

REGULAR MEETING SEPTEMBER 10, 2012

The meeting of the Fair Lawn Planning Board on Monday, September 10, 2012, was called to order at 7:30 p.m. by Chairman Peter Kortright in the Council Chambers of the Fair Lawn Municipal Building.

The notice of Open Public Meetings Law was read stating that the newspapers were notified and a notice posted on the first floor bulletin board of the Fair Lawn Municipal Building.

Roll Call

PRESENT: Chairman Peter Kortright, III, Deputy Mayor Edward Trawinski, Tom Carney, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Kenesha Brathwaite, Larry Metzger, Joan Fragala, Todd Malkin, ABSENT: Cristina Cutrone, Joseph Mele

Also present: Board Attorney Thomas Randall, Board Engineer Jeffrey Morris, Environmental Engineer, Christopher Arntz, Planner Cheryl Bergailo, Board Secretary Cathryn Hochkeppel.

Approval of Escrow Bills

Upon motion by Todd Malkin and a second by Deputy Mayor Edward Trawinski, the escrow bills were unanimously approved. AYES: Chairman Peter Kortright, III, Deputy Mayor Edward Trawinski, Tom Carney, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Kenesha Brathwaite, Larry Metzger, Joan Fragala, Todd Malkin

Approval of Minutes

Upon motion by Deputy Mayor Edward Trawinski and a second by Jim VanKruiningen, the minutes of the regular meeting of August 13, 2012, were unanimously approved. AYES: Chairman Peter Kortright, Deputy Mayor Edward Trawinski, Vice-Chairman Brent Pohlman, Kenesha Brathwaite, Jim VanKruiningen, Todd Malkin, Joan Fragala. ABSTAIN: Tom Carney, Larry Metzger. Upon motion by Deputy Mayor Edward Trawinski and a second by Todd Malkin, the minutes of the special meeting of August 27, 2012 were unanimously approved. AYES: Chairman Peter Kortright, Deputy Mayor Edward Trawinski, Jim VanKruiningen, Tom Carney, Joan Fragala, Kenesha Brathwaite and Todd Malkin ABSTAIN: Vice-Chairman Brent Pohlman, Larry Metzger. Upon motion by Deputy Mayor Edward Trawinski and a second by Jim VanKruiningen, the minutes of the work session of July 9, 2012 were unanimously approved. AYES: Chairman Peter Kortright, Jim VanKruiningen, Tom Carney, Joan Fragala, and Kenesha Brathwaite ABSTAIN: Deputy Mayor Edward Trawinski and Todd Malkin.

Amend Housing Element and Land Use Plan

Cheryl Bergailo explained the Housing Element. Upon motion by Todd Malkin and a second by Deputy Mayor Edward Trawinski, the resolution was unanimously adopted. AYES: Chairman

Peter Kortright, III, Deputy Mayor Edward Trawinski, Tom Carney, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Kenesha Brathwaite, Larry Metzger, Joan Fragala, Todd Malkin.

Memorializing Resolution

12-71 Edward Street; Santo Subdivision, Block 5606, Lot 19

Upon motion by Deputy Mayor Edward Trawinski and a second by Tom Carney, the memorializing resolution was unanimously adopted. AYES: Chairman Peter Kortright, III, Deputy Mayor Edward Trawinski, Tom Carney, Jim VanKruiningen, Kenesha Brathwaite, Joan Fragala, Todd Malkin,

General Public Comment

Chairman Kortright opened the time for public comments. No public wished to be heard and the time for public comment was closed.

Landmark at Radburn, LLC, Block 3609, Lot 21, Block 3610, Lots 1-2; Major Subdivision and Site Plan

Ron Shimanowitz, Esq., appeared on behalf of the applicant and noted that this is a continuation of the hearing with regard to Landmark site. He reminded the Board that the only form of relief being sought was a design waiver for the detention basin.

Brent Pohlman asked about the economics of the placement of the affordable housing units. Chairman Kortright also asked for a detailed road plan relative to Plaza Road.

