

**MINUTES OF A REGULAR MEETING OF THE PLANNING BOARD  
OF THE BOROUGH OF MOUNTAIN LAKES**

April 27, 2017

Chair Martin Kane read the Open Public Meeting Advertisement Notice adopted at the annual meeting on January 12, 2017: Adequate notice of this meeting was given to the Citizen and the Daily Record, posted with the Borough Clerk and on the Bulletin Board and made available to all those requesting individual notice and paying the required fee.

Start: 7:13 PM

**ROLL CALL:**

Members Present: Kane, Russo, Dagger, Shepherd, DeVenezia, Horan, Mirsky, Nachshen, Holmberg and DuTertre

Absent: Sheola

Also Present: Attorney Peter Henry, Engineer, Bill Ryden, Kate Keller, Planner, Stephen Souza, Environmental Engineer

**PUBLIC COMMENT:** none

**REVIEW OF MINUTES:** Tom Dagger made a motion to adopt the minutes of the March 23<sup>rd</sup> meeting. David Shepherd provided the second; the minutes were approved by voice vote of all eligible voters.

**RESOLUTIONS:** none

**PUBLIC HEARING:**

Carried Application:

Kings, Mountain Lakes, LLC  
145 Route 46  
Major Subdivision, Major Site Plan  
Sign Variance

App. #16-261  
Blk: 116, Lot: 3.01  
Zones OL-2 & R-AH2

Peter Wolfson continued the application. Tonight they brought back Mr. Appel, the applicant's architect, to answer some of the questions asked at the last meeting. Before doing so he wished to address some of the comments in the Environmental Commission reports. Mr. Wolfson began the RSIS requirements for storm water management have been met along with all state, DEP and Borough requirements. The Commission seems to think the applicant must meet a higher standard than the state or Borough require. They questioned the review of the Borough's Engineer and Environmental Engineer. Stephen Souza said in his report the EIS was consistent with the Ordinances of the Borough. Mr. Wolfson went on to cite the Supreme Court Mount Laurel 1 decision which stated all development has an environmental impact and municipalities cannot thwart projects that include affordable housing on the bases of environmental concerns. Stephen Souza clarified his report said the RSIS standards were met and site improvements acceptable but there still were many issues that still needed to be addressed.

Larry Appel told the Board he designed a new trash enclosure, found on sheet PB-C1,

dated 4-14-17, to keep out the bears. Mr. Appel thought the shed looked good and would keep out the animals. He also changed the rears of building 7 and 8 to make them more attractive. On the affordable building they added shutters, stone veneer on the foundation and a gable roof over the entrance door. They also added closets in the non-bedroom area. The new elevations of building #8, found on sheet PB-AO.4 dated 4-14-17, showed the additional stone veneer and architectural details. They added gable end roofs to the build and the decks will now be included. They brought some of the finishes found on the front to the rear of the buildings. Peter Holmberg asked Mr. Appel to review the sprinklers in the units. Building #7, the affordable units, would have sprinklers. The building code does not require the market rate units to have sprinklers. They are required to have fire rated walls and roofs with the units compartmentalized. The buildings have good accessibility from the front and sides. Mr. Holmberg responded the fire department thought the buildings needed sprinklers in all the units because you can't get to them from the rear. Larry Appel answered we do not think they are needed nor are they required. Martin Kane confirmed the Fire Department thought the building had limited access. Tom Dagger thought the elevations for the two buildings were improved. He asked if they would do the same thing with the other buildings. Mr. Appel answered, we do not plan to do so since you would not see the backs of the other buildings. Mr. Dagger asked are they consider changing buildings 2 and 3 since they face Route 46. Nick DeVenezia commented the decks still show on the plans as optional. Larry Appel said they would change the plans. Tom Dagger felt the 7 design criteria spelled out in section 245-9.1A should not be limited to the street facing sides. Larry Appel answered they did all of the 7 in the front of the buildings. In the rear they had change in color, vertical stepping, horizontal movement and roof variation. Thus the rear had 4 of the options and only 3 were required.

Martin Kane opened the hearing to the public for questions of the witness. Rob Simon confirmed the treatments in the rear of buildings 7 and 8 had changed but nothing else did. He asked if the applicant could change the roof line to reduce the height of 7 and 8 to be more like buildings 2 and 3 and could they change the building footprint. Larry Appel answered if they changed the footprint a lot of other pieces of the plan such as coverage would be affected. Jim Hyson, of 2 Littlewood Court, thought the Ordinance called for variation by building not individual units so how did they think they comply with this requirement? Mr. Appel answered when they designed the building they tried to create character and variation. Tom Dagger clarified the Ordinance read a different design was required for every group of three townhome units. Mr. Hyson said the market rate units had two exits so why do the affordable units have only one. Larry Appel clarified the buildings meet the International Building Code which require one egress; the market rate units have an extra one. Both Steve Levis, of 29 Sherwood Drive, and Gerhard Wellmann, of 49 Sherwood Drive, did not have a question and were asked to hold their comments until later. Penny Leman, of 32 Sherwood Drive, said the units in building 2 and 3 appear to have walk out basements; when you walk out what will be there? She was concerned with the property drop off and the safety of that situation Mr. Appel said there would be a patio out the sliding glass door the same size as the deck above. Nick DeVenezia was also concerned there would be issues with the 2 tiered retaining wall design so close to the patios. Ken Adams, of 388 Morris Avenue, asked what material the trash enclosure was made of. Larry Appel replied it would be a wood frame structure

