

TOWNSHIP OF OCEAN
PLANNING BOARD
REGULAR MEETING
December 4, 2008

Meeting began at 7:35 PM

The meeting of the Ocean Township Planning Board was held on the above date and time; Chairman Anepete presided and called the meeting to order.

Pledge of Allegiance

STATEMENT: Pursuant to the provisions of the New Jersey Open Public Meetings Act, sending copies of the notice of the meeting properly provided adequate notice of the meeting to the Times-Beacon and the Atlantic City Press. Notice was posted on the bulletin board in the Administration Building.

ROLL CALL

Members Present:	Vince Anepete	Richard Reilly	Lee Eagles
	Ralph Avellino	Rita Sweeney	Craig James
	James Eckert	Dennis Tredy	

Members Absent: Bob Knowles, Daniel VanPelt and Gordon VonSchmidt.

Chairman Anepete asked for a motion to approve the minutes of the November 6, 2008 regular meeting. Mr. Tredy made a motion to approve. Mr. Avellino seconded the motion. All in favor: (aye) Tredy, Avellino, Eckert, Reilly, Sweeney, James.

Chairman Anepete asked for a motion to approve the vouchers. Mr. Avellino made a motion to approve the vouchers. Mrs. Sweeney seconded the motion. All in favor: (aye) Avellino, Sweeney, Eckert, Reilly, Tredy, Eagles, James, Anepete.

Chairman Anepete stated that the correspondence is available in the board office for review at any time.

BOARD COMMENTS

Chairman Anepete updated the board on the Ordinance Sub-Committee meeting held November 24, 2008. The meeting discussed a possible ordinance involving the parking of trailers and vehicles in residential areas. The Sub-Committee felt further study was required regarding the gross vehicle weight of vehicles parking on residential streets. The thought is possibly a panel truck being the largest type of vehicle allowed. Some research will be done and another meeting will be scheduled in January.

Chairman Anepete asked for any comments from the board.

Mrs. Sweeney asked if the Sub-Committee was considering having these vehicles parked in driveways.

Chairman Anepete answered that the Sub-Committee is looking at all aspects i.e., driveways, streets, yards, set-backs, etc..

Mr. Eagles asked if the Sub-Committee was considering finding a piece of property that can be fenced off and allow residents to park these large scale vehicles there.

Chairman Anepete answered that this was also spoken about by the Sub-Committee and is being considered. Diligent homework has to be completed before the Sub-Committee can come back and make a recommendation before the Board.

OLD BUSINESS

None.

NEW BUSINESS

Presentation by Stanley Slachetka, P.P. of T&M Associates concerning the Housing Plan Element and Fair Share Plan.

Mr. Yost swore Mr. Slachetka in.

Mr. Slachetka: Good evening everybody. This is a public hearing on a proposed amendment revision to the Township's existing Housing Plan Element and Fair Share Plan which is part of the Township's Master Plan. Because it's an amendment to the Master Plan of the Township, there is a requirement for public notice, as well as having the proposed Housing Element and Fair Share Plan on file a minimum of 10-days prior to the hearing this evening. I believe the notice requirements for the Master Plan amendment have been satisfied and also notices have gone out to adjoining townships and a copy of the proposed Housing Element and Fair Share Plan has gone to the County Planning Board. Because it is a public hearing, I would make my presentation, provide an opportunity for you to ask questions and then it gets opened to the public and the public has an opportunity to provide whatever input, comments, or questions they may have. The reason why we are here and why we are amending the Housing Element and Fair Share Plan is because the NJ Council on Affordable Housing – COAH – in May and subsequently with further amendments and revisions in October of this year adopted a new set of rules and regulations governing the process and procedures by which a municipality is to calculate and then address their affordable housing obligation or their fair share of the regional affordable housing need within this region. Because of those changes in regulations, we had to make certain revisions to the plan. However, as we'll discuss in just a moment, your plan in terms of its overall approach is fundamentally the same plan as you had previously. That is, the primary location for new affordable housing within the township will be within the confines of the Town Center. And specifically, in the proposed planned development area of the Town Center where most of the new residential and non-residential development is going to occur. From the standpoint of the township's obligation, it's divided into three parts. The first part is Rehabilitation Obligation, and that is to address those units that currently exist within the township and are occupied by low and moderate income households as defined by the NJ Council on Affordable Housing. Those households actually occupy a unit which is considered to be below code in terms of building code standards based on certain census information and data. COAH has calculated for the township that there are 11 such units within the township. There may be 11 units there, there may be less than 11 units, there may be more than 11 units. But

using the census data and surrogates for determining what constitutes below code, or what constitutes a deficient unit, COAH has come up with this number. Currently the township has in place an on-going local rehabilitation program. That program that is being administered by community grants and planning is proposed to continue under this new plan. There is no need to change the fundamental programmatic approach to addressing your Rehabilitation Obligation. It's just an on-going need that you are going to be addressing. Just the fact that you have a program in place is sufficient from COAH's perspective. You don't have to address or rehabilitate all 11 units within the township during the COAH certification period, but you at least have to have that program in place. That is probably the most clear and straight forward part of your housing plan. The 11 unit Rehabilitation Obligation, you have an existing local rehabilitation program which is been determined previously to be acceptable by COAH. You have a for-profit entity that under contract to do that and that program will continue.

The second component of the township's Affordable Housing Obligation is what COAH categorizes as the Prior Round Obligation. That is your on-going obligation for the construction of new affordable housing that relates to and harkens back to the first two rounds of COAH regulations. This is what is now called the Third Round Rules of COAH Rules and Regulations. The first two cycles, COAH established a very specific need number that communities have to address in terms of the new construction obligation and for Ocean Township, that prior round obligation is 236 units. Those 236 units haven't changed from COAH's prior regulations to the current regulations. COAH puts this in a box and calls it your Prior Round Obligation. There are some subtle differences between the way you address that obligation and can address that obligation in comparison to what you can do for the Cycle III portion of the obligation which is the Growth Share.