Mr. Schwartz was reminded that he was still under oath. He reminded the Board of his previous testimony. He noted that for the last eight years Landmark has borne the burden of bringing this development to fruition. The affordable units would have no home if Landmark had not borne that burden. In addition, Landmark gave up 35 units and incurred the cost of redesigning the development. The court had approved the plan which had an apartment building with 120 units. The court approved plan had the apartment building in approximately the same area as the current affordable units. It is also the same ratio that exists with the current design in that all the affordable units were housed in the apartment building. The cost of removing 35 units is approximately \$800,000. Redesigning the project was also costly. To further integrate the units would cause additional costs to Landmark. The original court approved affordable units were in one building and were located along the railroad tracks. Cheryl Bergailo stated that her recollection was that the building backed up to Coopers Way and the railroad.

Chairman Peter Kortright opened the matter to the public for comments.

Jane Diepeveen, 14 Ryder Road, asked about other plans submitted to the Board. Ms. Hochkeppel explained that there was a proposal many years ago, not a site plan, but nothing was submitted to the Planning Board.

Michael Ross, 10-15 Ramapo Terrace, asked about environmental issues and was told this would be discussed later.

Eric Schutz, 20-14 Radburn Road, asked about the court approved plan and was told parking was provided in various ways but it did not include street parking.

Carol Neiditch, 26-15 Kipp Street, asked if there was going to be a buffer along the railroad tracks. Mr. Schwartz explained that there will not be a sound barrier but there will be landscaping.

Stanley Hayden, 12 Beekman Place, asked if the applicant was aware of hazardous materials and Chairman Kortright stated that this expert was not for environmental questions.

Felice Koplik, 6 Reading Terrace, asked whether the applicant shouldn't provide more information regarding the distribution of the units. Mr. Shimanowitz stated that the applicant has answered that question and has provided what they believe is the necessary information.

Wendy Dabney, 13-05 Ivy Lane, asked whether there will be a fence along the railroad tracks and was told there will be a fence.

Pamela Coles, 13-34 George Street, asked if Mr. Schwartz was familiar with the amount of sound that is generated by trains. Mr. Schwartz explained he is familiar with the noise of the train. Mr. Schwartz stated that it is common to have units along the railroad tracks and pointed out that there are also market units along the tracks.

Joel Cohen, attorney for objectors, asked why the units cannot be further dispersed and was told that there are many impacts including economic. Mr. Cohen asked whether other configurations were presented to the Planning Board and was told no. Chairman Kortright pointed out that this is a court ordered development.

Walter Weglein, 14 Ramsey Terrace, asked if the affordable housing was cheaper to construct. Mr. Schwartz explained that the same quality of building materials is used on both the affordable units and market units.

Wolf Turner's comments, 5 Remington Road, were stricken from the record by unanimous consensus of the Board.

There were no additional questions from the public.

Carol Wagner, Director of Health and Human Services, was sworn in and explained that NJ DEP has oversight of any remediated site but she serves as the depository for the environmental correspondence. This site has been under the jurisdiction of the DEP for many, many years. She stated that in June, 2011, she received a conditional letter of No Further Action. Carol Wagner explained that the Borough of Fair Lawn does not have oversight but they do receive the record. The jurisdiction lies with DEP.

Mr. Shimanowitz clarified the ownership of the various parcels. Landmark owns one parcel and is under contract for the other. Archery Plaza is included in the design but is not owned nor planned to be owned by the developer. The responsible party for cleaning up this site is BASF which is one of the largest corporations in the world. The June 2011 letter from DEP was marked as Exhibit B-1.

Christopher Arntz was sworn in and qualified as an expert environmental engineer from Boswell Engineering. He explained he reviewed a number of documents including the report from Brinkerhoff Environmental. He summarized the report. He explained that several No Further Action letters were issued over the years, most recently in June 2011 relative to the groundwater. Mr. Arntz stated that it was not unusual for a conditional NFA letter to be issued requiring additional testing over a twelve year period. Mr. Metzger asked if the standard met was for residential and Mr. Arntz explained that for groundwater, there is only one standard.

Chairman Kortright opened the matter to the public.

Wendy Dabney, Chairman of the Environmental Committee, asked if the No Further Action letter involved only the contaminants identified on the site and was told that was correct. Ms. Dabney asked about the contaminant in the ground water and Mr. Arntz explained that the contaminant identified is not a volatile contaminate. Ms. Dabney was concerned about contaminants from the Topps site that might migrate. Ms. Dabney asked about construction materials used to prevent contamination and Mr. Arntz explained that membranes can be used in construction to prevent intrusion.