with Azek trim and sheathing. There will be natural ventilation at the top under the building eave by way of a decorative louver. John Horan questioned the choice of a black roof for the buildings. Mr. Appel responded the color was actually a charcoal blend made up of multiple colors as seen on exhibit A-9 dated 3/27/17. Mr. Horan asked about the heat that would generate. Larry Appel said the color is not dark or light. On second thought he said the color is more like a Weather Wood blend (browns). Bethany Russo pointed out the site plans said there were 4 ft. fences along the retaining walls. She would like to know how that looked so she could have a better understanding of how the applicant was marrying these two features. Linda Hyson, of 2 Littlewood Court, asked if they had consider flipping building 2 and 8 so the building you see coming in was not so tall.

Mr. Wolfson introduced their Environmental Engineer, Mark Gimigliano, from Dykstra Walker. He is a licensed Engineer, in the state of New Jersey, who has worked on all types of environmental issues over 20 years. Mark Gimigliano worked on this EIS and found no unusual environmental issues with the property. In doing the site review he found several constraints such as a stream, steep slopes, fresh water wetlands, a flood corridor, and riparian buffer. We reviewed the required 50 ft. transition area and evaluated potential soil erosion and flooding. The DEP has issued a permit to install the piping planned. Surface water quality will be maintained by managing the run off during construction. Soil erosion measures will be installed before the start of construction and will remain until they are finished. They plan to collect the storm water runoff, clean it to state standards and any water that is released into the ground or stream will meet the standards for clean water. The vegetation will be cleared and the wildlife habitat will be reduced by the development. That is an inevitable side effect of development. State records do not identify any threatened or endangered species. If in their review of the proposed plan they determine there will be an environmental impact from the development and have found we find ways to mitigate any issues that arise.

Mr. Gimigliano reviewed the comment letter from Stephen Souza of Princeton Hydro dated July 18, 2016. Items 1 & 5 of the letter stated the EIS and slope disturbance were consistent with Borough standards. Comments #2, 6, 13-17 and 19 are statements of fact and do not need further comment. Comments #3, 4, 7, 9-11, 18 and 20 required action and those have been complied with. Comment #8 asks for "will serve" letters for utilities and they will supply them. Comment #12 stated the stormwater management plan must be reviewed by the DEP. It has been reviewed and a permit has been issued.

Mr. Gimigliano reviewed the Environmental Commission letters dated September 15, 2016 and April 18, 2017. Mr. Wolfson asked Mr. Gimigliano if he believed the no build alternative worked for the site as mentioned in point #1 of the April 18<sup>th</sup> letter. He responded no, anything that they do will have an environmental impact and the property is zoned for development. It was the state agencies that govern this area. Point #2 questioned the availability of a potable water supply. The applicant said they look to the Borough Engineer for capacity. The state website also gives information on availability of water and it agrees with the Borough Engineers assessment. Point #3 states the slopes on Sherwood exceed 25%; the slope was not that steep. The Environmental Commission suggests the use of Brook Lane for access to the site. This would require crossing the stream and the DEP would not approve this type of access if there was another option. Martin Kane asked Stephen Sousa if he agreed with this statement. Mr. Souza did agree,

you would need an elevated structure that would require footings in the stream so crossing it would be highly detrimental to the environment.

Point #4 suggests an inventory of vegetation, wildlife and aquatic organisms be conducted for 1 year. Mr. Gimigliano replied they did a site inspection and consulted state records on endangered species. The LOI from the NJDEP concludes there is no need for further evaluation. Stephen Souza suggested in comment #9 of his July letter a Natural Heritage Data Request be submitted to the NJDEP. That was done again and it was determined no further investigation was needed. Martin Kane asked Dr. Souza if he thought enough wildlife study had been done on the site. Dr. Souza planned on asking the applicant to estimate the total amount of time they spent on the site doing all their various work and observations. Mr. Gimigliano answered the site visits had been done over a period of time and agreed to go back and determine the total amount of time spent on the property by the staff. In connection with the discussion on wildlife Dr. Souza asked Mr. Gimigliano to explain the limitations on clearing to the Board. M. Gimigliano explained clearing of property is only allowed during a limited time during the year. Tree clearing is not allowed from May 1<sup>st</sup> to July 31<sup>st</sup> so as to not disturb the stream during fish spawning. Clearing is also not allowed from April 1<sup>st</sup> and Nov 15<sup>th</sup> to protect the Indiana Bat. Mr. Wolfson ask the applicants Engineer to address point #6 pertaining to the Wildlife Corridor. He responded a corridor connects two areas that have been disturbed by development. This property is not a wildlife corridor. There is wildlife on the property that will be disturbed.