The third piece is Cycle III, the newly adopted Growth Share methodology and approach. COAH originally established it and adopted a Growth Share methodology in 2004. That methodology and those regulations were challenged by a variety of different entities. It went to court. Finally the Appellate Division ruled and threw out COAH's prior Cycle III Rules and Regulations. So COAH had to come up with a new set of regulations which they developed and ultimately proposed in the early part of this year 2008. There was a public comment period and then finally COAH adopted those regulations in May of this year 2008, and they also responded to various comments and recommendations for changes and amendments that had been made to COAH by a variety of different parties rather than adopt those changes in May, they adopted the rules in May and then they adopted subsequent amendments in September of this year 2008 and they were published in the NJ Register in October and then came into effect. And that is the new set of regulations that we are working under now. There may be further changes, there may be other statutory changes that take place, but that is the set of rules and regulations that we have to work with right now.

There is one final piece and that was in July of this year, the NJ Legislature enacted and the Governor signed into law a series of legislative and statutory amendments to the Fair Housing Act and new legislation that further defined and changed what COAH could or could not do in terms of allowing municipalities to satisfy their Housing Obligation. Some of the key changes in that legislation, which is commonly known as 8500, some of the key components of that was the elimination of the Regional Contribution Agreements. They also established a minimum requirement for municipalities to provide for affordable housing units that meet the needs of very low income households which is those households that are earning 30% or less than the median income within the region. And a variety of other different changes occurred to the regulations

and other affordable housing requirements both in the Fair Housing Act and COAH regulations. We have those changes as well that we have to account for and shift around. Probably the biggest impact of that on the township's plan was that we lost the ability to do Regional Contribution Agreements. In our prior plan, we had two RCA's proposed: one with Neptune Township in Monmouth County and another with Lakewood in Ocean County. We in essence lost those RCA's. So we had to basically make up the units elsewhere. Fortunately, we have a plan that was structured in such a way that the ability to make up those units in the Town Center was available to us and the plan that is presented to you now provides for those units within the Town Center. Having said that, we have the Rehabilitation Obligation, a Prior Round Obligation, which is the prior round for constructing new units which your previous plan addressed in part but now we have to make some changes to that based on the new laws that were enacted, and then we have finally the Growth Share Obligation which is based upon an estimate of residential and non-residential growth which is anticipated to occur in the township between the years 2004 and 2018. Really your plan is to address or provide these units from the present time to the 2018 threshold. There is a 10 year time frame for the implementation of the plan assuming COAH approves it at some point within the near future.

Mr. Slachetka asked if there were any questions at this point.

Mr. Eagles commented regarding the prediction (from the census bureau) on page 6 of the draft report that in 2030 the township will be a population of a little over 15,000 people. Based on the present Master Plan and how the Town Center is set up, could the township have 15,000 people housed here? If we take that number against what we're talking about in Round III, can we reduce what our obligation is going in?

Mr. Slachetka stated before I get too much further, I should indicate the document that we are talking. For the record, it is the 2008 Housing Plan Element and Fair Share Plan of the Township of Ocean Master Plan. This is the Draft for Planning Board Hearing November 21, 2008, that is when it was on file. Ultimately, if the board adopts this, we'll put the adoption date on it. That is document we are referencing.

Mr. Slachetka continued. Both the MLUL and the Fair Housing Act laws require that the Housing Plan Element include a variety of different pieces. One of those pieces is an evaluation or description of a variety of different population housing and socioeconomic and demographic trends for the community. It establishes sort of a base-line. It is primarily for informational purposes. It doesn't really fundamentally effect your obligation or the way that you approach the Housing Plan. But you are correct that somewhere in this whole process in terms of looking at this data information there has to be some connection or some consistency. There will be differences in some of these numbers because of the way that the census data collects numbers and the way that COAH has projected your growth in the future. The question you ask is a very good one. Is there any basis in reality here? There is in terms of when you look at COAH's numbers and what they projected going forward through 2018 in terms of the number of anticipated housing unit growth and job growth that is projected to occur from 2004 to 2018. They are projecting a housing growth allocation of 458 new housing units. 748 new jobs. When we consider that when we look at the actual growth that is taking place both in the terms of Oceanaire and other developments that have occurred and what's anticipated in terms of the Town Center, we think that for now, accepting those projections makes some sense that they are within line with what would be anticipated. Now whether or not that results in a population at 15,000 or somewhat less or more, it really is speculation. Those projections, that information

that you see there is projections that were prepared by the North Jersey Transportation Planning Authority which is the Metropolitan Planning Organization for this region.

Mr. Eagles: I think my only real question here is looking at maybe some reality here because we could never support that kind of population based on our Master Planning and zoning that we have here in town. So do we go into this whole thing giving something away. That is what I'm asking here. Do we reduce the number coming upfront and defend it.

Mr. Slachetka: It's a fair question and one of the responses to COAH's original rule proposal that occurred this year, a lot of communities challenged COAH's methodology. Specifically, the methodology used by the demographic and planning consultant that COAH had retained to basically do state-wide projections for growth of housing and employment growth. One of the problems that COAH had in it's methodology is the consultants took a variety of different areas that were identified as vacant land such as like the parkway median and the front lawn of municipal buildings and playing fields and a lot of other things that they basically lumped into vacant land that basically moved up the projections for a lot of communities. It was particularly problematic in those communities that were fairly well developed communities that had very little real true open space and vacant land. In places like Ocean and other places it had less of an impact in terms of the ultimate projections. When you look at the actual growth already that has occurred from 2004 to now and project that moving forward in anticipation of the Town Center being implemented and the like, we think that the numbers here that are projected are actually kind of conservative numbers. We have the opportunity because COAH put in response to the concerns that were expressed by municipalities; they put in place in methodology and approach by which you can adjust the growth projections. We can go through that exercise and it does take some time to do, but we could do that and we have done that for other communities that have challenged the growth projections. In Ocean, we talked about this at the last meeting; it is my opinion that for now, that really is not a worthwhile exercise in terms of the township. In fact, I think the projections here from COAH's perspective, are relatively conservative in terms of housing growth and job growth within the township.

Chairman Anepete: It is a conservative estimate. It also my understanding that we only have to react to actual increases in population. Whereas this 10-year window, we don't actually have to build to the estimates of COAH, but to what actually occurs and we have a 10-year window. We could catch up all the time.

