

**TOWNSHIP OF WEST ORANGE
PLANNING BOARD
MEETING MINUTES
April 5, 2017**

The Township of West Orange Planning Board held a regular meeting on April 5, 2017 at 7:30 P.M. in the Council Chamber, 66 Main Street, West Orange, New Jersey.

Chairman Bagoff called the meeting to order at approximately 7:33 P.M. He announced that notification of the meeting was given to the Township Clerk, and posted on the Township Bulletin Board, sent to the West Orange Chronicle and the Star Ledger, and posted on the Township's website calendar. This meeting has been properly noticed to the public in accordance with the Open Public Meetings Act. No new matters will start after 10:30 P.M.

PLEDGE OF ALLEGIANCE

Chairman Bagoff requested all persons stand for the Pledge of Allegiance.

ANNOUNCEMENTS

Mayor Robert D. Parisi has made the following Board appointment: Mr. Andrew Trenk will be the Mayor's Designee/Class I member, effective immediately through December 31, 2017.

The next Planning Board regular meeting will be April 5, 2017 in the Council Chamber at 7:30 P.M.

OATH OF OFFICE

Patrick J. Dwyer, Esq., Board Attorney, administered the Oath of Office to new Board member, Andrew Trenk.

ROLL CALL

PRESENT: Chairman Robert Bagoff, John Cardoza, Jerome Eben, Tekeste Ghebremicael (7:35 P.M.), Vice Chairman Lee Klein, Michael Keigher, Councilwoman Susan McCartney, Andrew Trenk, Gary Wegner, Ron Weston, William Wilkes II

ABSENT: None.

ALSO PRESENT: Paul Grygiel, Township Planning Director, Patrick J. Dwyer, Esq., Board Attorney, Robin Miller, Board Secretary, Harvey Grossman, Esq., Public Advocate.

ADOPT MINUTES

The minutes of the December 7, 2016 and March 1, 2017 Planning Board meetings were unanimously adopted.

SWEARING IN

Township Professional: Paul Grygiel, AICP, PP, Township Planning Director

RESOLUTION(S)

None.

APPLICATION(S)

PB-17-02/Valley Road Residential, LLC

Block 9, Lots 1, 7, 44, 50 and 56

22-26 Central Avenue and 9-15 Mitchell Street

Application for Extension of Approval PB-14-03

William Sullivan, Esq., Scarinci Hollenbeck, appeared on behalf of the Applicant to request an extension of its previously approved site plan, Application PB-14-03 (April 2014). Township Ordinance required applicant to show good cause with written application for the extension. He submitted the history of issues that had prevented the Applicant from obtaining building permits within the two year time period. He stated the project was now progressing; there had been a recent groundbreaking ceremony for the start of construction of 128 residential units on the Orange side of the property. The Applicant had now offered to include additional affordable housing to the project, which would help the Township meet its affordable housing obligations.

Mr. Weston asked if the Applicant anticipated any significant changes to the original site plan approval; Mr. Sullivan said there were no changes. Mr. Eben asked when the proposed start date for the project was; Mr. Sullivan stated this summer or fall. In response to inquiry from Mr. Cardoza, Mr. Sullivan stated if granted, the extension would be in effect for two more years.

The Public Advocate and the Public had no questions or comments.

Chairman Bagoff closed the public hearing; the Board deliberated.

The Board granted extension of the Final Site Plan Approval for two years from the date of the original expiration. The expiration date is now May 7, 2018.

Conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its

successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of notification or this approval shall be deemed withdrawn.
6. All of the other terms and conditions of the original approval remain unchanged.

The Board voted on the Application as follows:

Motion: Mr. Weston

Second: Mr. Eben

Cardoza: -	Eben: Yes	Ghebremicael: Yes	Klein: Yes
Keigher: Yes	McCartney: Yes	Trenk: Yes	Wegner: -
Weston: Yes	Wilkes: Yes	Bagoff: Yes	

OTHER BUSINESS

Chairman Bagoff stated he had received a correspondence from Sanjeev Varghese, County Engineer, regarding the area of Northfield Avenue from the JCC to Cherry Lane. The County will not be undertaking renovation or modification to the area due to the topography of the land. There is currently no application before the Planning Board; the Board's interest in this matter has ended at this time.

