

# **Holland Township Planning Board**

## **Minutes of the Regular Meeting**

**February 10, 2014**

The meeting was called to order by Chairman Rader:

“I call to order the February 10, 2014 Meeting of the Holland Township Planning Board. Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Planning Board Secretary on December 12, 2013 by:

1. Posting such notice on the bulletin board at the Municipal Building.
2. Published in the December 12, 2013 issue of the Hunterdon County Democrat
3. Faxed to the Express Times for informational purposes only.

### **Flag Salute**

Chairman Rader asked all to stand for the Pledge of Allegiance

### **Identification of those at the podium**

Present: Ken Grisewood, Michael Keady, Michael Miller, Carl Molter, Dan Rader, Thomas Scheibener, Melissa Tigar, Duane Young, Don Morrow, Esq., Attorney, Bill Burr for Richard Roseberry, P.E., Engineer, Elizabeth McKenzie, Planner, Susan Berber for Lucille Grozinski, CSR, and Maria Elena Jennette Kozak, Secretary.

Excused Absent: Dan Bush and Dave Grossmueller

Resignation: Susan Grimshaw

Chairman Rader explained that due to an accident and the extensive recovery needed, Ms. Grimshaw has submitted her resignation. A letter will be sent to Ms. Grimshaw thanking her for all her service to the Planning Board and that she will be missed. Chairman Rader and Secretary Kozak will work on that.

Let the record show there is a quorum.

### **Minutes**

A motion was made by Tom Scheibener and seconded by Mike Keady to dispense with the reading of the minutes of the November 11, 2013 meeting and to approve the minutes as recorded. All present were in favor of the motion. Motion carried.

A motion was made by Tom Scheibener and seconded by Mike Keady to dispense with the reading of the minutes of the December 9, 2013 meeting and to approve the minutes as recorded. All present were in favor. Motion carried.

A motion was made by Mike Keady and seconded by Carl Molter to dispense with the reading of the minutes of the January 13, 2014 meeting and to approve the minutes as recorded. All present were in favor of the motion with the exception of Tom Scheibener who abstained. Motion carried.

### **Old Business:**

There was no Old Business to discuss.

### **New Business:**

There was no New Business to discuss.

### **Completeness Review:**

There was not a completeness review schedule for discussion.

### **Resolution**

**Block 24 Lots 3 & 13 – Huntington Knolls LLC** – Amended Site Plan Map (33 pages with a date of October 2013) and application forms received into the PB office November 1, 2013. The Stormwater Management System Hydrologic & Hydraulic Calculations report dated July 2013 received into the office on July 18, 2013. All information is on file. Carried from 10-14-13 Agenda. Applicant requested Public Hearing for condition compliance to refine past approved resolutions. Hearings took place November 11, 2013, and December 9, 2013 and January 13, 2014.

Let the record show that Ken Grisewood and Mike Keady recused themselves, left the room and went to the office of the planning board until they were requested to return to the meeting.

Applicant Attorney Caldwell was present.

The January 13, 2014 minutes were approved earlier in this meeting. As Secretary I thought it would help to recap the end of the resolution section of the January 13, 2014 minutes to remind everyone of where this matter stands.

“ Planner McKenzie reminded the board that at this point they need to look at a comparison. She suggested waiting to adopt the resolution until the revised/amended site plans are approved. She also suggested that the board could provisionally agree in terms of conditions of final approvals that were presented.

Attorney Morrow stated that the board can look at what was distributed by Planner McKenzie with Engineer Roseberry’s comments and substitute Attorney Wilson’s agreement and compare this with what was sent by the applicant’s attorney, Mr. Caldwell. If a board member has concerns then those concerns need to be sent to Secretary

Kozak so that she can distribute them to the professionals. Then the professionals can recreate another draft resolution for review.

Attorney Caldwell also reminded everyone that the transcript also helps everyone.

Attorney Caldwell stated that he thought discussion could take place in February regarding the plans. Engineer Roseberry asked that if the comments could be addressed with Engineer Zederbaum then why involve the board. Attorney Caldwell stated that if it is policy or process then it needs to go back before the board.

No one else had anything to say. Attorney Caldwell requested a one month extension with the understanding that if the weather is bad then additional time will be needed. Attorney Caldwell stated that he would send a letter to Secretary Kozak regarding the extension.

