

REGULAR MEETING NOVEMBER 19, 2012

The meeting of the Fair Lawn Planning Board on Monday, November 19, 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 (late), Vice-Chairman Brent Pohlman, Jim VanKruiningen, Cristina Cutrone, Joseph Mele, Larry Metzger, Joan Fragala, Kenesha Brathwaite, ABSENT: Todd Malkin

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

Ms. Hochkeppel indicated that Mr. Carney would be a little late due to a Fire Department commitment as Chief Grieder recently passed away.

Approval of Escrow Bills

Upon motion by Vice Chairman Brent Pohlman and a second by Deputy Mayor Edward Trawinski, the escrow bills were unanimously approved. AYES: Chairman Peter Kortright, Deputy Mayor Edward Trawinski, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Larry Metzger, Joan Fragala, Kenesha Brathwaite, Joseph Mele, Cristina Cutrone.

Approval of Minutes

Upon motion by Jim VanKruiningen and a second by Vice-Chairman Brent Pohlman, the minutes of the work session of August 13, 2012, were unanimously approved. AYES: Chairman Peter Kortright, Deputy Mayor Edward Trawinski, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Larry Metzger, Kenesha Brathwaite, Joseph Mele and Cristina Cutrone. ABSTAIN: Joan Fragala

Upon motion by Deputy Mayor Edward Trawinski and a second by Vice-Chairman Brent Pohlman, the minutes of the work session of September 10, 2012, were unanimously approved. AYES: Chairman Peter Kortright, Deputy Mayor Edward Trawinski, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Larry Metzger, Joan Fragala, Kenesha Brathwaite ABSTAIN: Joseph Mele and Cristina Cutrone

Upon motion by Vice-Chairman Brent Pohlman and a second by Joan Fragala, the minutes of the work session of October 15, 2012, were unanimously approved. AYES: Chairman Peter Kortright,

Vice-Chairman Brent Pohlman, Jim VanKruiningen, Larry Metzger, Joan Fragala, , Joseph Mele and Cristina Cutrone ABSTAIN: Deputy Mayor Edward Trawinski and Kenesha Brathwaite

Upon motion by Jim VanKruiningen and a second by Joseph Mele, the minutes of the regular meeting of October 15, 2012, were unanimously approved. AYES: Chairman Peter Kortright, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Larry Metzger, Joan Fragala, Deputy Mayor Edward Trawinski, Joseph Mele and Cristina Cutrone ABSTAIN: Kenesha Brathwaite

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.

Professional Services for Master Plan

Upon motion by Deputy Mayor Edward Trawinski and a second by Jim VanKruiningen, the resolution authorizing Taylor Design and Boswell Engineering to proceed with the Master Plan was unanimously adopted.

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

Chairman Peter Kortright noted that the matter had been open for public comments at the last meeting and the public comments portion would continue.

Ronald Coll, 10 Ramapo Terrace was sworn in. He thanked the Board for their thoroughness and professional manner in which these hearings have has been conducted. He added that it stands in very sharp contract to the Trustees of the Radburn Association who betrayed the trust of the community. When the residents learned that somebody sold the park, they were upset. Not only did the Trustees conspire in secret but they refused to speak with the homeowners after the fact. In the case of Radburn, they are denied a democracy. The trustees had been working on the sale since 1986, 18 years of scheming. Deputy Mayor Trawinski was helpful but they also looked for assistance from government. They went to Department of Community Affairs. Both the Superior Court and Court of Appeals concluded that it was not illegal to deny democracy. Mr. Coll added that he understands that the Board can't stop this development but they can ask that the Board continue its diligent work. There are issues such as the placement of the affordable units, what degree of capping is going to be done, how will the houses be ventilated, etc. He added that the Board should not give Landmark a free pass when it comes to money. He thanked the Board and stated he has confidence they will do the right thing by the people of Fair Lawn.

Emily Hadjis, 20-14 Radburn Road was sworn in. She was concerned about the contaminated soil and the workers who will be inhaling contaminants.

Rita Golding, 14 Rutgers Terrace, stated that most people feel that this development is too dense and too high making it difficult for fire apparatus. She questioned the safety both to pedestrians and automobiles.