Ron Coll, 10 Ramapo Terrace, asked about the conditions of the NFA letter and was told that for twelve years, additional testing will be done.

Joel Rosen asked if the monitoring wells were plotted on the plans and was told no. He also asked if plans were submitted to the Environmental Commission and if a report was received. Ms. Hochkeppel explained that the application was submitted but no report was received to the best of her recollection.

Carol Neiditch, 26-15 Kipp Street, asked about the wells off Landmark's site and the plume that is moving east and south. She wondered if the construction would affect that plume and was looking for assurances from the Borough. Deputy Mayor Trawinski explained that the Board's jurisdiction is very limited as the law places sole jurisdiction in the DEP. He also pointed out that municipal

land use law states that the Board cannot deny an application for environmental purposes but shall approve the application subject to the DEP's determination.

Wendy Dabney, Environmental Commission Chairman, was sworn in and stated that the Commission has reviewed all the documents received by the Health Department. She stated that she thought the Planning Board was going to use Malcolm Pirnie to vet this issue, and Ms. Hochkeppel explained that Malcolm Pirnie had a conflict of interest with this site and that is why Mr. Arntz is present.

Andrew Shepard, 21-07 Radburn Road, explained that when he was in high school, he designed the logo for the recycling center. He also started to explain other incidents and asked about cancer hot spots. Mr. Randall explained that this was not an appropriate subject.

Craig Lechner, 21 Randolph Terrace asked what the pollutant chemicals do and Mr. Arntz stated that the standards are determined by the DEP.

Han Broekman, 4 Allen Place, asked how much naphthalene was in the ground water. Mr. Arntz explained that the naphthalene was 700 parts per billion and the standard is 300 parts per billion.

The meeting was recessed for 15 minutes at 9:15 p.m. and reconvened at 9:30 p.m. with all members present as previously indicated.

Chairman Kortright reminded the public that this is not a "normal" application in that there is a court order in place. Deputy Mayor Trawinski explained that he attended the court proceedings and this Board cannot deny the application on environmental grounds, historical grounds, or use/location grounds. This was the judgment of Judge Harris and then a reaffirming judgment by Judge Martinoti even though the Borough raised all of the issues that the public is raising. The developer has prevailed and this Board must act within the law. There are site issues that can be addressed by this Board and various improvements that can be suggested by this Board and those are the matters that the Board can address.

Andrew Robbins, Attorney-at-law of Sills, Cummis and Gross in Newark, NJ was sworn in and qualified as an environmental law expert.

Laura Brinkerhoff, 18-05 Atlantic Avenue, Manasquan, New Jersey, was sworn in and qualified as an environmental expert. Ms. Brinkerhoff explained her report in detail which summarized the DEP files for the property in question. She testified that staff members reviewed the documents dating back to 1987. She explained that there were sixteen Areas of Concern (AOC). Ultimately, a No Further Action letter was issued with limited restricted use for the entire site. The letter does not apply to any future AOCs. Ms. Brinkerhoff opined that based upon the history of the site, it is unlikely that all of the AOCs on the site were identified. All sixteen AOCs were not immediately identified as it was an ongoing process. As the work progressed, new AOCs were opened up on numerous occasions. She stated that it is a complicated site. Todd Malkin asked the process if an

additional AOC is identified, and Ms. Brinkerhoff stated that would have to stop construction to do additional clean up. Ms. Brinkerhoff also stated that because of the naphthalene in the groundwater, a report is to be submitted every 2 years. Ms. Brinkerhoff also explained vapor intrusion barriers. There are two types of barriers. One involves retrofitting the building. The other is barrier is put in place during construction. Ms. Brinkerhoff explained the technicalities involving vapor intrusion systems.

Joel Rosen asked if the property was suitable for a residential property and Ms. Brinkerhoff replied that there may be other contaminants that are identified during construction and the possibility of vapor intrusion also exists.