Mr. Slachetka: You bring up a very good point. Just in reverse. If it turns out that your actual growth turns out to be less then you can adjust your plan downward. In fact, you are going to be required every two years to report on actual growth. The way that they measure growth here is in terms of Certificates of Occupancy that are issued. Ultimately whatever is approved and you receive a C.O., then that becomes part of your actual growth as occurred. You could have higher growth, but more likely I would think that it would either be as projected or somewhat lower than what would be projected.

Chairman Anepete: I don't want the board to get upset about the 15,350 year 2030 estimate of population because we don't have to meet those numbers if we don't actually realize them.

Mr. Eagles: The only point I'm trying to make here is do we go in and start at X and then work up to Y.

Chairman Anepete: We should have a plan in place that shows that.....

Mr. Eagles: I guess today why we are starting at Y and why aren't we starting at X.

Mr. Slachetka: Because right now it's probably is in terms of the position point that you are, you probably are at Y more likely you have an opportunity at some point to go to X, but right now we can't get to X because if I went back in and starting doing this analysis, it may turn out that I wind up projecting more growth based on what we know has occurred, what's in the ground and moving forward. So rather than knowing that we can make these adjustments over time, rather than go through that effort and expense and maybe find out that the actual number is either this number or maybe somewhat more, lets just accept this number for now with the understanding that we can adjust it. The information on population projections is informational. It's out there already. It's what the North Jersey Transportation Authority has already projected. I can't go back and change that number. I'm just reporting on what they are reporting. They may be wrong, their projection maybe overstated or it may be understated. I don't know.

Mr. Reilly: Is that 15,000 a number we really should be concerned about from the standpoint that I think as was said, every two years there is going to be snapshots taken given what your population growth is and what your COAH numbers are going to be. So you are fluctuating every two years. Whether we hit 15,000 or whether we hit 10,000, that's the real number. Therefore, our housing obligation is going to reflect what that population is and when we look at this total number, to me it's nice to know, but it's not something that we must achieve if our housing and employment numbers don't reach that level.

Mr. Slachetka: Exactly. In fact, they are not telling you that you have to achieve that population. They are not even saying you have to achieve that number of housing units ultimately. This is what is being estimated. The population number doesn't even get factored in to your housing projections. That is not what they are looking at.

Mr. Eagles: My only point in this whole thing is that we are going to start out with what I would consider a negotiation somewhere down the pike with the state if we start out with a lower number. I do understand that this is going to be an on-going flowing thing that probably some of in this room won't even be alive to see the end result of this thing, but for the benefit of the township do we start out with the lower number.

Mr. Yost: I think most of you really are mindful and I think I made a statement last month when Stan made the presentation at the workshop, this is a response to the Mt. Laurel ruling and the Affordable Housing Ruling by the courts in that case. Towns aren't obligated to do any of this planning, but what happens is you expose yourself to a Builders Remedy which means any body coming in to the township who wants to put up 300 units can do whatever they want. When Stan, as Planner, takes his numbers together and reviews all the materials and puts a plan together, he's trying to find something that is within the framework of what he knows is going to be accepted by COAH so we can keep within the ambit of COAH's jurisdiction and we're not exposed to one of these Builders Remedy lawsuits.

Mr. Eagles: Which is acceptable today and then it flows.

Mr. Slachetka: If I felt that at any point in time at this stage you could seek an adjustment, I would make that recommendation to you. It's not a negotiation. We're not here negotiating a

number with the state. If the facts are the facts and we move on from there, at some point, as the Chairman had indicated, actual growth turns out to be less, then everything gets all ratcheted down and we're doing it every two years so all those adjustment points can take place. We're in pretty good shape I think.

Mr. Tredy: A few years ago, didn't the Township Committee ask you as a Planner for site specific for Ocean Township to find out what would be the total build out considering all of the different vacant properties.

Mr. Slachetka: We did an analysis looking at build out based on the zoning at the time. I can't think off the top of my head, what those numbers ultimately were but they are not the same numbers as these numbers. The reason that they are not the same numbers is because when we say "build-out", we're talking about full build-out at some point in the future. This is confined to what's going to happen up to 2018. But at the same time, it's probably taking you pretty close to that. Outside of the Town Center, because of the re-zoning that we had to do to get the Town Center designation effectly we preserved thousands acres of trees and very low density and reduced actually density around. If you can remember one of the first things I worked on with the township and the Land Use Board at the time was with the Master Plan Reexamination that was part of our analysis to make changes in overall in reducing down densities in a variety of other districts. We kind of knew that the center was going to be there so we kind of pushed and pulled to get the... We didn't change fundamentally the anticipated growth but we moved it into the center and outside and away from the environs around the center. So all these numbers are still working within the same overall picture that we started out with maybe about three or four years ago.

Mr. Reilly: The Township Committee has certainly been aggressive over the last few years in buying land and with the increased funds that are going to become available as of the approval by the town, additional funds are going to be available which will allow us to buy further land and as that happens that has a impact on buildable, therefore, population growth, therefore, reductions on these numbers. The Township Committee has been very active in that way. So that in itself will reduce or certainly mitigate the growth that we can experience.

Mr. Eagles: There are so many variables that come into this based on employment, based on what we do with commercial; this thing is going to be a big floater all over the place.

Chairman Anepete suggested that we allow Mr. Slachetka to continue with his presentation.

Mr. Slachetka: I'm going to read through some of these ways in which we put the numbers in certain boxes with the understanding that a lot of that changes over time. The most important thing here is to understand that we need to have something in place by the end of this year so we can sustain and continue within the COAH's jurisdiction so we avoid having the potential for litigation. Having said that, going through the prior Cycles I and II and where the numbers are. The reason why certain numbers appear in certain boxes is because again the rules are a little different in Cycle I and II as they are in Growth Share. What we were trying to do is maximize the benefit to the township of what these units are and maximize the opportunity to take advantage of receiving bonus credits and minimize the total number of affordable housing units we need to provide. Some things have to go in the Cycle I and II box and other things go into the Growth Share box because of that.

Mr. Slachetka reviewed with the board, Table FS 1 which is found on Page 25 of the 2008 Housing Plan Element and Fair Share Plan of the Township of Ocean Master Plan Draft for Planning Board Hearing.

A brief discussion took place regarding the two MSC units and why they would be counted. Mr. Slachetka stated that the town gets credit for them. Mr. Slachetka showed that we have 59 Rental Bonus Credits. The way the rental units were distributed in Cycle I and II and Cycle III, it maximizes the number of bonus credits we can get for those rental units.