A motion was made by Mike Miller and seconded by Duane Young to grant an extension of 60 days with Attorney Caldwell to submit a letter to the board secretary. At a roll call vote, all present were in favor of the motion. Motion carried. “

Chairman Rader stated that the board received Attorney Caldwell’s letter dated February 4, 2014 and his proposed resolution. Planner McKenzie asked if all present had time to review Attorney Caldwell’s letter and proposed resolution. Planner McKenzie stated that she went thru the resolution of Mr. Caldwell and compared it to her resolution which was submitted to the board as requested. She was able to see some things that need to be changed and made a list of changes which she submitted to the board at the meeting. Attorney Morrow reminded everyone that they need to stay away from the word application as it implies something new and this project was not new, but a discussion of a request to simplify an existing resolution by identifying condition compliance and outlining the remaining outstanding conditions which will need to be complied with. Planner McKenzie was asked to discuss the “LIST OF FURTHER CHANGES TO PREVIOUSLY REVISED RESOLUTION BASED ON CALDWELL VERSION “.

1. The title of the draft Resolution that was last presented to the Board (Draft revised 1/9/14 by ECM with RR changes) should be changed to insert the words "THE REQUEST OF APPLICANT FOR" between the words "APPROVING" and "A MODIFIED" in the second line.
2. The 6th and 8th WHEREASes in Mr. Caldwell's version of the Resolution should be inserted into the 1/9/14 draft Resolution, except that I would delete the words "in respect to the application" at the end of the 8th WHEREAS before inserting it.
3. On page 6, item 6 of the 1/9/14 draft Resolution, at the end of the first sentence in the second paragraph of that item the following should be added: "[.], as provided at N.J.A.C. 5:97-6.4 (f)."
4. On page 9, item 9, first paragraph, second line, delete the words "twelve (12)" and insert instead "12.63".
5. Also, on page 9, item 9 of the 1/9/14 draft, at the end of the first paragraph, substitute Mr. Caldwell's suggested language so that the last sentence of that paragraph will read: "If the existing building cannot be converted to a permitted use and is to be demolished, then such demolition would be deemed an abandonment of the previously granted front yard setback variance."
6. On page 11, item 11 of the 1/9/14 draft should be relocated to the end of the Resolution. It would become a new item inserted between existing items 23 and 24 (on page 15) in the 1/9/14 draft, with all paragraphs renumbered to accommodate the deletion from page 11 and the insertion on page 15.
7. On page 12, in the fourth line of item 14 of the 1/9/14 draft, insert after the word "development", the words "except for the units in the model building".
8. On page 13 of the 1/9/14 draft, at the top of the page, ***and subject to the Board's approval***, remove the words "to gas fueled or electric models" and insert the words "to non-wood, coal or charcoal-burning models". There are newer types of pellet fireplaces and fireplaces using other types of fuels that are being used with increasing frequency in modern construction that the Board may wish to consider permitting in addition to gas and electric fireplaces.
9. On page 14, item 18 of the 1/9/14 draft, change the last line in that paragraph to read: "June of 2006 and as approved by the Board for the apartment buildings by the adoption of this Resolution".
10. On page 15 of the 1/9/14 draft, item 22 will have to be amended to incorporate any conditions of Mr. Roseberry's review and the Board's approval, so we end up with one complete resolution incorporating all conditions of approval to date.
11. Page 15 of the 1/9/14 draft will also contain the language from item 11, which is to be relocated to that page, as recommended above.

Discussions took place about the need to have revised site plans in hand before a revised resolution could be accepted by the board. Planner McKenzie explained that her proposed condition compliant resolution excludes some conditions that pertain to the site plan as it was stated that the conditions would be satisfied. It is the belief of the board professionals that you need to see the revised or amended site plans with the changes reflected so that it would properly reflect condition compliance as summarized in the condition compliant resolution. Planner McKenzie does encourage the board to support the board engineer working with the applicant’s engineer to resolve technical issues on the revised/amended site plan. This would be an effective use of time for all involved. Once the plans are agreeable, then the board could support adding a “special” meeting if needed to approve the condition compliance resolution, which she believes she prepared with input from the board professionals identifying the decisions of the board.