Mr. Shimanowitz asked Ms. Brinkerhoff when she was retained and by whom. Ms. Brinkerhoff stated she was retained by the Neighbors to Save Daly Field within the last 3 months but the check was received from Mr. Rosen. In answer to Mr. Shimanowitz questions, Ms. Brinkerhoff explained that her staff went to DEP and made electronic copies of most the documents. She reviewed her staff's summaries. She did not speak with the entity performing the remediation. Ms. Brinkerhoff confirmed that the contamination existed long before Landmark obtained this site. Mr. Shimanowitz asked what limitations, if any, were placed on the development of the site by DEP and Ms. Brinkerhoff stated that is a legal matter and she has no opinion. Mr. Shimanowitz pointed out that Ms. Brinkerhoff's report read "It is unlikely that all AOCs were identified on the site and Brinkerhoff cannot conclude with certainty that the prior consultants identified all AOCs associated with former operations". He asked if she had any specific facts other than conjecture to support that conclusion. Ms. Brinkerhoff said that there was a pattern on the site that leads her to believe that it is possible that there are more AOCs. Mr. Shimanowitz asked if she had any data or evidence to support that conclusion and Ms. Brinkerhoff agreed that it was speculation. Mr. Shimanowitz also asked if the normal way to address vapor intrusion was to install a vapor barrier and Ms. Brinkerhoff stated that is correct. Brent Pohlman asked about the water table and whether vapor intrusion could be a problem on this site. Ms. Brinkerhoff stated that it would be difficult to know without testing. She added that DEP has very stringent standards and she explained that testing procedures. Deputy Mayor Trawinski asked about the testing and Ms. Brinkerhoff stated that she did not know what suite of compounds was tested for.

Mr. Robins explained the history of the site and he noted that the site cleanup started in 1987. He added that to have a case last for 24 years under ISRA is unusual as well as the fact that the case manager retained supervision of the site for many years. He further explained that the standards for the issuance of a NFA letter is statutorily based and DEP has to be convinced that the remediation complete to protect human health and the environment. He added that New Jersey has more stringent standards than almost every other state, if not every state. He explained the laws under which DEP operates. Mr. Shimanowitz asked if the NFA letter from June, 2011, imposed any limitations on the site. Mr. Robins explained that the only limitations are two small ovals on the property where naphthalene was identified. In those areas, you couldn't install wells, not that anyone was planning to use drinking water from that area anyway. Mr. Shimanowitz asked from a legal perspective what Mr. Robin's opinion was was about additional areas of

concern. Ms. Robins stated that the site has to be appropriately managed just as if the site had never been reviewed by DEP. Mr. Shimanowitz asked if the possibility of vapor intrusion would preclude development of the site and Mr. Robins explained that that responsibility rests with Topps and that is irrelevant to the development of the site. He added that it was his understanding that the plans already include the installation of a vapor barrier and subsurface depressurization system even though there is no legal obligation for Landmark to do so. Mr. Robins further explained that in accordance with the Site Remediation Reform Act, BASF, as the responsible party, never loses that responsibility regardless of how many times the transfer of the property takes place.

Chairman Kortright stated that if the applicant is going to include a vapor intrusion system, he would like something in writing.

Deputy Mayor Trawinski proposed that the Board Secretary send Ms. Brinkerhoff's report to DEP and it was the unanimous consensus of the Board to do so.

Mr. Rosen asked Mr. Robins who he represented and Mr. Robins replied that he represented the applicant. In response to Mr. Rosen's questions, Mr. Robins explained that DEP was monitoring this site and he was monitoring the DEP. Mr. Rosen asked if there were underlying documents relative to the responsible party and asked if it could be provided. Mr. Shimanowitz explained that he is not sure such documents exist but he will look into it. Mr. Rosen asked for clarification of the responsible parties and Mr. Robins explained that to the extent there is a distinction between the types of contamination, the responsibility of BASF and Topps would be clearly delineated. If contamination was ever commingled, than the laws in the State of New Jersey say they are jointly and severably responsible. Mr. Robins also stated that it is a positive that a huge company is involved and another company is also taking responsibility. He also stated that there is a Spill Compensation Fund available if these companies went away; and he has been successful at obtaining those funds for his clients. He explained the covenant not to sue by the DEP. He further explained that the stated has issued a covenant not to sue. The only area that was left behind is groundwater on the site and DEP will not pursue natural resource damages for onsite groundwater. Mr. Rosen stated he had n further questions.

Adjournment

Upon motion by Todd Malkin and a second by Deputy Mayor Trawinski, the meeting was unanimously adjourned at 11:00 p.m.

Respectfully,

Cathryn Hochkeppel
Municipal Housing Liaison/
Land Use Administrator/
Secretary of the Planning Board
CH:mc