

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

July 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: 7:02PM

**ROLL CALL:**

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

Absent: Horan, Russo and Sheola

Also Present: Attorney Peter Henry, Engineer Bill Ryden, Engineer Stephen Sousa and Planner Paul Phillips

**PUBLIC COMMENT:** none

**REVIEW OF MINUTES:** Peter Holmberg made a motion to approve the minutes of the May 25<sup>th</sup> meeting and Nancy DuTertre provided the second. The minutes were approved by a voice vote of all eligible members.

Peter Holmberg made a motion to approve the minutes of the June 6<sup>th</sup> meeting and Nancy DuTertre provided the second. The minutes were approved by a voice vote of all eligible members.

David Shepherd made a motion to approve the minutes of the June 19<sup>th</sup> meeting and Corey Nachshen provided the second. The minutes were approved by a voice vote of all eligible members.

**RESOLUTIONS:** none

**EXTENSION OF TIME:**

Jeffery and Lynne Ansell

App. # - 14-256-R

The Administrator received a request from the applicant for an extension of time to perfect the deeds to subdivide Block 100, Lot 23. Cathy Nolan of Day Pitney was present to answer any questions the Board had. The 190 days to perfect the deeds will run out on September 1, 2017. She said the sewer easement needed to be approved by the Council and they would not be meeting until August 28, 2017. The gas company took 6 weeks to shut off of the gas to the carriage house so they are in the process of taking the carriage house down now.

Peter Henry questioned the need for the additional 190 days when they were so close to being done. That would bring the extension to next March. Arlene Mirsky agreed with Peter Henry. Martin Kane recommended the Board give the applicant 120 days. A motion was made by Arlene Mirsky to grant the Ansell's a 120 day extension of time. The

second was provided by David Shepherd. The Board voted 7 – 1 to approve the extension of time with members Kane, Nachshen, Holmberg, Shepherd, DeVenezia, DuTertre and Mirsky voting in favor and Dagger voting against.

**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 reminded the Board where the hearing left off. On May 25<sup>th</sup> the applicant had concluded their testimony. They were here tonight to follow up on the comments made by the town’s Traffic Engineer Gary Dean. In addition the applicant (Kings) and the Concerned Citizens of Mountain Lakes (CCML) have been working over the past month on a potential settlement. The two groups have come up with concepts they wish to present to the Board. They were looking for feedback on the concepts the two groups had agreed upon. They also hope a straw poll of the Board could be taken on the proposed changes. If the Board agreed with the proposed changes they will have an agreement and CCML would drop their opposition.

Mark Gimigliano was at the hearing as an Engineer for the applicant. He explained at the last meeting they proposed a sidewalk plan which had issues. As a result they have changed the plan to have a continuous sidewalk throughout the site as suggested by Gary Dean. There is only one sidewalk on the entrance road which will still require a waiver. The visitor parking is no longer on the street since it was moved to pocket parking areas along the street. The original proposed fence was made of black metal. The fencing material was not liked by the CCML and will be changed.

Mark Gimigliano presented the proposed changes agreed upon by both parties. Exhibit A-12 was a colorized version of the “Site Layout Exhibit” dated 7/27/17 already submitted in black and white (exhibit A-12 B&W). All the exhibit letters on the submitted sheets pertain to the settlement with the CCML. Hearing exhibit A-13 was settlement exhibit B dated 7/11/17 – “Sketch of Buffer Easement”. The CCML requested a buffer easement around the site of 25’ to the north, 50’ to the east, it will follow the limit of the environmentally constrained areas to the west and to the south it will follow the area of disturbance. Mark Gimigliano said development would be restricted in the easement with the exception of those times they need to access it for the construction and maintenance of the development. This buffer design was approved by Bob Oosdyk and the Council. Tom Dagger asked how this was different from a conservation easement. Peter Wolfson said it was similar. Arlene Mirsky asked if the buffer was more area than required by the DEP permits they already obtained. The applicant’s professional said it was more. Exhibit A-12 showed the relocation of 7 parking spaces to the end of Albie Dr. and the addition of a stop sign. Nick DeVenezia was concerned the area of disturbance for the planned construction was into the proposed buffer. How would the applicant handle the re-landscaping of that area after disturbing it? It would be done as depicted on the landscape plan. Tom Dagger answered his own question, a buffer easement was different than a conservation easement since the easement area would be disturbed during

construction.