The DEP permit approved the pipe next to the stream. Tom Dagger clarified the pipe was only for heavy storms. Mark Gimigliano confirmed most storms would not affect the piping. Currently all the water runs off the property into the stream and you don't want to change that pattern. Stephen Souza added the pipe will be located in a less steep area of the property and in the riparian buffer. This is better than if it was up river and on the slope where it would create more disturbance. The applicant agreed to make it a condition of the resolution to do soil testing after the development was complete. Dr. Souza had requested a mounding analysis be done. The applicant was still considering that request. For stormwater management the DEP requires the following after development: the quantity of water remain the same, run off be no more than before, ground water recharge be maintained, all water that runs off pavement be cleaned to meet water quality standards. All these requirements will be met. The DEP requires water treatment devices and infiltration structures remove 80% of all total suspended solids. Dr. Souza added the structure requires inspection 4 x a year and the filters be cleaned. He asked, should a performance bond be put in place and how the inspections will be reported to the town. Peter Wolfson answered this would be handled by the condominium development. It would be part of the master deed to fund the maintenance through dues. Arlene Mirsky was concern the association would not have the funds to do the inspections. Peter Wolfson answered, we do not see this as a concern and would not agree to bonding.

Point #9 of the Environmental Commission letter mentions the need to treat the storm water flowing to Sherwood Drive to the maximum extent possible. The applicant did not think this practicable. The nutrient load will be reduced for the project. They will use native plantings and be leaving the existing wooded areas off Sherwood to help the nutrient load. The Shade Tree Commission has made low maintenance plant suggestions

and they have agreed to plant them. Point #10 concerned groundwater recharge. The state requirement is to have a system maintain 100% of the average annual pre-construction recharge volume. In their December 9, 2016 letter Dykstra Walker felt they would achieve approximately 170% recharge post development. This was questioned by the Commission; they asked to see the testing to support this statement. Mark Gimigliano clarified there will be 29% more recharge for the whole development after they were finished and they only need to be 100% of predevelopment. Mr. Sousa confirmed there must be 100% recharge and they were doing 129%. In point #11 the EC asked them to save the 60" oak tree. Mark Gimigliano said in order to keep the tree they would lose 3 to 4 affordable units and that would not be feasible. Point #12 suggests the size of the units are too large. Mr. Gimigliano could not comment on this. The height of the units in the the project will be visible in the winter time but they will not be above the trees in the summertime.

Mark Gimigliano responded to the Shade Tree Commission letter dated February 13, 2017. They have agreed to modify the landscaping plan to replace certain invasive plants with those suggested by the Commission. The 60" black oak cannot be saved. A right of way is not applicable since this project has private roads. The applicant will install tree protection around trees off site and post a bond for three years for tree replacement. Stephen Souza asked the applicant to amend the landscaping list so there were no invasive species and the applicant agreed to do so.

Lastly the applicant addresses the report from Thonet Associates, Inc. dated September 19, 2016. Mr. Wolfson asked Mr. Gimigliano if he met with DEP about the stormwater management plan and were they satisfied. They did, they were satisfied and permits were issued. Was there any evidence of a perched ground water table; no there was not. Mr. Gimigliano stated soil samples were done throughout the property and tested. There was a root depth of 6.5 to 9 ft. which helps prove there are no problems with seasonal ground water table. Stephen Souza had reviewed the soil logs and had no problem with the data submitted. Mr. Gimigliano continued, the sandy soils were great and they were spreading the water filtration over the site. Much more than it is now. In Mr. Thonet's report he states they have failed to provide a "failure analysis" for the proposed infiltration systems. It was accomplished by using basins that were oversized to accommodate the run off. Mr. Souza thought the analysis was done correctly. Mr. Thonet thought the location of the surface infiltration basin and roof runoff infiltration areas for building 7 & 8 were in an unacceptable location due to the steeply sloping region. He was right and we eliminated the surface basin in the sloping area and installed piping instead. Mr. Thonet was also concerned about roof-runoff. Mr. Gimigliano answered they changed the site plans to address his concerns. The roof-runoff piping was designed for 2 year storms and the other infiltration basins were enlarged to accommodate the additional runoff. The stormwater management plan meets standards at the property line. Some of the slopes over 20% will be eliminated during construction. All stormwater will be collected before it reaches the slopes. The backs of building 1, 2, and 3 are piped directly into the stream since water from the roof is considered clean water. Mr. Thonet found inconsistencies with the time of concentration. Mr. Gimigliano explained this referred to the time it took a drop of water to get from the furthest point in the water shed to any point of study. After receiving this comment they discussed it with the DEP. The DEP drew different concentration paths on their plans and they went back and tested them. Their original