PRESENTATION

AMENDMENT TO ADOPTED FAIR SHARE PLAN

PRESENTED BY: PAUL GRYGIEL, PP, AICP, TOWNSHIP PLANNER

Mr. Grygiel gave a brief recapitulation of the history of the Fair Share Plan originally adopted by the Board in November 2008. He stated in the nine years since the plan was adopted there had been various Supreme Court and Appellate Court decisions, assorted changes and repeals in the COAH rules; with COAH essentially ceasing to function. Nonetheless, the Township still had an obligation to provide affordable housing. Unfortunately, the exact number of units remained unknown; no judgement had been determined regarding Essex County, but the Township was seeking to establish its number. In the meantime, the Township had been presented with an opportunity from Valley Road Residential at its site on Central Avenue. Shirley Bishop, (the Township's Affordable Housing Consultant), had prepared the Amendment. It would provide the Township with 55 units of credit, plus any bonuses available for rental housing, smart growth, and various other transit oriented development projects yet to be determined. While the approved site plan would not be changed, the Township was proposing to amend the adopted Fair Share Plan to include 100 units of a mixed income rental development, 55 units would be low and moderate while 45 would be market rate units. Of the 55 affordable units, seven would be affordable to very low income households, 21 would be low income and 27 moderate income. The owner would be filing an application for the Mixed-Income Nine Percent Tax Credit Round on May

2, 2017. The Township would commit \$3 million from its Affordable Housing Trust Account to subsidize 40 of the 55 affordable units. If the Board chooses to approve the changes, the Master Plan Housing Element and Fair Share Plan would be amended to incorporate this particular development to ask for the 55 units of credit plus bonuses to count as compliance with COAH regulations.

In response to inquiry from Mr. Dwyer, Mr. Grygiel confirmed that the Township was currently involved in COAH litigation and if this plan was adopted the units would be counted as part of the consideration. Mr. Grygiel stated the project also made good planning sense; it was close to transit, jobs, stores and services. It should also help with revitalization of the Valley area.

Councilwoman McCartney stated the Fair Share Housing Center sent the Council an obligation of 1,362 units for the Township and a subsequent 30% reduction of that number; the Township was also currently in mediation regarding a development application, and there was no vacant land, there would also be credit for those factors. She stated the Township would satisfy its affordable housing obligation although the exact number was still unknown.

Mr. Keigher asked if the number of 55 units could change; Mr. Grygiel stated it could, but that would mean another amendment to the plan; it would have to come back before the Board.

Mr. Weston asked how the amendment would fit in to the current Fair Share Plan, would it just become appended. Mr. Grygiel stated that at this time it would just be appended. Ms. Bishop would prepare a fully revised Fair Share Plan but not until settlement discussions were completed. He noted that the rules had changed significantly since 2008. Mr. Weston stated the plan seemed to be a positive step forward for the Township in terms of expanding its commitment to low income housing; Mr. Grygiel concurred. Chairman Bagoff asked if the Township had any idea how close it was to the number it was obligated to provide. Mr. Dwyer stated the number quoted had been provided by the Fair Share Housing Center; the Courts would determine the final number. Mr. Grygiel stated that whatever the final determination, the Township would still claim credits for all units to date including all group homes constructed, the Prism development, a few other completed projects; the 55 units would also be included. The Township would not be starting from zero.

Chairman Bagoff asked if Mr. Grygiel would describe low-income and moderate-income housing; it was his understanding that this type of neighborhood would attract Police, Fire, EMTs, and young college graduates. Mr. Grygiel stated that Affordable Housing was based upon regional limits set by the laws and regulations of the State of New Jersey. Essex County was Region 2; the average was determined by the combined medium income of the County, and then broken up by household size. A moderate-income unit would be affordable to persons earning 80% or less of the medium average; a low-income unit would be affordable to persons earning under 50% or less of regional medium income. Persons had income to qualify for the units - public sector workers, service industry employees, etc. He reiterated that all moderate and low-income housing was for working persons who were unable to afford market rate housing in this part of the State.

