MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
DECEMBER 16, 2019

Mr. Travisano called the regular meeting of the Planning Board to order at 7:30 P.M.

Adequate notice of this meeting 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 2019, and January, 2020 was published in the Chatham Courier and the Morris County Daily Record, notice was filed with the Municipal Clerk and notice was posted on the bulletin board in the main hallway of the Municipal Building.

Answering present to the roll call were Mr. Travisano, Mr. Franko, Mrs. Swartz, Mr. Hoffmann, Mr. Kelly, Mr. Nelson, Mrs. Ozdemir, Mr. Coviello and Mr. Tarasca.

Ms. Hagner and Mr. Sheth were absent.

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

Mr. Travisano moved to excuse those who were absent. Mr. Franko seconded the motion, which carried unanimously.

Approval of Minutes

Mr. Franko moved to approve the November 4, 2019 minutes. Mr. Nelson seconded the motion, which carried unanimously with abstentions by those who were absent.

Memorialization Resolutions

PB 19-48.16-117.27 SOUTHERN BOULEVARD URBAN RENEWAL, LLC, (Arbor Green at Chatham) 401 Southern Boulevard, BLOCK: 48.16 LOT: 117.27

Mr. Warner reviewed with the Planning Board some last minute changes that were made to the resolution in conjunction with the applicant's counsel. He noted that the applicant agreed to obtain a disclosure from tenants that they are aware of the proximity of the DPW facility and the Gun Range. There is also a commitment to increase the number of parking spaces to the highest number practicable.

Mr. Hoffmann asked about the number of conditions. Mr. Warner said that there are 48 conditions. Mr. Hoffmann also noted a typographical error.

Mr. Travisano moved to adopt the memorialization resolution for the Arbor Green at Chatham application. Mrs. Swartz seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Swartz, Aye; Ms. Hagner, Absent; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mrs. Ozdemir, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Abstain.

Master Plan Consistency Review

Mr. Warner explained that when the Governing Body introduces a zoning or development ordinance, the Planning Board must be given 35 days to conduct a Master Plan Consistency Review. The Planning Board can also make recommendations on the ordinance. If the Governing Body moves forward with the ordinance, a public hearing will be held prior to adoption. Mr. Warner further noted that the Planning Board will not be adopting any new Master Plan elements prior to the consistency reviews on this meeting's agenda, therefore the ordinances are being reviewed based upon the existing Master Plan.

Mr. Travisano said that the members of the public present will have an opportunity to give comments before the Board votes on the consistency reviews. Rather than discussing each ordinance separately, Mr. Warner suggested that Mr. Banisch address both ordinances prior to public comment, and that the Board could then have a separate vote on each ordinance.

Mr. Banisch said that Fairmount Commons is an office complex on Southern Boulevard next to the Chatham Club. The overlay zone will permit a multi-family use as a replacement for the office complex if the property owner were so inclined as to change the use. Mr. Banisch also said that the overlay zone counts toward the Township's unmet need, and is a condition of the Settlement Agreement with the Fair Share Housing Center. Mr. Banisch said that the current Master Plan does not include overlay zones, therefore Ordinance 2019-19 is technically inconsistent with the Master Plan. He also said that Ordinance 2019-19 is consistent with the intent of the Master Plan because it provides for a balance of housing and works toward meeting the Township's Constitutional obligation for affordable housing.

Mr. Warner asked Mr. Banisch to define an overlay zone and explain how it fits in with the Township's Affordable Housing Plan. Mr. Banisch said that unmet need is the amount of affordable housing not satisfied when there is a realistic development potential less than what the Fair Share Housing Center believes the a municipality's obligation should be. Mr. Banisch said that the overlay zone does not change the current zoning, but allows for an additional zoning option for the property owner to change the use.

Mr. Warner said that the Township has an affordable housing obligation, and was able to demonstrate a lack of available vacant land to reach the realistic development potential. He said that there are different mechanisms available to reach the Township's Constitutional obligation for affordable housing, of which overlay zones are one option. Mr. Warner noted that compliance helps preserve the Township's immunity from Builders Remedy lawsuits, and this overlay zone is a condition of the Township's Settlement Agreement.

Mr. Banisch said that if the Board finds Ordinance 2019-19 to be inconsistent with the Master Plan, the Township Committee will need to adopt a reasons resolution prior to adoption of the ordinance to explain why it is being adopted despite the inconsistency. Mr. Hoffmann asked if the Township Committee would need one resolution or two if both ordinances are deemed inconsistent with the Master Plan. Mr. Banisch said that it could be done with one resolution, or

there could be separate resolutions. He also said that the resolution will include language that the ordinance is recommended by the Planning Board based on the intent of the Master Plan.