Walter Weglein, 18 Ramsey Terrace was sworn in. He stated that he is adjitated because this development will be extremely detrimental for Fair Lawn and will cost the Borough millions of dollars. He was concerned about the COAH units. The affordable housing need is acute in New Jersey but their segregation is against the law. The affordable units should be integrated within the entire complex.

Robyn Stoahl, 8 Ramsey Terrace, that she is concerned about making a left hand turn out of Ramsey Terrace. She was concerned about the safety at this intersection and suggested a light. Chairman Kortright explained that the traffic counts do not justify a light.

Suzanne Fishbein, 12 Bancroft Place was sworn in. She doesn't think there were well thought out plans and was concerned about the width of the roads and fire truck access.

Gloria Alessi, 29-02 Rutgers Terrace was sworn in and stated she was concerned about the pollution. Recently a well was drilled into the front corner of her property. She feels construction will have a negative effect on the rest of the neighborhood.

Eileen Johnson, 10-15 Plaza Road was sworn in. She expressed concerns about the contaminants, health issues and traffic.

Jane Balklehy, 11 Burnham Place was sworn in. She stated that development needs to be balanced rationally and reasonably. She was concerned about the loss of the entire Daley Field. She added it is part of her goal to preserve open space for her children and grandchildren.

Craig Miller, 5 Ramapo Terrace was sworn in. He stated that Radburn has always been called the upper class area of Fair Lawn. He feels this development will have a negative effect. Daley Field was dedicated to Mr. Daley who it was named after. He thought there should be some type of acknowledgement. He added that putting affordable housing along the railroad tracks is segregation. He also was concerned about the loss of the ball fields.

Rosalyn Borodokin, 13-18 Plaza Road, was sworn in. She stated that this development will be devastating to Fair Lawn.

Michael Schindler, 13-14 Plaza Road was sworn in. He stated that he agrees with everything everyone has stated. He added that the view from his house is Daley Field. He has open space behind him. He was told the Hayward tract might be developed but not Daley Field. He feels he has been duped and taken advantage of. He added that when they purchased the house, it was the height of the market. Once this development is built, he will never get that money back. Instead of seeing open space, the buildings will block the sun in his yard. He stated the trees will

not grow in the shade and that there will be more shade on the property. He further stated that no one can afford to lose \$50,000 to \$100,000. He stated that there are 24 kids in his daughter's kindergarten class and now there will be more kids. He suggested requiring a pool for the neighborhood. He was also concerned about the environment.

Maureen Moriarty, 13 Burnham Place was sworn in and stated that it is difficult that no one has input into the density. She felt there has been a lot of loss of trust as initially they were told it would be one and two bedroom apartments, now there are three bedrooms plus bonus rooms. She stated there is little you could do about safety issues that have not been addressed. She was concerned about the segregation of the COAH units. Ms. Moriarty added that the Brinkerhoff report is intelligent. She would also like to know where the membranes are going to be installed. She added that she was concerned about the traffic and pedestrian safety at Ramsey Terrace.

Chairman Kortright asked if any additional public wished to be heard. Since no further public wished to be heard, the time for public comment was closed.

Ron Shimanowitz, Esq., stated that he had reserved the right to comment on the Historic Preservation Commission letter dated March, 2012. There are things raised in the letter that are not in the Board's jurisdiction. Most of the comments take issue with the zoning ordinance as this development is in compliance. The site plan and building elevations have been accepted by the Radburn Association. They have been communicating with the Radburn Association since 2004. The applicant will still have to go back to the Radburn Association. This project has been designed in accordance with zoning ordinance in accordance with the Court Order. There is no design criteria contained in that ordinance. Also, this site has nothing to do with the rehabilitation of historic buildings. The density is consistent with the Court Order. The Landmark site has been recommended for multi-family housing in the master plan for 25 years. They agree that the sign should be preserved. There were some comments regarding parking and the carports. There is no variance required. There could be individual gardens as there is not a limitation on individual gardens. The building setbacks and heights are conforming and require no variance. The applicant is proposing balconies and will seek relief from the Radburn Association as it is an added benefit. The applicant will provide details to the architectural committee of Radburn relative to the construction materials.