Mr. Slachetka: You have a variety of different affordable housing choices that are being provided in the Town Center whether rental units, age restricted units, for sale units, low and moderate income units, all come into the mix. Under the Growth Share Obligation moving forward from this point from 2004-2018, we talked about the 458 housing units and 748 jobs that would be anticipated. Based on COAH's formulas, which is the need to provide one affordable housing unit for every five new residential units that occur within the municipality. One affordable housing unit for every 16 new jobs when you take 458 divide by 5 and 748 and divide that by 16, you come up with 139. 139 units which is on top of the 236 from your prior round. The way we are addressing that is with the remainder of the various Town Center development.

Mr. Slachetka reviewed Table FS 2 which is found on Page 25 of the 2008 Housing Plan Element and Fair Share Plan of the Township of Ocean Master Plan Draft for Planning Board Hearing. Mr. Slachetka showed that we have 34 rental bonus credits for Growth Share Cycle III.

Mr. Slachetka: That in essence is your overall plan. In this plan, you address the rental obligations both in your First and Second Found and Growth Share. You get as much benefit as you can from the age restricted project based on the age restricted caps. You address the very low income requirement. You maximize the bonus credits to the best extent possible and actually what we tried to do too in terms of these bonus credits, you are maxed out in bonus credits at 25% of your total obligation. So I can't get more than 59 bonus credits in the first two rounds and 34 in the third round. I tried to fill up the bonus tub as much as I can to the top before I'm limited in terms of the bonus credits. In essence, the intent of the plan is what you had right from the very beginning and that is to provide opportunities for affordable housing within the confines and context of the Town Center. There are no other affordable housing projects that are outside of those Town Center boundaries.

Discussion and clarification took place regarding the number of units and how they are added up and how the 93 rental bonus credits are taken. The bonus credits reduce down the number of actual affordable units you have to provide. A typographical error was pointed out on page 17 which Mr. Slachetka will have corrected. Mr. Slachetka also offered to double-check the numbers. The report does follow COAH's methodology and approaches.

Chairman Anepete: We have to have a plan in place by December 31, 2008 to comply with COAH's revisions and the Chair would entertain a motion at this time.

A motion was made by Mr. Tredy to open the meeting to the public and seconded by Mr. Reilly. All in favor: (aye).

PUBLIC COMMENT

Seeing none.

A motion was made to close the meeting to public comment was made by Mr. Reilly and seconded by Mrs. Sweeney. All in favor: (aye).

Chairman Anepete: Now we are looking for a motion to adopt the report and I suggest it be adopted with the typographical error which was highlighted by Mr. Eagles being recognized in the Final Draft.

Mr. Tredy made a motion that the 2008 Housing Plan Element and Fair Share Plan of the Township of Ocean Master Plan as presented tonight be adopted by the Planning Board. Mr. Avellino seconded the motion.

Mr. Eagles asked to amend the motion that also the arithmetic in its entirety be checked.

Chairman Anepete: I'm satisfied with the arithmetic as it is. I think what you are missing is the credits that we are getting the 59 credits that are applied in Figure 2. And in fact reflect truly the build-out that we are looking for.

Mr. Slachetka: Mr. Chairman I have no problem in double-checking the math. It's always good to have a second set of eyes and another perspective on it. I'll make sure that every single one of these numbers is double checked before it gets sent to the state.

Chairman Anepete: The amendment on the floor. We have to vote on the amendment prior to voting on the other motion. Do I have a motion to accept the amendment which is the proper procedures by Roberts Rules.

Mr. Eagles made the motion to make the amendment to the original motion. Chairman Anepete asked for a second. Hearing none, that motion was not passed.

Chairman Anepete asked for roll call on the original motion. All in favor: (aye) Tredy, Avellino, Eckert, Reilly, Sweeney, Eagles, James, Anepete.

Chairman Anepete thanked Mr. Slachetka for an excellent presentation.

Mr. Yost: In anticipation of the board taking action tonight, I did draft a proposed form of Resolution tonight and provided copies to the board secretary. The reason we have done it this way is because of the time constraints and the fact that apparently we have to have plan approved by the Township Committee before the end of the year in order to keep our schedule in tact. Essentially what it does is incorporate the report, any public comments, board comments, incorporates Mr. Slachetka's report and recommends it back to the Township Committee for action.

The board secretary passed out copies of the proposed Resolution.

Mr. Tredy asked the Chairman if we could have a five minute recess to read the proposed resolution.

Chairman Anepete asked for a motion for a five minute recess. Mr. Tredy made the motion. Mr. Avellino seconded the motion. All in favor: (aye).

Recess took place from 8:35 to 8:45 PM.

Chairman Anepete called the meeting to order. Before us we have the Planning Board Resolution adopting the 2008 Housing Plan Element and Fair Share Plan of the Township of Ocean.

Mr. Tredy made a motion to approve the Resolution. Mr. Eckert seconded the motion. All in favor: (aye) Tredy, Eckert, Avellino, Reilly, Sweeney, Eagles, James, Anepete.

Tardibuono, Block 98, Lot 5, Docket No. 04-08-PB, Minor Subdivision.

Mr. Harvey York, 202 Main Street, Toms River, NJ 08753, attorney for the applicant introduced the application. The property when it was originally created was two lots. The lots were created as part of a subdivision approved in 1953. They were known as Lots 16 and 17 and Block 39. Sometime thereafter, the lots were consolidated by an act of the municipality, not the property owner. The application is to take approximately 16,000 SF of land and subdivide it into two lots, one of about 7958 and the other 7872. The zoning ordinance requires 12,500 SF. The basis for the application is both a C1 and C2 variance. The C1 is substantiated of the case Pereira Vs. The Randolph Planning Board in which the court has held that when you have a substantial underutilization of the property, that is fact, is a hardship. We will provide testimony in that regard. With regard to the C2, Kaufmann vs. The Planning Board for Warren Township similarly talks about when you have a lot which is substantially larger than the neighborhood average, that is an overutilization and you are entitled to a variance. It doesn't mean that the existing lot could not be built. The court talked about a "readily marketable" as a one-family property and we acknowledge that this property could be a one-family property but it is not in keeping with the neighborhood. What we will do is provide testimony that if you were to take all of the lots within the 500 foot area which is much greater than the ordinance even imposes on us in terms of notice. You only have to give 200 feet. We will show that 88% of the lots do not meet the ordinance standard. What is developed in this area is a zoning ordinance which bears no relationship to what is actually built on the ground. We will present detailed testimony which will show that there are very few lots that conform to the zoning ordinance. 94 or 95 lots you will find that very few conform to the ordinance. An exhibit will show that the lots we are proposing are larger than most of the lots in the area anyhow. There is a drainage easement that runs through the property which is not working. We would, as part of our application, correct that situation, but more importantly we secured a permit from the state allowing us to fill that area. We did not have to do that before we came here, but we went ahead and got that permit in advance.

