

**MINUTES  
PLANNING BOARD  
TOWNSHIP OF CHATHAM  
NOVEMBER 19, 2018**

Ms. Nicole Hagner called the Regular Meeting of the Planning Board to order at 7:32 P.M.

**Adequate notice** of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2018, and January, 2019 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy filed with the Municipal Clerk and a copy placed on the bulletin board in the main hallway of the Municipal Building.

**Roll Call**

Answering present to the roll call were Ms. Hagner, Mr. Hurring, Mrs. Swartz, Mr. Brower, Mr. Ciccarone, Mr. Franko, Mr. Nelson, Mr. Sullivan, Mr. Nevin and Mr. Tarasca. Mr. Trivisano arrived late.

Also present was Board Attorney Steve Warner, Engineer John Ruschke and Planner Frank Banisch.

**Approval of Minutes**

Mr. Brower moved to approve the September 12, 2018 minutes. Mr. Nelson seconded the motion, which carried unanimously with abstentions from those who were absent from said meeting.

Regarding the October 15, 2018 minutes, Mr. Franko offered a correction that Ms. Wolfe was substituting for Mr. Warner rather than representing him. Mr. LaConte said he will make the correction in the minutes.

Mr. Tarasca moved to approve the October 15, 2018 minutes as amended. Mr. Franko seconded the motion, which carried unanimously with abstentions from those who were absent from said meeting.

**Master Plan Consistency Review**

Ms. Hagner said that there are three ordinances which have been referred to the Planning Board by the Township Committee for a Master Plan Consistency Review. Mr. Warner said that the referral is consistent with the Municipal Land Use Law and the Local Redevelopment Housing Law. Mr. Warner also said that the only question to be considered by the Planning Board regarding these ordinances is whether or not they are consistent with the Master Plan, and he noted that the consistency review is not subject to a public hearing. Mr. Brower asked if the public can ask questions, and Mr. Warner said that it would be at the Chair's discretion. Ms. Hagner said that it may be more appropriate for questions to be posed once the developer

submits an application. Mr. Ciccarone added that there will be a public hearing on the ordinances at the December 13<sup>th</sup> Township Committee meeting, and Mr. LaConte noted that the ordinances themselves are posted on the Township website.

### Ordinance 2018-22

Mr. Banisch said that Ordinance 2018-22 is for the affordable housing Redevelopment Plan for the Skate Park site. He said that because the Skate Park Site is zoned for affordable housing, the Redevelopment Plan is entirely consistent with the Master Plan. As such, Ordinance 2018-22 is not inconsistent with the Master Plan.

Mr. Warner said that the memorandum drafted refers to the Municipal Land Use Law regarding the Township Committee's referral to the Planning Board. He noted that the memorandum should instead refer to the Local Redevelopment & Housing Law.

Ms. Hagner said that Ordinance 2018-22 to be adopted has the attached Redevelopment Plan for the Skate Park site, which dictates how the site will be redeveloped. Mr. Banisch added that the normal site plan review process will still apply to the site. An application will still be submitted with the details for the development. Mr. Banisch also said that the Redevelopment Plan does not bind the hands of the Planning Board, however the developer will have a reasonable expectation of having a plan approved if it meets the standards of the Redevelopment Plan.

Mrs. Swartz asked if the Planning Board can provide guidance as to a demarcation between the redevelopment and where the Police Headquarters and the Department of Public Works are located. Mr. Banisch said that any buffering deemed appropriate can be discussed with the developer during the hearing on the application.

Mr. Sullivan asked if the affordable housing obligation could put the Planning Board at risk of a challenge if a higher standard is expected. He also said that he anticipates the builder will be accommodating to suggestions. Mr. Warner said that the pending affordable housing declaratory judgment action may have a limitation on the Planning Board's discretions. He also said that there are UHAC regulations to which both the Board and the applicant will be bound. Mr. Warner also said that reasonable stipulations can be upheld, however the matter has not yet reached the stage of a site plan application. Mr. Ciccarone added that there is a presumption that the applicant will not submit an application seeking variances to the Redevelopment Plan, and a conforming application should be a simple procedure. Mr. Banisch said that while the Planning Board's approval of an application will not be compelled, an expedited approval will presumably be granted.

Mr. Brower pointed out that there is an expectation that the affordable housing should be consistent with the Township's development rules. Mr. Banisch noted that the Redevelopment Plan has been negotiated in a way that the affordable housing will look like it belongs in Chatham Township.

Ms. Hagner said that Mr. Banisch drafted a memorandum stating that Ordinance 2018-22 is not inconsistent with the Master Plan, as the site is already zoned for affordable housing.

Mr. Brower moved to determine that Ordinance 2018-22 is not inconsistent with the Master Plan, with the amendment to the memorandum to reflect the correct statutory reference. Mr. Nelson seconded the motion.

**Roll Call:** Ms. Hagner, Aye; Mr. Hurring, Aye; Mrs. Swartz, Aye; Mr. Brower, Aye; Mr. Ciccarone, Aye; Mr. Franko, Aye; Mr. Sullivan, Aye; Mr. Nelson, Aye; Mr. Travisano, Aye; Mr. Nevin, Aye; Mr. Tarasca, Aye.

Mr. LaConte asked that the final memorandum be sent to him for distribution to the Township Committee.

### Ordinance 2018-23

Mr. Banisch said that last year the Planning Board was tasked to review a zoning change for the Dixiedale site. Ordinance 2018-23 amends the zoning changes that were already made, by adjusting how height is measured and addressing the phasing of the building of affordable housing at the Skate Park site.

Mr. Sullivan said that there is not any risk to the Township with the phasing of the affordable housing. He also said that if the developer bails out on the affordable housing, it is likely that another builder would be willing to step in.