Mr. Warner said that the Board has the authority to comment not only on the Master Plan consistency but also to make recommendations regarding the ordinance.

Mr. Banisch said that a development fee ordinance was previously discussed, and several Board members had pointed out that the ordinance was inconsistent with the Master Plan because of a difference in the categories of development that would require a development fee. The Master Plan only calls for development fees with new home construction, and anticipates certain uses for development fees. Mr. Banisch also noted that the Township had adopted but never implemented a development fee ordinance, and the Master Plan says that development fees should not be collected on additions. Mr. Banisch also said that Ordinance 2019-22 includes additions over 2500 square feet, which makes the ordinance inconsistent with the Master Plan. However, as development fees have the potential to help the Township meet the Constitutional requirement for affordable housing, the Township Committee has concluded that fees should be assessed on additions over 2500 square feet despite the language of the Master Plan. Mr. Banisch said that the Planning Board can recommend adoption of the ordinance because it advances the objectives of the Master Plan to have affordable housing.

Mr. Travisano clarified that the Planning Board has been asked to comment on the ordinance's consistency with the Master Plan. Mr. Banisch said that if the Planning Board only comments on the consistency with the Master Plan, then the Township Committee will not know if there is a recommendation to adopt the ordinance or not. Mr. Warner said that there is a 2.5% fee for commercial development, and the 1.5% fee for residential construction.

Mr. Warner reiterated that the consistency concern is related to development fees on residential additions, and Mr. Banisch noted that the Planning Board responded to residents who oppose development fees on residential expansions. Mr. Warner noted that the Township Committee can still adopt the ordinance as long as there is a corresponding reasons resolution, and he asked Mr. Banisch if he could explain why the Township Committee recommended having the fee on residential expansions. Mr. Banisch said that his understanding is that the Township Committee considered the ordinance as introduced to be a good middle-ground option.

Mr. Kelly said that the Township Committee has considered the public input opposing development fees on small-scale improvements, and the Township Committee is also mindful that in the Settlement Agreement there is a provision that affordable housing costs will be paid through development fees or through bonding and property taxes. Mr. Kelly pointed out that paying affordable housing costs through bonding will have the most impact on all residents, as the debt will be paid through property taxes. He said that the development fee ordinance is limited to new homes, tear downs and substantial improvements. Deputy Mayor Kelly noted that the Township Committee endeavored to protect minor improvements, and said that substantial improvements have the impact of making homes less affordable. He also said that the Township has ongoing costs and expenses related to affordable housing that need to be paid. Mr. Banisch said that when the Township Committee addressed this issue, several residents of older homes said that they want to be able to make repairs without paying for other people's homes. Mr. Banisch noted that the deliberations were difficult, and he said that the Township Committee chose a high threshold for substantial improvements.

Mr. Nelson asked if the owner of a property has to be contacted prior to the creation of an overlay zone. Mr. Banisch said that the owner does not have to be contacted, however in the case of Ordinance 2019-19 the owner is aware and consents to the additional value and opportunity. Mr. Banisch said that the question that the property owner would need to ponder is if the potential new use out-competes the existing use. Mr. Nelson asked if the Fair Share Housing Center has to approve the overlay zone. Mr. Banisch said that the Fair Share Housing Center already approved the Settlement Agreement, and the overlay zone is a step being taken by the Township to comply with the terms of the Agreement. Mr. Travisano said that the property owner would still have the right to come before land use boards.

Mr. Tarasca asked about the logistics of collecting a development fee. Mr. Banisch said that the fee would partially be collected when a permit application is submitted, with the balance collected once the equalized assessed valuation is determined by the Tax Assessor. Mrs. Swartz asked if the fee is based on the projected project. Mr. Banisch said that reconciliations can be made based on actual figures. Mrs. Swartz asked what happens if the project runs out of money or if the project is cancelled. Administrator Hoffmann read aloud the pertinent section of the ordinance.

Mrs. Ozdemir asked how Fairmount Commons was selected for the proposed overlay zone. Mr. Banisch explained that the process for developing a vacant land adjustment requires that layers of lands be considered, and COAH rules were such that lands having the potential for redevelopment are required to be considered. Fairmount Commons was considered because at one point there were several vacancies in the office complex, which suggested a potential for a future change in use. Mr. Banisch also noted that it is a location from which residents could walk to the local business district. Mr. Hoffmann noted that the current occupancy rate is almost 97%.