Mr. Michael B. Intile, Crest Engineering, Associates, 90 Susan Street, Toms River was sworn in by Mr. Yost. Mr. Intile provided the board with his background, education and expertise.

The board accepted Mr. Intile's credentials.

Mr. Intile presented Exhibit A-1.

Mr. Intile described in detail where the property is located. The lot is in an R1-A zone.

Mr. York asked the approximate square footage of the property.

Mr. Intile said it is approximately 15, 850 SF.

Mr York stated that the property was originally in accordance with the plan known as Lots 16 and 17 Block 39, as shown on the map of Holiday Beach Lagoon Section developed by Ocean Properties Inc., Ocean Township, Ocean County NJ, filed in the Ocean County Clerk's Office on October 14, 1953 as map B197. Is that correct?

Mr Intile verified this to be true.

Mr. York stated that the genesis of the lots that are the subject matter of this property or the property in question was a subdivision approved by the municipality.

Mr. Intile verified this is correct.

Mr. York asked with regards to the applicant's proposal, the applicant is proposing two single-family lots. Is that correct?

Mr. Intile said the applicant is proposing two single-family residential lots in keeping with the zone. First lot identified as 5.01 contains 7958 SF. The second lot contains 7872 SF. Both lots are 50' in lot width. The zone requires 12,500 SF.

Mr. York stated that each lot requires two variances – one for area, one for width.

Mr. Intile verified this.

Mr. York asked with regard to the physical condition of this property, is there a condition on this property which required the DEP Permit.

Mr. Intile said yes related to DEP Permit #6 which allows the filling of what's called isolated wetlands. Those wetlands are deemed by the State of New Jersey to be isolated and not required in the buffer.

Mr. York asked if the property has any drainage easements along through it?

Mr. Intile answered there is a drainage easement on the eastern side of the property running from Nautilus Blvd to the rear of the lot known as 5.02. The easement is not the width of the easement that the township typically takes on a drainage easement as referred to in the Engineer's review. As part of this application, that easement is being reviewed by the Township Engineer and we will conform to 20' if that is decided.

Mr York clarified that at this point it is a 5' wide drainage easement with 2 ½ feet on this property and 2 ½ feet on the adjoining lot. That is not typically how drainage easements are prepared.

Mr. Intile: Correct.

Mr York stated with regards to the two lots that would result from the subdivision, is the applicant prepared to build the homes in accordance with the standards of the ordinance.

Mr. Intile: Yes.

Mr. York: So no further variances would be required for the construction of the homes and the homes would be built in a similar place as the lots in the area.

Mr. Intile: Yes that is correct.

Mr York asked Mr. Intile to refer to his Exhibit. Mr. Intile then marked Exhibit A-2. Mr. York asked Mr. Intile to direct the board's attention to the 200' radius on Exhibit A-2. The 200' radius and 500' radius was pointed out to the board on Exhibit A-2. Mr. Intile showed the color purple on Exhibit A-2 are lots that are smaller than the smallest lot the Applicant is proposing and smaller than the ordinance of 12,500 SF.

Mr. Tredy asked about the lots that are not colored – that they are larger.

Mr. Intile answered that the lots that are white or not colored are lots that are larger than the lots the Applicant is proposing.

Mr. Tredy asked if they were larger in area, or frontage or both or either.

Mr. Intile answered that they are larger mainly in frontage and larger in area.

Chairman Anepete asked if there is a percentage calculation of the complying lots.

Mr. Intile answered of the purple lots – there are a total of 31 lots within that study area of 200 feet. Of that 31, 24 are smaller. Those are the purple lots. We talk about ordinance lots which are 12,500 SF or larger, there are only 3. We have 24 smaller lots, 7 which are larger, but only 3 that conform to the ordinance. 77% of the lots within the 200' area are smaller than the lots we are proposing.

Mr. York stated that 31 lots within 200' and only 3 comply with the ordinance. That in terms of percentage is 10%. 10% of the lots within 200' conform to the ordinance.

Mr. Intile identified those lots on Exhibit A-2.

Mr. York stated that the vast majority of the lots are smaller than the lots that are being proposed. He then moved on to the 500' area of Exhibit A-2. He asked how many in the 500' circumference how many lots are there in general?

Mr. Intile showed that in the 500' study area, there are 94 total lots, 63 of those 94 are smaller than those of the lots the applicant is proposing. With regard to the ordinance, 12 within the 500' circle conform.

Mr. Tredy asked for the number of those larger.

Mr. Intile stated there are lots that are larger than the applicant's proposed lots, but are not in conformance with the ordinance.

Mr. York stated that the lots that actually meet the demands of the ordinance, there are 94 in total and 12 conform to the demands of the ordinance.

Mr. Intile stated 12% of the lots within the 500' conform to the ordinance.

Mr. York asked Mr. Intile: Taking that into account, would you say that the use of this land, with a one-house on 16,000 SF approximately, would not be in keeping with the design and what's on the ground in this area.

Mr. Intile answered: I think so. If you look at even the size of the houses that we marked on here in a cursory fashion, if you know the neighborhoods and are familiar with them, most of the houses fit within the 50' lots that they are built upon with reasonable side setbacks, lots of 50' here would certainly conform to the character of this neighborhood and be what you were looking for.

Mr. York: Would you classify this then as a substantial under-utilization of the property if you were in fact to build one house?

Mr. Intile: Considering that only 10% are conforming within 200' if you had left it as one lot, and built one house then 10% obviously is not the majority.