Planner McKenzie reminded the board that they never approved a phase with COAH units. The board did approve a group home lot but not multi-family so she is unclear as to what Attorney Caldwell is trying to say in this paragraph. The resolution has given the applicant the flexibility of building some Market Units before COAH units. The board will need to understand in relationship to Phase 3 and Planner McKenzie cited NJAC 5:97-6.4F which is the section of COAH’s rules that require the

affordable units where feasible to be fully integrated with the market units. Discussion included comments that COAH has taken the position that it is perfectly feasible to integrate affordable rental units with market rental units but not feasible to integrate affordable rental units with for sale market units. It is her opinion that the board needs to know in the future if the units will be integrated as some modifications will be needed. Only 127 units are shown on the plan. The phasing of construction is not the issue but Mr. Caldwell misunderstood the trigger mechanism. It is not a phasing requirement but a trigger mechanism. The board has to address the phasing in context of the 54 units if the DEP approves to relocate approved commercial to treatment capacity apartments. If the TWA can be used for the apartments then that is good. The TWA was approved for 44 residential units and Engineer Roseberry has voiced concern. If the applicant can add the nonresidential then this needs to be provided to the board professionals for review. The COAH phasing requirements of the Holland Township Ordinance applies and it will be necessary to tie the phasing of to 44 or 54 or 127 units.

Mr. Scheibener questioned an email stating that only 44 units are available for the Waste Water Management Plan (WWMP). Planner McKenzie explained that the treatment works application (TWA) permit is for 44 units. We are working on providing input on the amended WWMP and need to talk with the powers to be to include the whole project into the WWMP. The first step is to know what approvals exist. We need more information. In regards to water and sewer she does agree with Mr. Caldwell. We cannot control but need to watch. We need to know what is current and what has expired. We need to understand the whole project.

Attorney Caldwell expressed concerns that this ongoing work product could be better summarized by what is in the transcript despite who thought what. Attorney Caldwell stated that it would have been helpful to have Planner McKenzie's comments prior to the meeting and that it is hard to process the information at this time during a meeting. He believes that the condition compliance resolution is unbalanced but headed in the right direction. The applicant has been working on a rendering of multi family units. This is for information purposes only and was presented for all to look at. The applicant wants the board to see that they are trying to move forward. The rendering also shows floor plans. Planner McKenzie stepped up to look at the rendering. Attorney Caldwell stated that there are semantic issues between himself and Planner McKenzie. It is his opinion that thru the Municipal Land Use Law (MLUL) the applicant has sought relief and that the board took formal action. The public was present. The applicant is working with Engineer Roseberry regarding the drawings. Attorney Caldwell is just trying to make sure that things do not shift and that the board will not change its mind. He believes that the board needs to act so that there are binding conditions. He just does not understand why the board is taking so long to pass a resolution. Attorney Morrow had a few comments at this time. He reminded everyone that he did not review the transcript of December 9, 2013 as it would have cost the applicant money from escrow. The findings of fact is the boards review of the transcript in conjunction with the recollections of those involved which produces a resolution that incorporates comments from the applicant as well. It is his suggestion to the board that Planner McKenzie should make additional changes to the condition compliance resolution and then a clean version should be forwarded to all involved. It needs to recite the history of what has happened. Mr. Morrow stated that many resolutions were passed over the years and then modifications or deletions took place. The Planning Board needs to decide which conditions are deleted and which conditions exist. Because of the nature of the development, things are always changing. He concurs that the applicant should not be bound by something until a certain sequence of events happen and he suggested that the board does not approve anything tonight as a revised and clean resolution needs to be before everyone to actually vote.

Attorney Caldwell expressed his frustration that the hearing took place in December and then resolution conversations have been taking place and now the board wants the applicant to consider giving more time. Hostile discussion took place at this time with Attorney Caldwell demanding that the board adopt the resolution and Attorney Morrow counter arguing that the board cannot adopt a resolution this evening without factual basis. Planner McKenzie stepped in and stated that the proposed resolution was written under the assumption that the board wanted site plan and architectural drawings to be compliant before adopting the resolution. Once a compliant plan is accepted then one resolution of modified conditions could be adopted. That is the goal. If you want the plans to not be a set of compliant plans then the resolution needs to be redone to reflect what is still outstanding. Attorney Morrow strongly suggests just cleaning the resolution up so that conditions on top of conditions do not exist and there is a compressed resolution. Attorney Caldwell was still dissatisfied with the board not taking action on a resolution which brought on an attorney debate over interpretation.