Hearing exhibit A-14 was settlement exhibit D, dated 7/11/17, "Sketch of Roadways, Narrowed". The plans showed the road ways narrowed to 24'. By eliminating the on-street parking they were able to make the road narrower and all one width which creates traffic calming. Peter Henry suggested the addition of no parking signs along the roadway and the applicant agreed. Rather than moving the project inward from both sides they moved the development north and east to move the buildings away from the wetland area. Peter Holmberg asked that the new road plan be sent to the fire department for review. He also asked about a second access to the project. Mark Gimigliano answered they could not create a second access without crossing private property. David Shepherd confirmed after a fire the fire truck would have to back out of Lakeland Court. Mr. Gimigliano added the truck would but the RSIS takes all this into consideration when setting their standards. He also pointed out they had relocated the sidewalks to behind the parking spaces as per the RSIS. Peter Holmberg suggested they consider moving the development into the conservation easement to build the cul de sac. Tom Dagger said he was not in favor of moving the development into the conservation easement. Corey Nachshen said the road met RSIS standards and he would not want to move it into the conservation easement to accommodate the turn around. He continued, the important thing was to get the fire trucks in. The road is short and they will have plenty of time to back out when a fire is over. The Board questioned the location of the bus stop. Peter Wolfson read an email from Board of Education explaining the current school bus stop was located at Lockley Court for all of Pine and Spruce Edge.

Hearing exhibit A-15 was exhibit E "Building 8 Tree Locations" dated 7/11/17. Martin Kane was concerned with the selection of Giant Arborvitae evergreens to create the screening for building 8. He thought another type of evergreen might be a better choice since the deer like this variety so much. The applicant agreed to plant whatever evergreen trees the town wanted. Peter Holmberg asked what the difference in elevation from Sherwood Dr. to Building #8 was. When standing on the Sherwood Dr. cul de sac the trees would be 25 ft. higher than the road and the 1<sup>st</sup> floor of the building would be another 15 ft. higher than that.

Hearing exhibit A-16 was an architectural rendering of the rear elevation of Building 8 found on sheet SK-1 dated 6/13/17. This rendering showed changes made to the sheet PB-A-04 dated 4/14/17. The new drawing showed a lower roof line with dormers which makes the building appear to be two story. They dropped the roof line 1 foot to a building height of 29 ft.

Hearing exhibit A-17 was exhibit G "Sketch of Access Easement" dated 7/11/17. Mr. Gimigliano told the Board the property currently has trails running through it. The CCML wanted an access easement in place to allow people to get to the conservation easement, railroad tracks, ravine and stream. The path would be a naturally wooded walking path like it is now. The town could mark the trail for ease of use. Peter Holmberg questioned the liability the Borough would have if it accepts the easement. He was concerned with the steep slopes walkers would travel to access the ravine. Peter Henry responded you could have the Borough not accept the easement and not allow the easement to be altered without their consent. You could grant the easement by Kings to Kings for the benefit of the public. This would give residents the right to walk along the property to get to the easement. Peter Wolfson said it's an access easement to the ravine. Peter Henry

explained this would not become the Borough's land. It will be Kings land and Kings is granting the easement. Marty Kane confirmed they were maintaining the status quo of the trail.

Rob Simon explained the use of the current trail. This area was used by the residents in Spruce Edge. There are steep slopes and the people who use the path know that. This easement is located in an existing water easement the Borough already has in place. The Borough can locate the 5 ft. access easement within the 10 ft. area selected; where ever it is best for a path. It was not CCML's intention to have the land deeded Kings to Kings but rather Kings to the Borough. Peter Henry responded if you make it Kings to Kings for the benefit of the public with the consent of the Borough to make any change you would protect the easement from disappearing. Rob Simon added they wanted to make sure this easement is kept in perpetuity. Martin Kane thought it best for the lawyers work out the particulars rather than the Planning Board. Arlene Mirsky replied, she liked the idea but she wanted to make sure the Borough does not have to maintain the trails or take on the liability. Peter Wolfson added the applicant does not want the liability; they feel the ownership belonged with the Borough. Nancy DuTertre also thought the area of disturbance was very close to the easement and did not want the Borough responsible for anything the applicant might due during construction. In conclusion the Board confirmed their acceptance of the concept and the lawyers should work out the language.

Hearing exhibit A- 18 was settlement exhibit I – “Sketch of Temporary Project Sign”, dated 7/11/17, showing the design of the proposed entrance sign. Mr. Gimigliano told the Board there would be no permanent sign in the right of way but they were requesting a temporary sign be installed in the right of way during construction and sales. Hearing exhibit A-19 was settlement exhibit J “Temporary Row Sign Location” dated 7/11/17. The sign would be setback 30' from the Sherwood cul de sac pavement hidden behind the retaining wall. A time limit for the sign had been agreed upon by the applicant and the CCML. The temporary signs would be removed when the last unit was sold or 5 ½ years from the commencement of construction or the expiration of the appeals process. They also needed a variance for the sign since signs are not permitted in residential zones and approval from the Council since the right of way belongs to the town. Arlene Mirsky thought the entrance sign large. Mark Gimigliano responded an entrance sign would normally be 8' x 4'; this was 6' x 4'. Hearing exhibit A-20 was exhibit K – “Sketch of Temporary Project Sign” dated 7/11/17. The applicant was requesting a two sided 20” x 30” directional sign on street sign pole for Sherwood and Intervale for the same duration as the larger sign. Martin Kane said these signs went against the current draft of the new sign ordinance. After some discussion the applicant agreed to drop the request for the small directional sign on the street sign pole.