Mr. Eben stated other developments were pending in the Township, including one recently seen at the Site Plan Review Advisory meeting, also the Highlands. He asked if those developers were required to provide affordable housing units. Mr. Grygiel stated the Township's current ordinances do not provide for a formal set-aside of affordable units. The current ordinance provided for the Affordable Housing Trust Fund – the 1.5% set aside. However, the Courts had been clear that for any new development, municipalities should set aside 15%-20% of affordable units. For all new developments going forward in the Township (and elsewhere in the State), developers would be obligated to provide a portion of their units to moderate and low income housing or make some sort of contribution to otherwise address the

issue. Due to the Highlands litigation, the percentage of the developer's obligation for affordable housing units had yet to be determined. Mr. Eben stated there were several bills related to this issue pending before the New Jersey Senate and Assembly (S2216, A4659, A4660 and A4661). He asked how those bills would affect the action taken by the Board on the Fair Share Plan Amendment and the Master Plan Update if they were signed in to law. Mr. Grygiel stated no one had an answer regarding the possible outcome of pending State legislation; however, the State Supreme Court several years ago ruled that every municipality had the constitutional obligation to provide affordable units. The ruling had been upheld several times. The problem(s) had been the State legislators' failure to take action in formalizing the procedures; the governor's office had never taken action; COAH had been trying to take action, but was deemed acting illegally. He stated that regardless of the outcome of pending legislation or action taken by the Board, the Township was obligated by law to provide affordable housing. Mr. Eben suggested that Mr. Grygiel review the pending bills and perhaps discuss them with the Board at the next meeting.

Mr. Wilkes asked if there were ratios used to determine the number of units required. Mr. Grygiel stated that while not currently in the ordinances, the COAH Second Round Rules (1993-1999) were currently being used. Based on the size of the development, a rental development must set aside 15% of the units; a sale development must set aside 20% of the units.

Mr. Wegner asked if there were tax advantages associated to either the owned units or owner of the rental units. Mr. Grygiel stated that as it related to this project, he did not know if there were tax abatements; however, taxes were paid on the property and the Township was providing a subsidy for the affordable units.

Mr. Cardoza asked if all bonus credits (i.e. transit oriented) had yet been determined. Mr. Grygiel stated he could list what was typically considered a bonus credit, such as rental bonus credits for non-senior citizen family units (2 for 1), limited to 25% over your obligation. Other bonus credits included transit oriented and redevelopment.

The Public Advocate and Public had no questions or comments for Mr. Grygiel.

Chairman Bagoff closed the public hearing; the Board deliberated.

Mr. Weston stated the Township had the opportunity to satisfy 55 affordable housing units of an approved site plan that was permit ready. He viewed this as a positive thing for the community and suggested the Board adopt the amendment to the Fair Share Plan. Councilwoman McCartney concurred.

The Board voted to approve the Amendment to Adopted Fair Share Plan as follows:

Motion: Chairman Bagoff

Second: Vice Chairman Klein

Cardoza: -	Eben: Yes	Ghebremicael: Yes	Klein: Yes
Keigher: Yes	McCartney: Yes	Trenk: Yes	Wegner: -
Weston: Yes	Wilkes: Yes	Bagoff: Yes	

DISCUSSION

MASTER PLAN REEXAMINATION

PRESENTED BY: PAUL GRYGIEL, PP, AICP, TOWNSHIP PLANNER

(Continued from the March 1, 2017 regular meeting.)

Chairman Bagoff stated the Board had originally discussed having a Subcommittee for the Reexamination of the Master Plan, as done in previous years. However, since there were now many new Board members who did not participate in the last Update, it was his thought that the entire Board should sit as the Reexamination Committee as opposed to a Subcommittee. Mr. Grygiel stated Municipal Land Use Law (MLUL) did not require the formation of a Subcommittee; State law dictated that the Planning Board was the entity required to adopt the Township's Master Plan or Reexamination Report. He said for some topic(s), the Board might want to consider smaller Subcommittee(s). Mr. Weston stated he agreed with the Chairman; he asked for clarification regarding public noticing for working sessions. Mr. Dwyer stated that a gathering of five or more members must be noticed.