Joel Rosen, Esq., representing Neighbors to Save Daley Field, stated he has heard that the Board has to approve this plan because of the builder's remedy. He also has heard this is a variance free plan and he disagrees with both statements. Nothing shall restrict the Board's statutory responsibilities. He stated he believed the facades on Cooper Way require a variance. They do not comply. Also, buildings may be set back no less than 10 feet. Very few of the set backs have been denoted but they appear to be less than 10 feet so they are not in compliance with ordinance. Mr. Rosen noted that the environmental aspects were discussed at the September and October meetings. The only environmental report submitted was the Brinkerhoff report that indicates that there is a high probability that once there is excavation, further areas of concern will be found. Her testimony was not challenged by this Board. Mr. Rosen alluded to an environmental violation

made by Landmark at Rahway, called Park Place and wanted to submit a press release to the Board.

Mr. Shimanowitz objected as it was another entity. Board Attorney Randall ruled that the issue is closed. This is time for summation and argument based upon the record. Mr. Rosen also stated that no copies of an agreement with BASF as to the responsible party were provided.

Mr. Rosen added that the lack of integration of affordable housing units is not appropriate and does not meet the affordable housing obligation. He also pointed out that no documentation relative to economics was presented. Mr. Rosen felt that the application was not complete and additional information needs to be supplied by the applicant.

The meeting recessed for a five minute break at 9:10 p.m. The meeting was reconvened at 9:25 p.m. with all members present as previously indicated.

Board Attorney Randall noted that Tom Carney had read the record for the portion of the meeting that he had missed.

Mr. Shimanowitz, attorney for the applicant, stated that this Board is bound to follow the Court Ordered ordinance. Over the course of the application, all the variances were eliminated. The only design waiver is the wall of detention basin which the professionals agree wasn't the type of wall intended to be governed by the ordinance. The Court Order was for 200 units. The proposal is 165 units with 33 affordable units that results in a lesser density than is allowed under the ordinance. This is a conforming application. Relative to the environmental aspects, it is not the Board's jurisdiction. It is the jurisdiction of the DEP. The builder's remedy is in place. There are no variances. There was a reference by Mr. Rosen regarding additional variances. To raise that issue at summation after the experts have testified, is not proper. However, the experts and the Board's professionals are in agreement that the buildings that face Cooper Way are far removed from the roadway with landscaping and that section did not apply. There was no planning testimony to the contrary. No one has called out a variance where a 10 foot setback has been violated. Regarding the issue of integration, the ordinance has a standard which is to integrate to the extent feasible. That is not a qualitative standard. When the Court granted the applicant 200 unit builder's remedy, it included a 120 unit apartment building that faced Route 208 and the railroad and it contained all the affordable units. These units were considered to be feasibly integrated. Landmark heard concerns from this Board and made adjustments accordingly. You have the testimony of a sworn planner and no planning expert disputing his testimony.

In closing, Mr. Shimanowitz respectfully reminded the Board that the applicant has worked with them and he also wanted to refute some of the comments made about Landmark. He has represented Landmark for many years and Landmark is a good corporate citizen. Landmark still has a ways to go in dealing with the Radburn Association. He thanked the Board for its time and encouraged them to grant the application.

Board Attorney Randall stated that this Board's charge is to be finders of facts. Board members have to consider the law as given to them. There has been a judicial determination and an ordinance which the Board must follow. The applicant has come forward with what they have determined is a variance free application. The Board has the right to impose reasonable conditions. There is subjective and some objective criteria. The Board needs to exercise its judgment as to whether the affordable units are integrated to the extent feasible. He reminded the Board members that they don't have jurisdiction over the environmental matters. There is a concept of preemption and the DEP is entrusted with that charge and local bodies are not. The Board has the ability to deliberate. If this applicant has satisfied the requirements the application should be granted but certain conditions may be imposed.