Mr. Travisano opened the floor for public comment.

1. Rich Matlaga, 36 Dale Drive, said that a comment was made that the property owner does not need to be informed that an overlay zone is being created. Mr. Matlaga noted that several properties are listed in Exhibit B of the Settlement Agreement, and he raised a concern that those properties could become a target for eminent domain should the Fair Share Housing Center argue that the Township is not adhering to the Settlement Agreement. Mr. Banisch said that the Township has some discretion on how to meet the obligation, and the Fair Share Housing Center cannot tell a municipality to use eminent domain. Mr. Travisano noted that only the Fairmount Commons property is being included for an overlay zone. Mr. Warner said that because the overlay zone is a mechanism to satisfy unmet need, the mechanism is satisfied by the adoption of the overlay zone. Mr. Matlaga claimed that the current development fee had been rescinded, and asked if the development fees will cover all of the Township's affordable housing expenses. Mr. Banisch said that is unknown, as it is unknown how much future development will actually take place. Mr. Travisano said that any shortfall will likely be covered by property taxes. Mr. Matlaga opined that the development fees are not likely to cover all the affordable housing costs. Mr. Hoffmann said that it is not known yet how soon the Township will be able to begin collecting fees, and a trust fund has not yet been created. Mr. Matlaga said that if the fees generated are only a small amount, it may not be worth collecting them. Mr. Ruschke said that the Township Committee will be able to make adjustments based on the collection rate. Mrs. Swartz asked about the projected

costs facing the Township, and Mr. Hoffmann discussed the projections used in the development of Ordinance 2019-22. Mrs. Swartz commented on the amount of time it will take to generate funds, and the potential for future adjustment of the development fee. Mr. Ruschke noted that other towns collect fees based on a much lower threshold.

2. Chris Felice, 20 Candace Lane, said that the Planning Board is not discussing the influx in taxes that the Township will receive from new development, and he asked why the Township is not earmarking a portion of the added assessments rather than collecting a development fee. Mr. Felice also questioned the projected amount of development fees to be collected. Mr. Travisano said that the Planning Board's discussion is limited to the consistency of the ordinance with the Master Plan. Mr. Felice asked if his questions matter before the ordinance is approved. Mr. Warner also explained that the Township Committee introduced the ordinance, and that the Planning Board has the opportunity to review the ordinance for Master Plan consistency. He further explained that the Planning Board can give some additional input, and the ordinance will be further considered by the Township Committee for potential final adoption. Mr. Warner also noted that if the portion of the ordinance that is inconsistent with the Master Plan was removed, then a lesser amount of development fees would be collected and more money would have to be collected through general taxation. Mrs. Swartz noted that the Planning Board previously disapproved the concept of collecting fees on additions. Mr. LaConte noted that there is a public hearing for both ordinances scheduled for the December 19th Township Committee meeting, at which the merits of the substance of the ordinances will be discussed. He suggested that any questions about the substance of the ordinance be asked at that time. Mr. Felice asked if the development fee trust fund could grow to a point at which the State could force the Township to use it for additional affordable housing. Mr. Warner said that the obligation is a separate matter from the funding mechanism, and the obligation will not be adjusted based on the revenue collected. Mr. Travisano said that the site or sites to be developed for affordable housing are currently in dispute, however the obligation to provide affordable housing is not in dispute. Mr. Felice said that if the obligation is met and funds are still being collected, could somebody sue the Township to use the fund to create more affordable housing. Mr. Banisch said that the Settlement Agreement with the Fair Share Housing Center requires monitoring of the fund, and it is more likely that the Fair Share Housing Center would ask the State to take away any unused funds. Mr. Ruschke said that the Township could only hope to collect more funds than are needed, and he reiterated that the development fee can be adjusted if excess fees are being collected. He further noted that there are already ongoing expenses to the Township for affordable housing. Mrs. Swartz noted that the New Jersey Supreme Court also has some jurisdictional oversight of the trust fund. Mr. Ruschke said that there is not a likely risk of funds being taken away from the Township. Mr. Travisano suggested that the ordinance be reviewed every few years to make sure that unnecessary fees are not being collected. Mr. Felice asked if the creation of the overlay zone allows the property owner to apply to the Township to fund an affordable housing project. Mr. Banisch said that the overlay zoning allows the property owner to build a higher density residential development with affordable housing if they do so with their own funding, and the funds in the development fee trust would not be available for the project. Mr. Warner noted that such a development would need to have the presumptive set-aside of affordable units.

