Solicitor Frank stated that he had reviewed this ordinance and has an issue with it. Chairperson Hamilton-Wood stated that she has an issue with timing. The ordinance indicates that it kicks in at the time of the issuance of certificate of occupancy. How does this affect projects that already have Board approval? Engineer Guzzi stated that this would apply for anything that has been approved but has not obtained a construction permit. The construction permit kicks this in. Solicitor Frank stated that one of the things that developers get when they receive an approval is protection from changes in the ordinances. The only things that they are exempted from are things that are public health and safety issues. The ordinance states that it is essential for to public safety for

pedestrian traffic. He stated that it is a debatable point as to whether their approval protections are covered or not.

Chairperson Hamilton-Wood said that in some instances the Board has required other things in lieu of sidewalks, what happens in this case? Solicitor Frank stated that these are the problems that we have. Approvals aren't just one thing. They are a larger package. Chairperson Hamilton-Wood asked if this would send the applications back to the Board? Solicitor Frank stated that he did not think so. The Municipal Land Use Law says that the approved applications get a period of protection from changes in ordinances.

Solicitor Frank stated that he has another problem with the ordinance as it is written. That is in section 2 it says, "No construction permit shall be issued for any property abutting US Route 130 that does not have or provide for sidewalks. The Township Council may, but is not required to, waive the sidewalk requirement for good cause and subject to such conditions as the Council may establish."

This is in the zoning section and as a consequence the Township Council cannot take the authority to waive requirements from the Boards that are charged with hearing zoning matters.

Neither of these issues go to the Master Plan issue, both of them have to do with the scope of the powers which are sought to be exercised by the governing body in the ordinance itself. Both on the front end as to what they are choosing to regulate and on the back end of how they are choosing to permit variance from that regulation.

Engineer Guzzi stated this also might have an impact on the Residential Site Improvement Standards (RSIS) within residential development. Solicitor Frank stated that he would address the issues of RSIS, Council variance and can't apply to approved site plans within 3 years.

Chairperson Hamilton-Wood stated that the way this ordinance is worded the Planning Board has no ability to grant a variance from this obligation. Solicitor Frank stated that the fundamental problem with this ordinance is that the governing body cannot divest the Planning Board of its ability to grant variances.

Solicitor Frank said that if the Board should deem it appropriate he would draft a letter to the governing body pointing out these 3 problems. He stated that it might be appropriate for the 2 members of the governing body who sit on the Planning Board to request that this matter be tabled until the language is resolved.

Councilman Ryan suggested that Solicitor Frank make a phone call in the morning to Township Solicitor Kearns to go over the legal concerns with the ordinance.

Chairperson Hamilton-Wood asked what the time frame was for Board action? Solicitor Frank stated that while the process is designed to get the wisdom of the Board back to the governing body, the realities of the referral is that the Board is being asked to discuss

whether or not this is consistent with the Master Plan. It is probably appropriate for this body to respond by saying that generally the provision of sidewalks is consistent with the Master Plan. But the Board would be remiss if they didn't point out the procedural and substantive legal problems of this proposal. Even though they are outside of the direct powers of the Board's referral.

Chairperson Hamilton-Wood asked what would happen in the future if an applicant were told that they have to put in sidewalks and there are no provisions for a variance from the Board? Solicitor Frank stated that the applicant could state that the ordinance was invalid. Councilman Ryan said that the applicant also would have the ability to come before Council and ask to have the requirement waived. Solicitor Frank said that if he were the attorney for the applicant he wouldn't come before Council. He stated that he would just sue on the Planning Board resolution that didn't give him relief because the ordinance was invalid.

Councilman Ryan said that everyone understands the intent of this ordinance being sent to the Planning Board was. He said that he would not make a recommendation knowing that Solicitor Frank has some concerns. These concerns should be thoroughly discussed and if revisions are necessary they should be made. The first step has to be a discussion between the Planning Board Solicitor and Township Solicitor to determine if revisions are warranted.