Ms. Hagner asked when the ownership of the 3.8 acres will change hands.

Mr. Warner said that the Land Use Element of the Master Plan has not yet been updated to reflect that the Dixiedale Property has been rezoned for multi-family dwellings, and therefore Ordinance 2018-23 is technically inconsistent with the Master Plan. Mr. Banisch's memorandum notes that while the ordinance is technically inconsistent with the Master Plan, it still furthers the goals of the Master Plan and recommends the adoption of the ordinance.

Ms. Hagner noted that Ordinance 2018-23 only addresses height calculations in the particular zone, and she recommended that the Township Committee consider having the height calculation apply throughout the Township. Mr. Ciccarone said that the height calculation in Ordinance 2018-23 considers the topography of the site, and the calculation method may or may not be appropriate throughout the Township.

Mr. Ciccarone moved to find Ordinance 2018-23 to be inconsistent with the Master Plan, but to nevertheless recommend the adoption of the ordinance as it advances the land use goals of the Master Plan. Mr. Brower seconded the motion.

**Roll Call:** Ms. Hagner, Aye; Mr. Hurring, Aye; Mrs. Swartz, Aye; Mr. Brower, Aye; Mr. Ciccarone, Aye; Mr. Franko, Aye; Mr. Sullivan, Aye; Mr. Nelson, Aye; Mr. Travisano, Aye; Mr. Nevin, Aye; Mr. Tarasca, Aye.

Mr. LaConte asked that Mr. Warner work with the Township Attorney regarding a reasons resolution for the Township Committee to adopt along with the ordinance.

#### Ordinance 2018-24

Mr. Banisch said that Ordinance 2018-24 prohibits smoke and vape shops as a land use under zoning regulations. He also said that one of the goals of the Municipal Land Use Law are to promote the health, safety and general welfare of the public. While the Master Plan is silent regarding smoke shops and vape shops as a permitted use, he said it is reasonable to assume that it is not inconsistent with the Master Plan to effectuate a policy of prohibiting smoke shops and vape shops.

Ms. Hagner asked if e-cigarettes would be prohibited to be sold in shops. Mr. Ciccarone said that this ordinance only affects stand-alone shops.

Mr. Franko moved to find that Ordinance 2018-24 is not inconsistent with the Master Plan. Mr. Brower seconded the motion.

**Roll Call:** Ms. Hagner, Aye; Mr. Hurring, Aye; Mrs. Swartz, Aye; Mr. Brower, Aye; Mr. Ciccarone, Abstain; Mr. Franko, Aye; Mr. Sullivan, Aye; Mr. Nelson, Aye; Mr. Travisano, Aye; Mr. Nevin, Aye; Mr. Tarasca, Aye.

Mr. Brower asked about providing comment on the ordinances discussed. Ms. Hagner said that the Planning Board members can give comment during the Public Hearing at the Township Committee meeting on December 13<sup>th</sup>.

#### Discussion

##### Tree Top Escrow

Mr. Ruschke said that the Planning Board approved an application about 20 years ago, and a condition of approval was the installation of sidewalks on a section of Meyersville Road. The developer was pushed to complete the subdivision, however concerns were raised about the number of trees to be removed for the sidewalk. Mr. Ruschke said that there was discussion of the developer coming back before the Planning Board to seek relief from that condition, however the developer failed to do so. The Township is still holding the developer's performance bond. Mr. Ruschke asked for the Planning Board's feedback on the matter so that he can report to the Township Committee, and there is a desire to bring closure to the matter. He presented photographs of the site.

Mr. Brower said that the trees will eventually die, and suggested that the sidewalks could be installed at that point. Ms. Hagner said that there is still the matter of the performance bond, and asked if the sidewalk could be installed without impacting the trees. Mr. Ciccarone said that in order to avoid impacting the trees, the sidewalk would not be able to comply with ADA requirements.

Mr. Franko asked where the sidewalk goes and who would use it. Ms. Hagner said it would allow residents of Tree Top to walk down Meyersville Road on a sidewalk.

Mr. Banisch said that the question is whether the trees are a good reason not to require the developer to comply with the requirements of the approval.

Mr. Brower asked about the sidewalk reducing somebody's property. Mr. Ruschke said that grading would also need to be done, however all the work would be within 10 feet of the road.

Ms. Hagner said that the residents in the area did not want the sidewalk. Mr. Ruschke said that the matter came up due to a desire to close the performance bond. Ms. Hagner said that the Planning Board should not hold up the bond while waiting for the trees to die. Mr. Ciccarone said that the Township should require the developer to apply to the Planning Board for relief from the requirement.

Mr. Nelson asked if there is another way to release the performance bond. Mr. Ruschke said that he will have to work with the attorneys involved to investigate options. Mr. Franko asked if the bond escheats. Mr. Warner said he will have to look into whether or not that would be the case. Mr. Sullivan said that the obligation should not be removed without a cost, and suggested that the performance bond be converted into a trust.

Dot Stillinger from the Environmental Commission asked about the species of tree involved. Mr. Brower said that they are white pines.

#### Other Discussion

Mr. Brower commented on the provisions of Ordinance 2018-23 regarding adaptive reuse of the building, and said that the requirements are too restrictive on the developer. Ms. Hagner said that the prospective redeveloper was part of the process of drafting the ordinance. Mr. Brower asked about the definition of structures, and Mr. Banisch provided the definition. Mr. Brower also asked about a pathway proposed for the site, and how close the walkway might be to people's bedrooms. Mr. Ciccarone said that such issues will be sorted out once an application is submitted, and he does not think that there will be anything more intrusive than a public sidewalk.

Mr. Ciccarone moved to adjourn at 8:44 PM. Mr. Franko seconded the motion, which carried unanimously.

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Gregory J. LaConte  
Planning Board Recording Secretary