design turned out to be the most conservative. Mr. Thonet questioned having a structure on someone else's property. Mr. Gimigliano said an easement has already been established so the structure can remain on the property and be used by the development. This was the best place to deposit the runoff. If they chose to have an open channel conveyance of runoff they would create more erosion so it is not an option for this site. Stephen Souza added for a site with this much development to use this type of structure for stormwater management was the proper choice.

Stephen Souza asked about the planned soil erosion sediment controls. He suggested they use super silt fencing in certain areas. Mr. Gimigliano agreed that type of silt fencing would be appropriate; they will use it and make the necessary plan changes. Dr. Souza was concerned with the grass seed selected and asked them to revisit that. They should use a different type of seed more appropriate for the shade. Stephen Souza asked how they were planning to build the retaining walls without going into the transition areas. Mark Gimigliano said the transition area in the back of building 1 would not disturb because they would cut into that area of the site and install the drainage piping before the building was built. The building 2 wall was 5ft off the transition area and would not be disturbed during construction. Mark Gimigliano concluded the transition areas will be clearly marked.

Nick DeVenezia and Tom Dagger questioned the economics of the project. Peter Wolfson said this was not part of the Board's purview; a question like that would be more appropriate at the Council. John Horan asked about the water supply. Did Mr. Ryden think this project would have enough water? Mr. Ryden responded, the project capacity can be met by the Borough's current capacity.

Martin Kane opened the hearing to the public. Mr. Simon wished to wait and ask questions of the witness at the next meeting in order to consult with his Environmental Engineer before questioning Mr. Gimigliano. Environmental Commission Chair, Marnie Vyff, of 10 Vale Drive, would ask questions on behalf of the Commission. She stated an EIS was done after the property was zoned for affordable housing. Shouldn't the EIS have been done before? And should they have determined the property not buildable? Mark Gimigliano answered an EIS is done when a development project is proposed not before. Requiring that the property not be built on is not reasonable. It is buildable if the project can be done with accommodations for the environmental issues. Ms. Vyff asked, What about looking at constructing single family homes as the property was originally zoned? Mr. Gimigliano answered that was not part of an EIS. She continued, did the applicant consider putting the affordable units, Building #7, by the oak tree. Mr. Gimigliano responded if you keep the oak you would not be able to build closer than 20 to 30 ft. of the tree and still save the oak. She asked could a sink hole develop with the flow of water runoff; no it wouldn't.

Steve Arnold, of 4 Craven Road, asked if they did alternate studies for the Sherwood Drive entrance besides the one presented? Mark Gimigliano said they looked at several alternative road layouts. We looked at old topo maps and determined the least amount of disturbance was to build the road at an angle diagonally across the property. Mr. Arnold asked, did you consider accessing the property from Pickwick or York Road? No they did not because they would have had to access the project by crossing town property. Mr. Arnold inquired if they studied the wildlife migration. No they did not, they did acknowledge some of area for wildlife will be lost with the development. Jim Hyson, of 2

Littlewood Court, asked if they knew the cost for maintaining the storm water management system. They had not done that yet. Bill Ryden assured Mr. Hyson, this type of stormwater management structure was established 10 to 15 years ago and there are programs in place to deal with the maintenance of these systems. Ken Adams, of 388 Morris Avenue, asked how the public was supposed to believe with all the construction proposed that the applicant would be able to obtain 129% recharge. Mr. Gimigliano answered curbing, inlet structures and the piping underground will collect in the structure and clean the water before discharge into the stream. If the structures are maintained they are one of the best structures out there. Mr. Adams asked if the building was reduced by two units could they save the tree. Mr. Gimigliano said we would need to remove three units. Sandy Batty, of 15 Lockley Court, asked what time of year it was when they visited the site, was it during the Indiana Bat roosting time. Mark Gimigliano answered he would need to look back at his records. She asked they provide the amount of soil to be moved and the truck routes they planned to use.

Due to the hour the meeting was carried to May 25<sup>th</sup> 7pm at Borough Hall without further notice.

### **COMMITTEE REPORTS:**

#### **Other Business**

The Board is considering having two meetings in June. The regularly scheduled meeting for June 22, 2017 will be canceled. Under consideration are 6<sup>th</sup> and 13<sup>th</sup>. The administrator will send out a follow up email to confirm the June dates.

Martin Kane made a motion to adjourn the meeting at 10:54 PM.

Respectfully submitted,

Cynthia Shaw, Secretary