Attorney Morrow stated that the board could do what they wanted but his professional opinion is that the board should wait as discussed. This project has been going on for over 11 years and there are many resolutions on the books. This is not a typical project before the board and the condition compliance resolution needs to take everything into account.

At this time the board members were asked how they felt about voting tonight. Each board member had a turn speaking with the general outcome being that a cleaned up resolution needs to be presented before the board can vote. Some site plan discussions took place. Planner McKenzie restated her opinion that a revised/amended set of site plans should be approved before the condition compliance resolution is approved but that the board move forward as they please. Planner McKenzie could work on a list of site plan related conditions for the next scheduled meeting.

Another discussion of voting took place with Attorney Caldwell referring back to the transcript of December 9<sup>th</sup> and how the resolution should be adopted tonight.

At 8:40 p.m. there was a recess at which time Secretary Kozak was asked to make a copy of Carl Molter's notes to the Planning Board for Attorney Caldwell. At 8:50 p.m. the meeting continued.

More discussion of Attorney Caldwell's opinion that the resolution needs to be adopted this evening. Attorney Caldwell believes that the transcript is the findings of fact. Pages in the transcript were discussed. Attorney Caldwell expressed that he is tired of the last minute receipt of things and then went on to state that Attorney Morrow has dodged responsibility. Attorney Morrow clearly stated that he disagreed with Mr. Caldwell's statement and that he is trying to help the applicant. He reminded Attorney Caldwell that he did not spend a lot of time working on the resolution as that would have cost the applicant money. In fact, he has tried to save the applicant money. This then got into a heated discussion of why substitute attorney Wilson did not prepare the resolution with Attorney Morrow stating that it would have cost the applicant substantial money to have Attorney Wilson review the history of this project to prepare a comprehensive resolution. The transcript even states that the board professionals would be involved in preparing the resolution. After more discussion, a motion was made by Tom Scheibener and seconded by Mike Miller to support a meeting of Attorney Morrow, Planner McKenzie and Attorney Morrow for the purpose of working together on merging the condition compliance resolution prepared by the board professionals with Attorney Caldwell's comments discussed tonight and the creation of a clean version of a condition

compliance resolution being distributed to the board members. All present were in favor. Motion carried. The board engineer and the applicant's engineer will continue to work on the amended/revised site plans.

The board also agreed to having a special meeting. The proposed date is February 26<sup>th</sup> with Secretary Kozak making sure of availability. If available she will follow the proper procedures. Secretary Kozak asked Attorney Caldwell about granting an extension. Attorney Caldwell acknowledged that he is giving an extension. Attorney Caldwell was reminded it needs to be written and that he promised to send a letter from the last meeting granting the extension. Attorney Caldwell stated that he would send the requests in a PDF but also stated that he said it on record.

Secretary Kozak tried to bring up the subject of escrow and was told by Attorney Caldwell that I should have the Finance Officer send the appropriate information.

At 9:10 p.m. Ken Grisewood and Mike Keady were asked to return to the meeting.

### **Public Hearings**

There were no Public Hearings scheduled for discussion.

### **Sub-Committee Status and Updates:**

Mike Keady had nothing to report on the Waste Water Management Plan Second Draft2 (10-07-13). Mike Keady stated that the subcommittee of the Environmental Commission is working on the Highlands Council Land Use Ordinance and has questions that need to be sent to the Highlands Council. Mike Keady will also contact Larry LaFevre regarding the task about preserving agriculture. Basically things are moving forward and hopefully things should be done within the next few months.

### **Public Comment**

There were no comments from the public.

### **Miscellaneous**

Nothing to be discussed at this time.

### **Executive Session**

No executive session was needed at this time.

### **Adjournment**

Mike Miller made a motion to adjourn. Motion approved. The meeting ended at 9:15 p.m.

Respectfully submitted,  
*Maria Elena Jennette Kozak*  
Maria Elena Jennette Kozak  
Secretary