Mr. York: Directing your attention to the negative criteria with the construction of these two houses have any negative impact on this area?

Mr. Intile: The other items in the bulk standards are met, the lot coverage would be met, the lot footprint would be met, the lot width and area are the only two, lot depth is almost twice what's required by ordinance 80' is required, we have 157'. They are not proposing anything that's not conforming in terms of permitted use in the zone, so I would say that there are no negative impacts.

Mr. York: In fact, the construction of the houses would either be the same or greater than that which is built on the adjoining properties within the 200' and 500'.

Mr. Intile: Yes.

Chairman Anepete asked if it has been established what the building would look like and how much land it would occupy. You said the coverage is in compliance but we have no indication what the coverage would be.

Mr. Intile: I say that because the DEP plan required us to consider the set-backs for what size house might be there. The house would be very much consistent with what houses are in the neighborhood that would conform to the pervious coverage and lot coverage.

Mr. York: We are stipulating for the record that there would be no variances from your ordinance standards as it relates to the houses. In other words, your ordinance standards set forth, a 25' minimum front setback, a 10' side yard, a 20' rear yard, maximum lot coverage of 30% etc., we would conform to all of those requirements – even though the lot is substantially smaller then the design standards. In this particular neighborhood, your design standards are based on 12,500 square foot lots so that when you deal with these standards whoever designed

them obviously a Planner and the Township Committee; they designed them based on a much larger lot. We will comply with them notwithstanding the fact that the lot is not a 12,500 square foot lot. There may be houses in the neighborhood that do not conform to those standards. If you were to look at the plan and Mr. Intile can, of course, testify to this, there are many lots that do not conform to the 10' side yard setback. Is that correct Mr. Intile?

Mr. Intile: Yes. There are probably closer to 5 on that basis.

Mr. York: So we would exceed that which is built on the ground and conform to your ordinance. In your opinion then, this is an under utilization, not in keeping with the neighborhood if it were to be one single-family home and would have no negative impact.

Mr. Intile: Yes.

Mr. York: I have no further questions.

Chairman Anepete asked for questions from the board.

Mr. Reilly asked that of the lots that are larger excluding those that are 12,500 or thereabouts, what is the typical average size of those lots? Let's start in the 200' circle.

Mr. Intile referred to Exhibit A-2 and pointed out Lot 3 is 8000 SF, Lot 4 is 10,000 SF, Lot 51 is 9500 SF, Lot 50 is 8250 SF, Lot 46.01 is 14,000 and Lot 44.01 is 16,000 SF.

Mr. Reilly: What you are saying is they are roughly 1,000 or above in lot size larger than what you are proposing. Would that be typical in your 500' circle running about a 1,000 thereabouts?

Mr. Intile confirmed about a 1000 to 1500 SF.

Mr. Reilly asked as to when the history of the 12,500 SF was set up for the purposes of this particular area and were most of the homes in this area already built? Mr. Reilly stated that he was trying to get a relationship in the sense of which came first.

Mr. York answered that he didn't look, but an educated guess that all these houses were built long before the zone was created at 12,500 because the original map creating these lots is 1953 and if you look at the 1953 filed map and that information they are all 50' lots.

Mr. Reilly stated that at some point after a majority of these homes were built, there was a decision made to establish that 12,500 was the standard for this area.

Mr. York stated that he guesses that would be correct. The alternative theory would have to that somebody made the 12,500 and then gave out 87 variances for all the houses.

Mr. Reilly said he was trying to ascertain is was this an intention of trying to effect a change in the number of homes that were built or to be built.

Mr. York stated I'll take your theory that may have been the answer. The problem is there are no substantial vacant lots.

Mr. Reilly said except for the fact were the larger homes or the larger properties set up after the 12,500 was set in place.

Mr. York: No. All of these lots are part of the original filed map.

Mr. Reilly stated so then this is the only, what I'll call exception, in a sense that it was created from two smaller lots.

Mr. York: No. If you look at Lot 17.01 and you'll see the dotted lines. 19.01, 16.01, there were two lots, two of the filed map lots. They come off the filed map, but somebody bought two of them and either built on them or have them as vacant lots. If you look at all of the different lot sizes, they are part of that filed map. At some point, this area is clearly developed. Are they all new houses or old houses?

Mr. Intile: These houses are older houses. So the zone change occurred some time after most of the houses were already built.

Mr. Reilly: We're just trying to get some history on why this was done from what you are describing appears to affect only this one particular lot.

Mr. York: No, it affects other lots. I don't want to mislead you. It affects every lot in the area including the vacant lots on the top. It also effects for example, if I owned the lot next door to us, Lot 8 and something happened to my house or I wanted to put an addition on, I would be required to get a variance. The worst case example, assume that the house next door is destroyed by fire. The right to rebuild would be gone.

Mr. Tredy: No.

Mr. York: I'll be glad to site you the statue if you have anything other than a partial destruction, you lose your right to non-conformity and you lose your right to rebuild. That is state law. It's easy. So that person on the next lot would have to come before the Board of Adjustment and obtain all of the variances necessary to build. If you're asking me would they get those variances.....

Mr. Tredy: That would be an isolated undersized lot is that what you are saying?

Mr. York: It would become an isolated undersized lot. But even if it were not isolated or undersigned, because that sets another set of criteria in play the right to buy or offer to sell under Dallmeyer. It loses its non-conformity rights though. If you have a partial destruction you get to rebuild automatically. Take it one step further, I own the lot next door, it's only partially destroyed and now I want to rebuild two feet further to the side. I'd have to get a variance because the standards of the ordinance are greater than all of these houses were constructed under.

Mr. Tredy asked Chairman Anepete if he could bring up the same vicinity map received in his packet that he marked with highlighter. This was marked in evidence at B-1.

Mr. Yost stated for the record that B-1 is a copy of A-2 which was submitted to the board with it's packet with a little bit different color scheme – yellow as apposed to the purple and blue.

Mr. Tredy: Mr. Intile you can see this is the same vicinity map that you had up there previously where you marked the lots that you consider to be non-conforming or undersized. I marked in yellow; the board can see all those lots that are marked in yellow?

Chairman Anepete: Clearly.

Mr. Tredy: Would you agree that those marked in yellow either conform to the ordinance or are larger than the lots that you are wishing to.....