Chairperson Hamilton-Wood said that if it is truly the Council's intent that an applicant should come before them to discuss whether or not sidewalks should be required on a site plan; what purpose does this Board serve? Councilman Ryan said that to be clear this is only one facet of what the Planning Board looks at and does not encompass the entire review of a site plan. Chairperson Hamilton-Wood stated that she believes that the Planning Board reviews the entire application in order to make an informed decision. If you do not look at the entire application you do not get the flavor of the purpose of the application.

Solicitor Frank stated that this is a legal question based upon statute and the Board doesn't have to debate it. He said that he would have a discussion with Solicitor Kearns and find out where he thinks the authority rests to put this in this section in this way.

Councilman Ryan requested that Solicitor Frank copy him and the Members of the Board on the conversation with Solicitor Kearns. Solicitor Frank agreed that he would forward a memo. Solicitor Frank said that pending that outcome, the Board is obliged to make a response as a body to this. Mayor Berry stated that this ordinance was scheduled for a second reading and adoption at this Wednesday night's Council meeting. Chairperson Hamilton-Wood stated that this is her concern that the ordinance would be adopted before the Board could do anything. Solicitor Frank stated that the Board, as a body, needed to ask for this to be tabled. Not because of its inconsistency with the Master Plan, because it would be appropriate for this body to respond that pursuant to the referral this is consistent with the Master Plan however we have these problems. Chairperson Hamilton-Wood agreed that this was the appropriate response. Councilman Ryan said

that he did not disagree and it is possible that the issue can be resolved by the phone call between the two solicitors. He stated that he will be at the Council Meeting Wednesday night and based off of that conversation the appropriate action whether it is deferring a decision if modifications need to be made or adopting the ordinance will be put forth.

Chairperson Hamilton-Wood asked if revisions were made to the wording of the ordinance would that send it back to the Board for further review at the next meeting? Solicitor Frank answered that it would not because the Board would have already dealt with the statutory function of is it or isn't it consistent with the Master Plan to require sidewalks.

Councilman Ryan asked for the record if it was consistent with the Master Plan to require sidewalks? Solicitor Frank stated that he thinks it is. The RSIS requires that there be sidewalks and it is already in the ordinance now because it is consistent with the discussion in the Master Plan about providing for appropriate pedestrian circulation.

Member Lutz stated that he agreed with Chairperson Hamilton-Wood that this is an attempt to basically take any opportunity for the Planning Board to grant a waiver away from the Board. He stated that if this power is taken away from the Board there is no reason for the Board to be here.

Member Wainwright stated that he would rather see this tabled and done right then to push it through and have problems in the future. Member Lutz said that there aren't any pending applications for development on Route 130 that would warrant pushing this through. A delay of a couple weeks won't make any difference.

Chairperson Hamilton-Wood asked what the appropriate action would be. Solicitor Frank stated that there should be a motion to direct that he send a letter to the governing body on behalf of the Board advising that they had reviewed the ordinance and concur that the provision of sidewalks are generally consistent with the Master Plan and raising the 3 issues that were previously discussed. Solicitor Frank stated that he would call Solicitor Kearns before he wrote that letter and in the event that Solicitor Kearns shuts down some of those issues then he would not include these in his letter to the governing body.

Councilman Ryan stated that this had been a continuing conversation for a very long time. All the members of the governing body voted in the affirmative to move this initiative forward.

Motion of Lutz, seconded by Wainwright to direct Solicitor Frank to proceed as discussed.

Upon roll call the Board voted as follows:

YEAS: Berry, Hamilton-Wood, Lutz, Ostrander, Ryan, Wainwright
NOES: None

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ABSENT: Molimock, Morris, Bauer

PUBLIC COMMENT

Motion of Lutz, seconded by Ostrander to open the meeting to public comment. Motion unanimously approved by all members present.

Seeing no one wishing to comment motion was made by Lutz, seconded by Ostrander to close the Public Comment. Motion unanimously approved by all members present.

Motion of Lutz, seconded by Ostrander to adjourn at 8:14 p.m.

Paul Ostrander, Secretary

PO/ne