Mr. Grygiel stated that subject to Township approval of project funding, he anticipated the process would take approximately six months to complete. Work would be done during regularly scheduled meetings, possibly a few special meetings, and other activities such as stakeholder interviews, meetings with Administration, Building and Planning Departments. His firm had been contracted to prepare the Township's 2010 Reexamination Report. He gave a brief recapitulation of the process, which began in 2009; typically, firm consultants with one or two Board members conducted interviews outside the context of Board meetings. He suggested the Board consider the same format. Daytime meetings would be held with the staff of Township departments/entities including Library, Engineering, Police, Fire, Board of Education, etc. The activity would be more information gathering than a full discussion; it would take two or three days to conduct the interviews during regular business hours. The interviewers would then report back to the full Board. Mr. Grygiel said for the 2010 Reexamination, his notes indicated the Board held at least three public meetings, (possibly more). He opined the Board was considering the process of the Reexamination out of order; as done previously, it was important to introduce the Master Plan Reexamination Report to the Public, explain what it was and what it entailed, and then let the Public speak with some additional ideas. He could also involve the Public by sharing information online. Later, a less formal workshop meeting could be scheduled, maybe earlier in the evening or on a weekend, but by Public Notice. The workshop would allow the Public to look at maps, drawings, and get feedback without being sworn in. Lastly, a final formal meeting where the Report would be reviewed and the Public would be sworn in for the record. He restated it was typical to put information online so the Public could transmit comments by email. Mr. Grygiel confirmed that in order to begin the Reexamination, the Board must request funding for the Project from the Township.

Chairman Bagoff stated that at its March meeting, the Board made a recommendation to send a letter to the Council stating they were going to proceed with a reexamination of the Master Plan under the guidance of Mr. Grygiel and request the Council fund the project.

Councilwoman McCartney stated the Board had many resources it could utilize in gathering information; the Pedestrian Safety Advisory Board and Pleasantdale Civic Association had used students at Rutgers University, students at NJIT had worked on the Natural Resource Inventory for the City of Newark. The Board could also use students from Seton Hall, Montclair State and other universities.

Mr. Eben stated the Board had to hire a firm to assist with the Reexamination; he asked if the Resolution was about the hiring. Chairman Bagoff stated the Resolution was to ask the Council for the funding to conduct the Reexamination; in the interim, the Board could independently hire a firm and wait for funding.

Mr. Dwyer read the draft Resolution, (Attachment A). Chairman Bagoff asked the Board if they had any questions or comments on Resolution. Vice Chairman Klein asked if the Board would advertise for a consultant; Chairman Bagoff stated not at this time.

The Board voted to adopt the Resolution as follows:

Motion: Chairman Bagoff

Second: Vice Chairman Klein

Cardoza:	Yes	Eben:	Yes	Ghebremicael:	-	Klein:	Yes
Keigher:	Yes	McCartney:	Yes	Trenk:	-	Wegner:	Yes
Weston:	Yes	Wilkes:	Yes	Bagoff:	Yes		

Chairman Bagoff stated the last time the Board undertook the Reexamination of the Master Plan the Board sent out a Request for Proposal (RFP) advertisement; several firms submitted proposals, the Board chose Phillips Preiss Grygiel. Eventually Mr. Grygiel became the lead Planner on that 2010 Reexamination; and subsequently he became out Township Planner. Chairman Bagoff advised the Board he had sought the opinion of Township Attorney, if it would be within the within the law and reasonable, to entertain the thought of re-hiring Mr. Grygiel's firm. He stated his reasoning was that Mr. Grygiel also sat on the (Township) Zoning Board; Mr. Grygiel knew what had transpired between 2010 and present day. Chairman Bagoff stated he was very satisfied with Mr. Grygiel's work; personally, the Board in general, the Zoning Board and the Township. Chairman Bagoff stated if an outside firm were hired, it would be starting from zero. Mr. Grygiel had an understanding of the nuances of the Township over the past ten years that would be advantageous and economically feasible to maximize a budget, and the use of his time. Chairman Bagoff stated he would entertain any discussion from the Board on the matter.