Mr. Intile: Absolutely not. Mr. Intile proceeded to point out several that he felt were not.

Mr. Tredy: Larger in either frontage or square feet?

Mr. Intile: If you are adding frontage in there, you are adding another criteria.

Mr. Tredy: They are either larger in frontage or square feet.

Mr. Intile: You are counting the frontage of these lots for?

Mr. Tredy: They are either larger than the lots you are proposing to create either in frontage or in square footage or they conform. I wanted the board to see that because it shows a little different picture than the applicant is trying to bring towards us.

Chairman Anepete asked that the record show that the Engineer nodded yes to Mr. Tredy's question.

Mr. York said he would like to ask Mr. Intile a question. Notwithstanding the fact that they meet the frontage, the lots that he is pointing out are 20 and 30% smaller than that which we are proposing is that correct?

Mr. Intile: The ones we pointed out here yes.

Mr. York: So while the frontage may be met, they are woefully undersized in terms of the ordinance. For example, all of the Lots 4, 2, 3 in Block 1.01 are less than half the size of what the ordinance requires.

Mr. Intile: That is correct. While you are looking at ordinance bulk standards, they are also on 100', ours is over 150'.

Mr. York: Let's talk about the area. What he has done is he has pointed out a bunch of lots that may have the right frontage, but are less than half the ordinance requirements. As a professional planner, are we better off having lots that require a frontage requirement but are much closer to the ordinance requirement.

Mr. Intile: Much closer to the frontage requirement at 50' and provide quite a bit more area than 6,000'.

Mr. Tredy: If we were to say the lot was only 20' wide, but 1,000 foot long, you would also say, that is more conforming to the ordinance?

Mr. Reilly: Where is the frontage on the lots you are....

Mr. York: We are proposing 50'. The lots the gentlemen pointed out were 60' but only 6,000 SF in area and depth – we are about 157' in depth, 50' in width in a 7900 SF area.

Mr. Reilly: Dennis, the ones that you had up there are they typically 60' in frontage?

Mr. Tredy: Everything that is in yellow is either larger than the proposed two lots which are 50'. They are either larger in frontage or larger in square footage or they meet the ordinance.

Mr. York: Mr. Intile so that we are very clear about what has just been put up there (referring to Exhibit B-1), this map doesn't show that any more lots meet the requirements of the ordinance does it?

Mr. Intile: No.

Mr. York: Your testimony as stated was correct.

Mr. Intile: Yes.

Mr. York: All this does is show that there are lots which have adequate frontage but that's all they have. So they meet a design criteria, but do not come even close to matching the requirements of the ordinance.

Mr. Intile: You've included frontage as one of the criteria you were looking at here, and that's all you've done.

Mr. York: In fact, many of the lots he's pointed out failed to meet other requirements of the ordinance such as lot depth, setbacks etc..

Mr. Tredy: How can you say setbacks? There are no houses. We don't know what the setbacks are.

Mr. York said I will have Mr. Intile testify for example that Lot 11 is not 10' from the side yard. He's already testified as to the other lots not meeting the side yard setbacks.

Chairman Anepete: Does that complete your presentation? If it does, I'd like to hear from our engineer. Mr. McVicar if you would.

Mr. McVicar directed the board to page 3 of his October 22, 2008 letter under "Design Comments". Item #1 is information. Item #2 has been discussed. Item #3 regarding Nautilus Road and the ROW. Mr. McVicar asked if there had been any response.

Mr. York answered that they would look at it and issue a report to Mr. McVicar's office.

Mr. McVicar referred to Item #4. Has there been any response?

Mr. York stated that plans were sent and verified that they were received and we are waiting for a response.

Mr. McVicar directed the board to page 4 of his letter under "Plat Details". He asked Mr. York if there were any problems addressing those four items?

Mr. York said "no".

Mr. McVicar referred to Section G "Outside Agency Approvals".

Mr. York updated that they have submitted to the Ocean County Planning Board and have not received a stamp yet. Ocean Township MUA an application was made. Have not received a letter of No Interest yet. Township Engineer regarding the ROW and easement and LOI. We have received the LOI and GP #6 for filling in isolated wetlands.

Mr. McVicar said he had no further questions.

Chairman Anepete asked for any other questions from the board.

Chairman asked for a motion to open to the public. Mr. Tredy made a motion. Mr. Reilly seconded the motion. All in favor: (aye).

PUBLIC COMMENT

Seeing none.

Chairman Anepete asked for a motion to close to the public. Mr. Tredy made a motion. Mrs. Sweeney seconded the motion. All in favor: (aye).

Mr. York summed up his application. This regard to our presentation, and while I appreciate the board's exhibit, the board's exhibit flies in the face of professional planning. Our professional planner said so. It's not the test whether you meet some of the bulk requirements, it's about lot area. The two cases I sited to you, deal with lot area. Are we under utilizing the property substantially and was that the intent of the original plan. What we said to you was, our lots will be substantially bigger than almost all the lots in the area by a lot. But there is one question you have to ask yourself. How much worse will this be if we only had one house and we built on 16,000 or 15,000 and change? Now it would be bigger than virtually all of the lots. I say virtually, there are two or three lots that would even be bigger. Utilization of this for one house clearly comes into the scope of both cases. It's an under utilization. It's not as if there were 50% of the houses going to be the same size or smaller, there is 88% that don't meet the ordinance and would be smaller. In this instance, you have lots that were created by a filed map in 1953. It is clear that these are older houses and at some point in time the municipality decided to re-zone an area and it may be that the adjoining areas had a basis for a 12,500 square foot. But it is equally clear that in this neighborhood, 12,500 SF could never and would never work. Now, one might say, and one of the arguments made in the case is well, did the municipality do this with a desire to upgrade the houses in the neighborhood. The answer is "no". The houses are all built on smaller lots. If we had vacant land and there was scattered throughout this area, 20 or 30 vacant lots, then the argument would be, hold on, those vacant lots were designed so that the new zoning requirements of 12,500 SF could take place. The only way that this area could become