Seeing no further public comment, Mr. Travisano closed the floor.

Mr. Travisano said that for Ordinance 2019-22, the Township Planner's recommendation is that the Planning Board determine that the ordinance is inconsistent with the Master Plan because development fees would be collected on additions to existing homes. It is further recommended that the ordinance be adopted despite the inconsistency. Mr. Franko noted that the memorandum from Mr. Banisch explains why the adoption of the ordinance is recommended.

Mr. Nelson moved to deem Ordinance 2019-22 inconsistent with the Master Plan but to recommend to the Township Committee that it be adopted as it advances the goals and objectives of the Master Plan. Mr. Kelly Seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Swartz, Nay; Ms. Hagner, Absent; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mrs. Ozdemir, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Aye.

Mr. Nelson moved to deem Ordinance 2019-19 inconsistent with the Master Plan but to recommend to the Township Committee that it be adopted as it advances the goals and objectives of the Master Plan. Mr. Franko Seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Swartz, Aye; Ms. Hagner, Absent; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mrs. Ozdemir, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Aye.

A recess was taken at 8:46 PM.
The meeting was resumed at 8:52 PM.

Memorialization Resolutions

APPROVAL of PB 19-66-1 STERLING/SUN AT CHATHAM, LLC, (Dixiedale) 351 Hillside Avenue, BLOCK: 66, LOT: 1

Mr. Warner noted that the draft resolution was changed to use the term "sidewalk" instead of "walkway" to be consistent with the definitions found in the RSIS Standards. He also said that there were some minor corrections to the resolution. Mr. Warner further said that a change was made to indicate that if approval is not received from the DEP for the perimeter sidewalk as planned, the applicant will need to return to the Planning Board for additional relief. Mr. Warner said that an agreement was made that a designated fallback position be added to the resolution in case the DEP does not give approval, and that the Board will still make the final determination. Mr. Warner reviewed some other language changes in the resolution. An update was also made in reference to minimum 40-inch tall fall protection. Mr. Warner reviewed additional updates to language and conditions. Mr. Ruschke commented on the removal of a condition regarding the size of a culvert, and said that the Township has to comply with RSIS standards.

Mr. Warner asked Mr. Ruschke to explain a change proposed by the applicant to the condition regarding an 8-inch water main. Mr. Ruschke said that the design of the water main is regulated by the Department of Environmental Protection. He also said that there was discussion about potentially extending the water main to the border with Chatham Borough, and that New Jersey American Water will ultimately be responsible for maintaining the water main. Mr. Ruschke

further noted that he does not have a strong opinion whether the main should extend to the border or to the entranceway of the development. He also said that NJAW will extend the main if they deem it appropriate. Mr. Travisano suggested deferring to the judgment of NJAW. Mr. Warner read aloud the proposal from the applicant regarding the water main. Mr. Travisano suggested that the applicant be allowed to proceed as proposed unless otherwise mandated by NJAW.

Mr. Warner addressed language for which a change has been proposed for flat land to be referred to as gently/moderately sloping land, and that all building be arranged to allow for operation of a 35-foot extension ladder subject to review by the Township Engineer and Fire Department. Mr. Warner said that the applicant wants the condition to be removed because that property is all steep slopes. He also said that the Fire Chief is going to get back to Mr. Ruschke about the necessary space for operation of a truck with the ladder. Mr. Ruschke said he will defer to the Chief regarding use of a ladder truck. Mr. Travisano recommended that the condition remain, as it is an item that the Fire Chief discussed in his initial review of the application. Mr. Warner noted that field changes can be made with the approval of the Township Engineer and Fire Chief. Mr. Ruschke said that the wording should be such that he and the Fire Chief have the ability to make such field changes if necessary. Mr. Warner read aloud the revised condition.

Mr. Travisano moved to adopt the memorialization resolution for the Sterling/Sun at Chatham application with the revisions discussed. Mrs. Swartz seconded the motion.

Roll Call: Mr. Travisano, Aye; Mr. Franko, Aye; Mrs. Swartz, Aye; Ms. Hagner, Absent; Mr. Hoffmann, Aye; Mr. Kelly, Aye; Mr. Nelson, Aye; Mrs. Ozdemir, Aye; Mr. Sheth, Absent; Mr. Coviello, Aye; Mr. Tarasca, Abstain.

Mr. Franko moved to adjourn at 9:16 P.M. Mrs. Ozdemir seconded the motion which carried unanimously.

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Gregory J. LaConte
Planning Board Recording Secretary