Hearing exhibit A-21 was settlement exhibit L “Sketch of Safety Fencing” dated 7/11/17. Mark Gimigliano said the fence will now be a wooded split rail fence rather than a metal fence. This was just a change of materials; the location of the safety fencing would remain the same. It will be located behind building 7 & 8 and along the entrance to Albie Dr. Hearing exhibit A-22 was settlement exhibit M “Retaining Wall Landscape Screening” dated 7/11/17. The applicant had added landscape screening to the fencing along Albie Drive.

Mark Gimigliano continued, they also made changes to the storm water management plan for buildings 7 & 8. They have increased the size of gutters from 5” to 6” K-style gutters

with leaf guards. They added a few more inlets to collect the run off behind the buildings. They will add scheduled cleaning of the gutters and outlets to the maintenance plan; the association would be required to maintain these items.

Hearing exhibit A-23 was settlement exhibit N “Surety Bond for Landscaping and Trees” dated 7/11/17. The highlighted areas on this document show the areas covered by the surety bond for any damage to the existing landscaping and trees. The bond shall be with the Borough for three years. There will also be a bond posted for any road damage done to Sherwood Dr. lasting for the duration of the project. Bill Ryden was concerned some of the highlighted areas were the private property of 4 residents not the Borough’s and would have to be discussed further. He was sure the Borough would not want to hold bonds on private property.

Peter Wolfson then listed some additional conditions they had agreed to comply with based on the hearing and their work with the CCML. There are time limits on the temporary sign, provisions in the master deed such as the condominium retention of and maintenance of the roads and stormwater system and allowing the Borough the right to perform any of the maintenance needed on the stormwater system if the homeowners association does not at the association’s expense. There would be no parking signs added on Albie Drive. There would be no parking on Sherwood of anyone connected with the project after the clearing of the property has been done and a designated parking area was established for the project. They will work from 8am to 6pm M – F, 8am to 4pm on Saturday. No outdoor construction work would be allowed on Sundays but indoor work could be done from 8am to 4pm. Bill Ryden asked that onsite water and sewer utilities should be listed as owned by the association.

Martin Kane asked if our professionals had any additional comments they would like to add at this time. Paul Phillips, the Borough Planner, felt the change in height of building 8 and the addition of landscaping behind it were positive. He asked if by reducing the width of the roads the applicant was able to reduce the slope disturbance. Mark Gimigliano answered that had not been determined yet. Gary Dean, the Borough’s Traffic Engineer, thought the circulation plan without the parking on the street and the consistent road width were better. He did ask Kings to look at moving the trash enclosure at the end of Lakeland 5 ft. to the north to provide a backup area for the handicap space. He was concerned about the additional stop sign added at the end of the cul de sac. Mark Gimigliano answered this was for calming the traffic and so the end units on Sherwood Dr. would be giving the ability to back out of their driveways. Mr. Dean responded it is the responsibility the person entering the road to watch for traffic. Bill Ryden said with all the changes that have been proposed a new set of site plans would be required and reviewed by all the Borough professionals. Martin Kane requested the formal site plan submission be given to the Board as well. Tom Dagger also requested a draft resolution be prepared. He felt those two documents would really be helpful to the Board. Peter Henry agreed it was best for him to prepare a draft resolution for the next meeting. Martin Kane opened the meeting to the public comment. The public could ask questions of the applicant and make comments on the proposal presented tonight. Ellen Emr, property owner of 19 Sherwood Drive, asked if the Fire Department could comment on fire that happen 3 years ago in Pine Edge. Sandy Batty, of 15 Lockley Court, 1<sup>st</sup> spoke on behalf of the Shade Tree Commission. Evergreen trees have shallow roots and are not the best choice on steep slopes. She was concerned about the trees planned for behind

building 8. Personally she wanted to keep the stop sign at the end of Albie Drive. She was uncomfortable with the taking of the straw poll and she would like to hear the proofs for the temporary sign. Peter Wolfson replied they will abide by the Shade Tree Commission planting suggestions but requested a quick turn around on the review by the committee. He also added the proofs for a permanent sign had already been presented. They were now asking for a temporary sign with a time limit; the proofs would be the same. Rebecca Lubetkin, of 15 Robin Hood Drive, asked what this design said about Mountain Lakes as a community. The affordable units are small and segregated in the development. She thought they should be incorporated into each building. Jim Hyson, of 2 Littlewood Court, was concerned with the straw poll vote. He was confused as to what the vote was actual on. Peter Henry responded the Board was not voting on the whole application or the settlement just the concepts presented. Mr. Hyson confirmed there would be no parking on all the streets and the addition of no parking signs.