upgraded is if everything burned down. With all do respect to everybody's planning, there is no Township Committee that says "we're upgrading by hoping somebody's houses burn down". The zoning standards that are applied to these houses are impossible for everybody in this neighborhood. They aren't just difficult for us; they are different for everybody in the neighborhood because of the side yard setback requirements. Because these are houses that were just placed and you look at every one of these houses, the vast majority of them as he testified are within 5' of the property line. So the minute you put an addition on, you have you to get a variance. One can only assume that in the re-zoning of this area, which appears to be a residential area, encompassed by other zones, they picked something not worried about what was there because this is a 1953 subdivision. I'm not prepared tonight nor is it's the board's jurisdiction to argue whether these two lots were legally combined in the first place. That is a legal question that a court would have to decide. But at some point in time, the township decided to take away the lot designations and put these two lots together. Had they not done that, under Vaugner (sp?) vs. Campoli which is a Supreme Court case, this issue would not be before you. We have two preexisting lots and we would have right to build on them. Our argument to you is, that is really what's out there anyhow. These are all smaller lots, the zoning standard is in place, it does not bear any reasonable relationship for what's on the ground. This is an example where there is a zoning ordinance that doesn't match the world. It doesn't match it to an extent of 88%. I think both cases, the C1 and C2 are justified. Thank you.

Chairman Anepete said what I'm hearing is a lot of legal cases being sited that are beyond the capabilities of the general board members here and I'd like to take the advice of our legal council on how to proceed, whether more research is required.

Steve Yost suggested that the board has heard a very well reasoned argument. They have taken expert testimony and Mr. York has sited a couple of cases and its obvious the applicant is presenting this under the under utilization doctrine based on these two cases. I would like to be in position to give the board the best advice that I can. I'd like an opportunity to take a look at those cases, or any other cases that you would invite me to look at so I can read them. I have my Cox book here and I can look that up, but that is really not the best way to do it. I think it's better for the board to have my advice after I review the cases and give them the best council that I can so they can use their considered judgment to pass on the application instead of doing something tonight. It doesn't necessarily have to be moved tonight. That would be my suggestion to the board. I don't know if the applicant is agreeable to that.

Mr. Tredy spoke. Not withstanding the fact that we will wait for the information you give the board at the next meeting, I would like to remind the board that the zoning that we are looking at is always considered minimum, the minimum requirements. If a lot has more square footage then is required, that's not a detriment to the lot, that's a plus. I don't see why that should be used as an argument to subdivide it if it still doesn't meet the minimum requirements.

Mr. York answered that the answer to that is the case law.

Mr. Tredy: That area as you stated was 1953 zoning. Now we're in 2008 zoning and irregardless of the fact that we don't want houses to burn down, we have seen that in many areas in the township and in other towns also where the tendency is towards much bigger homes then the 1953 homes that you looking at. In order to get to that larger home, we found that many homeowners or property owners they combine lots themselves. They buy their neighbors house, they tear it down and put their new big house right in the middle. That is how we get bigger and

bigger lots over time. I think when the Township Committee created this new zoning, they didn't want to hurt anybody, they were looking to the future, not to the past and that is how I feel about this particular zoning that is in front of us.

Mr. Avellino: The zoning was changed when the Land Use Board existed and it was done to try to upgrade the size of the lots in town rather than have 50' lots and the next thing you know people are coming in for a variance, you mentioned 5' setbacks. We wanted to do away with that and by making the lots a larger size, they could put a decent house there without infringing upon the setbacks, both square footage setbacks, etc. That's the reason why the zoning was changed. They weren't trying to deter anybody from building in town. They were trying to upgrade the size of the lots. As Mr. Tredy said, a lot of these lots were 50' wide. They were built because they were summer homes. They were weekenders, vacation homes. They weren't built for year-round houses. I know the area I live in, the lots were 40'. You're trying to say if that's the case then you could subdivide a lot in Sands Point Harbor for 40' because that's the way it was in 1953. I can't buy that.

Mr. Reilly added that both of you gentlemen were answering the question I was asking a bit ago and that was how this thing all came about and going from smaller lots to 12,500 SF. You're really answering where I was trying to elicit how did this get put together. What was the timing, what was the intent?

Mr. Avellino stated that it was part of the Master Plan. The sizes of the lots were changed in order to upgrade the Master Plan rather than keep status quo. 5' setbacks are a hardship, we wanted to deter from that.

Mr. Reilly said that it absolutely makes sense to me in the sense that many of the homes here at one time were either summer homes or cottages and obviously you didn't want something very large. We're going through, as many towns are, a transition process where more and more people coming here are coming here on a permanent basis and more and more are looking for larger homes than the existing homes. It becomes a challenge through variances at the zoning board level allow them to expand this or do we start saying to do it you are going to have to buy more land, i.e., adjoining property. It's the only way we're ever going to achieve this change to occur.

Mr. Avellino: On the other hand, if the gentlemen who owned this lot wants to build a house, why would he want to divide it in half and build the house on a smaller lot? I would think if I owned the lot, and I wanted to build a house on the lot, then I would keep the lot the size it is and then I could build what I want and have setbacks further from my neighbors. Now we're creating four variances.

Chairman Anepete: I think a motion would be in order to carry to the next meeting as it is agreed to by the applicant.

Mr. Yost asked Mr. York if he'd be willing to waive any time constraints so we can come back next month and if you have any additional sites in the next couple of days. I'll take a look at them and should be in position to advise the board on the basis of your presentation.

Mr. York: Sure.

Mr. Tredy made the motion to carry the application to the January 2009 meeting. Mrs. Sweeney seconded the motion. All in favor: (aye) Tredy, Sweeney, Avellino, Eckert, Reilly, Eagles, James, Anepete.

BOARD COMMENTS

Chairman Anepete brought to the attention of the board, the memo from the board secretary noting the Reorganization meeting will be held Tuesday, January 6 at 7:00 PM and the regular Planning Board meeting will be held immediately after at 7:30 PM.

Mr. Tredy asked Mr. Yost what he would be doing with regard to the previous application.

Mr. Yost stated he would read the cases and consider any other cases that come to his attention. Many times the case law doesn't support the argument. Mr. Yost wanted to be in position to give the best advice he can to the board, so the board can make the best decision it can.

Mr. Tredy made a motion to adjourn. Ms. Sweeney seconded the motion. All in favor: (aye).

Meeting ended at 9:38 PM.

Respectfully submitted,

Beth Laramee