Deputy Mayor Trawinski thanked the citizens for their participation. He reviewed a brief history of the Borough's affordable housing history including the negotiations with Fair Lawn Commons to meet the Round 2 obligation without exposing the Borough to costly litigation. He also stated that elections have consequences. He noted that the Council split on pursuing the litigation. Deputy Mayor Trawinski and Mayor Baratta voted to pursue the matter. Councilmember Weinstein and Joseph Tedeschi voted against the litigation. Councilmember Swain recused herself due to a conflict. He stated that any anger should be directed at the Trustees of the Radburn Association. Deputy Mayor Trawinski added that this project will cost Fair Lawn in the long run. Deputy Mayor Trawinski stated that it would be easy to vote grandstand and against this application but that he took an oath to faithfully, impartially uphold the law. He added that he viewed this application as variance free. The professionals listed the variances, and, one by one, the applicant modified the application to eliminate the variances and the Board is presented with a conforming site plan with the exceptions he will note. He complimented the applicant on working with the Board.

Deputy Mayor Trawinski moved that the application be approved subject to the following conditions:

- That the retaining walls in the detention basin be terraced;
- Landscaping along Plaza Road to include boxwood and linden berries;
- Pursuing the advance green on Plaza Road, subject to the Board Engineer's approval. In the alternative, applicant's fair share to be used for the restriping of the intersection at Berdan and Plaza;
- Applicant to make best efforts to encourage governing body to implement speed bumps on Ramsey Terrace. Applicant to pay its fair share;
- Revised plans for Plaza Road including fluorescent yellow green marking to be submitted for approval by Board Engineer;
- Pursue governing body relative to lighted crosswalk at Ramsey Terrace;
- Placement of a Stop sign at Road C;

- Applicant to add a note on plan that sidewalks and any depressed curbs are to be repaired or replaced along Plaza Road;
- Increasing the radius of the southbound right turn in the Coopers Way entrance;
- Homeowner's Association documents to include documentation as to responsible parties relative to remediation;
- Homeowner's Association documents to include that vehicles are to be parked in garage and not used for storage that would prevent vehicle parking;
- Board attorney to review homeowner's association documentation;
- Any discrepancies between site plan, subdivision plan and architectural, the site plan shall govern; discrepancies between subdivision plan and architectural plan, the subdivision plan shall govern;
- Fencing around basin shall be 6 feet in height;
- All correspondence and actions taken with the DEP or any other governmental agency shall be copied to the Planning Board Secretary;
- The fencing along the railroad tracks shall be 6 foot high black chain link fence with tight mesh weaving to be approved by the Board Engineer;
- Standard developer's agreement with appropriate bonds;
- Immaterial field changes can be made with approval of Board Engineer. Any material changes require review by this Board;
- Strict compliance with Fair Housing Act and submission of all documents for approval with the Municipal Housing Liaison;
- Site mapping of the remediation areas to be submitted;
- Guaranteed maintenance of landscaping for 24 months;
- Driveways at carports to be 18 feet long;
- Some type of acknowledgement or dedication to Charley Daley (Daley Field)

- Installation of vapor barrier membranes where needed (there was some discussion as to requiring a membrane on all units but it was the consensus that the condition would be unduly burdensome to the applicant)
- Greater dispersal of affordable units subject to a basic concept plan to be reviewed of Board Attorney and Board Engineer and subcommittee of the Board;
- Compliance with the letters of the Board's professionals;
- Additional meeting with Fire Chief and Fire Marshall to review access between buildings A and F and placement of hydrants throughout the site;
- Additional lighting along pedestrian paths subject to Board Engineer's review;
- Additional lighting on Ramsey Terrace and Plaza Road subject to Board Engineer's review;
- Landscaping plan subject to Board Planner's approval;
- Applicant to use best efforts to obtain approval from NJ Transit relative to landscaping;
- Inspection of the condition of the 48" and 8" sanitary pipes prior to construction and consultation with Board Engineer.

Joan Fragala seconded the motion. There was some discussion and the Board members agreed with the conditions imposed. Upon roll call, the motion was unanimously adopted. AYES: Chairman Peter Kortright, Deputy Mayor Edward Trawinski, Tom Carney, Vice-Chairman Brent Pohlman, Jim VanKruiningen, Joseph Mele, Larry Metzger, Joan Fragala, Kenesha Brathwaite

Adjournment

Upon motion by Vice Chairman Brent Pohlman and a second by Deputy Mayor Edward Trawinski, the meeting was unanimously adjourned at 10:45 P.M.

Respectfully,

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