Rob Simon explained the purpose of suggesting these concepts was, if the Board found in favor of them, they would become part of their settlement and would become part of this application. Straw polls are acceptable by law. We have been making a good faith attempt to come to an agreement. We are looking for feedback on the exhibits presented tonight which will help with our negotiations.

Chairman Kane asked for Board comments on the concepts presented. Arlene Mirsky felt they were moving in the right direction. She would need to review a summary of all the issues that have been brought up. The trails are great but the Borough should not take the responsibility or the liability for them. She wanted to hear from the fire department about the width of the road. Tom Dagger agreed. He thanked the CCML for working to improve the plan and hoped the access would not be lost. David Shepherd liked how the project was moving forward conceptually. He was concerned with the Lakeland Court safety issue. He was glad something could be worked out with the CCML. Peter Holmberg thanked everyone for their collaboration. He agreed with everyone else. He understood the development design was the most economical but urged Kings to look at it again and incorporate the affordable units. Corey Nachshen felt the design was getting closer. This project will be going forward and he hopes it sells out quickly. Nick DeVenezia said all the ideas presented tonight were an improvement over the previous plans. Nancy DuTertre felt the project had moved forward. She liked having the shade trees reviewed. She doesn't like the liability of the trail and would like to see the low income units integrated. Rob Simon responded his clients were satisfied with the Board comments. He thanked everyone for their input.

Martin Kane asked the public if they had any additional comments on the proposals. Ellen Emr, property owner of 19 Sherwood, spoke of her personal experiences with steep slopes in her rental townhome where there is an 11% grade. She also spoke about a fire incident on Littlewood Court in 2009. Jim Hyson, of 2 Littlewood Court, thought Lakeland should be a cul de sac. Sandy Batty, of 15 Lockley Court, thought there were too many units in the development. She suggested they build 1 less affordable and 1 less market rate unit and add the cul de sac. This would reduce the impact on the environment and storm water management. They should do a surety bond for our park land as well as the entrance to Sherwood. She thought the ravine should be placed in a conservation easement.

Mr. Kane asked if the applicant would be ready with new plans for the August 24<sup>th</sup>

meeting. Mark Gimigliano thought it would be tight. Between now and the meeting Peter Wolfson thought they could work with the fire department. He said the applicant understood the Fire Department's requests but couldn't give them a cul de sac, they were only willing to sprinkle the affordable units and would install the fire hydrants where requested.

Peter Henry went through his notes with the Board. The items on his list were topics of discussion at some time during the hearing and may or may not be settled as of this evening's meeting. His notes included the following: sidewalks, a cul de sac on Lakeland Drive, widening the entrance road, a mounding analysis be completed, an entrance sign – permanent vs temporary, soil moving and the route taken, Borough maintenance of the stormwater system if the Homeowner's Association defaulted, conservation easements, trash collection for affordable units (keeping the bears out), tree protection after the build out & on Sherwood Dr., damage to Sherwood Dr., title 39 jurisdiction, ownership of the private lots, basements not converted to bedrooms, garages are for cars to prevent cars on the street, school bus stop determined by the Board of Education, location of building unit numbers and how they would be lit, closets in affordable units, rear elevations of buildings 7 & 8, 100 year storm, super silt fence, grass seed mix to be used, revised stormwater reports with the sidewalks included, protection of trees on Borough parkland, on street parking, site triangles at street corners and at the end of driveways, a sidewalk on one side of the entrance road as a di minimis waiver, traffic calming and sprinklers installed in all the units.

Tom Dagger was concerned about the ability of the homeowners association to handle all the obligations and their costs. Peter Wolfson explained the process of turning over these obligations to the homeowner's association as the project was finished. Most associations hire a management company to help them and these firms are familiar with such obligations.

After hearing the list Peter Wolfson said they would need to ask the church about the conservation easement.

Stephen Souza said he and Mr. Ryden would need to review the new site plan submitted. Seeing the amount of work that needed to be completed the Board thought it best to cancel the August 24<sup>th</sup> meeting and move the meeting back to September 14<sup>th</sup> at 7pm. A motion was made by Martin Kane to carry the application to September 14<sup>th</sup> at 7pm without notice and canceling the August 24<sup>th</sup> Board meeting. All Board members and professionals were in favor.

**COMMITTEE REPORTS:** none

**Other Business:** none

Martin Kane made a motion to adjourn the meeting at 10:53PM.

Respectfully submitted,

Cynthia Shaw, Secretary