Mr. Weston asked for clarification regarding the response from the Township Attorney. Chairman Bagoff stated the response from the Township Attorney was there was no conflict of interest or no reason under the law that the Board could not hire (Phillips Preiss Grygiel). Chairman Bagoff stated he also sought advice from Mr. Dwyer, who said it would be reasonable to get an opinion from the Township Attorney. The Board discussed the issue and agreed it was a good idea to re-hire (Phillips Preiss Grygiel).

The Public Advocate had no objection to re-hiring (Phillips Preiss Grygiel).

(Council President) Joe Krakoviak, 20 Grandview Avenue was sworn in. He asked if there was an actual (monetary) number associated with the Resolution. He stated it would help the Council in determining the budget allocation; the statutory budget hearing was this coming Saturday. Additionally, he understood the value of considering a single proposal, and then deciding on whether to consider other competing proposals, but that process would always leave an unknown. It was his opinion to solicit all proposals at the same time, and then compare what the world offered as compared to just one firm.

Chairman Bagoff stated the Board was now under a time crunch. He recommended the Board take Council President Krakoviak's suggestion under advisement, and still ask for the Resolution to be adopted. He asked Mr. Grygiel to supply the Board with a rough (monetary) number to work backwards with before the next Council meeting. Councilwoman McCartney stated that Mr. Grygiel could submit to Council a proposal stating an "amount not to exceed". Chairman Bagoff requested Mr. Grygiel provide Mr. Dwyer with the proposal amount by the next day. Mr. Weston stated the Board had not yet hired Mr. Grygiel's firm; the Board was looking for a budget number, not an "amount not to exceed"; the Board needed to present a budget number to Council. Chairman Bagoff asked if in the last three years, Mr. Grygiel's firm had performed a reexamination for a municipality that was similar in size to West Orange. Mr. Grygiel stated that in the last five years he had prepared reports as varied as a basic document costing \$7,500, to full a reexamination costing \$25,000-\$30,000. His records indicated the 2010 proposal for the Township was \$40,000, plus additional fees for new maps drawn from scratch as well as sustainability elements. He stated that many elements would not have to be re-done. He estimated the cost of a thorough reexamination would be approximately \$30,000. Mr. Weston suggested the Board make a motion to request a \$30,000 budget. Councilwoman McCartney stated she

understood the fair and open proposal approach; but she thought it would incur increased costs. Chairman Bagoff concurred; he stated that in the interest of the Public, the Board would discuss the matter going forward; however, he wanted the Board to get something on the table. Councilwoman McCartney stated that the Township was not required to provide the Reexamination (Update) until 2020; the Township could budget the \$30,000 over a three-year period.

Chairman Bagoff requested that prior to its Saturday budget hearing; Mr. Grygiel and Mr. Dwyer provide the Council with the Board's budget request of \$30,000 for its Master Plan Reexamination. Councilwoman McCartney stated the Council's next meeting was April 25, 2017.

Chairman Bagoff motioned to approve the Resolution as amended to include a budget request of \$30,000.

The Board voted to on the adopting the amended Resolution as follows:

Motion: Chairman Bagoff

Second: Mr. Ghebremicael

Cardoza: -	Eben: Yes	Ghebremicael: Yes	Klein: Yes
Keigher: Yes	McCartney: Yes	Trenk: -	Wegner: Yes
Weston: Yes	Wilkes: Yes	Bagoff: Yes	

Chairman Bagoff requested Mr. Grygiel would provide a more informed, itemized outline of the budget at the next Board meeting.

Chairman Bagoff motioned to adjourn the meeting; Mr. Eben stated there were members of the Public present that may wish to speak. Chairman Bagoff stated the Public was queried on each Agenda item; he noted that Mr. Eben's disagreement was on the record.

MEETING ADJOURNED at approximately 8:43 P.M.

Minutes adopted September 6, 2017.



Robin Miller, Secretary
Township of West Orange Planning Board

**THE NEXT REGULAR MEETING OF THE PLANNING BOARD WILL BE
WEDNESDAY OCTOBER 4, 2017 AT 7:30 P.M. IN THE COUNCIL CHAMBER.**