Township Council
09-12-2017

TOWNSHIP OF DENVILLE
MUNICIPAL COUNCIL
WORKSHOP MEETING

September 12, 2017

The Meeting was called to order at 7:30 P.M. by Council President Golinski. The Salute to the Flag was recited. Deputy Municipal Clerk Danielle Lewis read the Notice of Compliance with the Open Public Meetings Act and noted that this is a non-smoking facility. The Deputy Clerk requested that all electronics be silenced at this time.

ROLL CALL:
Present: Gabel, Witte, Kuser, Fitzpatrick, Murphy, President Golinski
Absent: Lyden

ALSO IN ATTENDANCE: Thomas W. Andes, Mayor; Steven Ward, Administrator; John Jansen, Township Attorney; Edward Buzak, Township Planning Board Attorney; Jason Kasler, Township Planner

President Golinski advised that he will open the public portion for those people who would like to speak on any topic other than Glenmont Commons, Toll Brothers or affordable housing. After the presentation, there will be another public portion where the public may speak on any topic.

OPEN PUBLIC PORTION
No one wished to be heard.

CLOSE PUBLIC PORTION

Township Planning Board Attorney Edward Buzak provided a brief overview of the history of affordable housing in New Jersey. He stated that in 1975, the Supreme Court determined that municipalities have the responsibility to provide a realistic opportunity for the construction of their fair share of the affordable housing needs. He explained that after a somewhat unsuccessful first round, the case known as Mount Laurel II was decided in 1983 and the mechanism of the builder’s remedy was established. Mr. Buzak explained that under the builder’s remedy, a developer who challenges and proves that the municipality has failed to comply with their constitutional obligation to provide affordable housing is then entitled to have their property re-zoned with a higher density, provided that a substantial number of affordable housing units can be developed under their proposal. Mr. Buzak commented that the builder’s remedy allowed the Court to use developers as surrogates to enforce the constitutional obligations of municipalities.

Mr. Buzak explained that in 1985, the legislature was prompted to adopt what is known as the Fair Housing Act. He said the Fair Housing Act created a framework for municipalities to use to exercise their zoning rights and obligations as they relate to affordable housing. The Fair Housing Act created a State administrative agency known as the Council on Affordable Housing (COAH) which was tasked with the obligation of creating regulations as well as establishing an administrative process for municipalities to revise their zoning ordinances. He added that COAH prepared and adopted regulations that created a numerical methodology for determining municipalities’ affordable housing obligations for 6-year periods. Mr. Buzak shared that COAH was responsible for using information provided by a municipality and the public to make a determination on whether or not a municipality had satisfied its constitutional obligation. He continued to say that if COAH made the determination that the obligation had been met, substantive certification would be granted by COAH, which provided municipalities with protection against builder’s remedy lawsuits. He shared that Denville was granted substantive certification.

Mr. Buzak explained that in 1999, the second round of regulations established by COAH expired and COAH came up with a different methodology and changed the 6-year period to a 10-year period. He said that COAH was unable to adopt valid regulations after 1999 and the Court determined that COAH was not functioning and returned jurisdiction
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over affordable housing to the Courts. Mr. Buzak added that plans previously submitted by municipalities to COAH were transferred to the Courts and declaratory judgment actions were instituted.

Mr. Buzak advised that of the 565 municipalities in New Jersey, over 300 have filed declaratory judgment actions. He said that Denville, along with over 20 other municipalities in Morris County are trying to create a plan to satisfy their affordable housing obligations that they can present to the Court.

Township Planning Board Attorney Buzak shared that the expert for the municipalities, the Fair Share Housing Center’s (FSHC) expert and the Court-appointed Special Master have all determined different obligations, none of which have been validated in any Court yet. He stated that there will be a determination made by the Mercer County Judge soon and the same Special Master will be used for the Morris County trial.

Mr. Buzak explained that Denville is moving forward with its housing plan based on the number provided by the municipalities’ expert and the plan includes properties which are being considered for rezoning. Mr. Buzak said two of the current proposals include 65 total units to be constructed by Glenmont Commons (10 affordable/20 credits) and 116 total units by Toll Brothers, with 24 being affordable housing units.

Presentation of General Concept Plans for Proposed Inclusionary Development of Affordable Housing by Declaratory Judgment Action Intervenor – RAM Associates (Toll Brothers) – 360 Franklin Avenue

Richard Hoff, Esq. (Bisgaier Hoff, LLC) introduced himself as the attorney for Toll Brothers in connection with this project. Mr. Hoff imparted that the property is owned by RAM Associates and Toll Brothers is the contract purchaser. Mr. Hoff then introduced Mr. John Peck from Toll Brothers and Mr. Jay Cruz (ESE Consultants, Inc.) the Engineer for this project.

Mr. Hoff presented Toll Brother’s conceptual plan, which is for the construction of 116 townhouse units. He stated that the original proposal was for 150 total units, with more buildings and more development of the site. Mr. Hoff advised that the Council requested that the affordable housing units be integrated with the market rate units, which is not what Toll Brothers had originally planned, as the integration of the different units is difficult from a construction standpoint. Mr. Hoff said that the task was to design an affordable housing unit that blends in with the market units and he showed a proposed drawing that demonstrates how the units would be integrated. He pointed out that typically when an inclusionary development is built, the density is higher than that which is being presented.

Mr. Hoff described the proposed units within the complex, explaining each would be three and a half stories in height and would include a basement, 1st floor, and 2nd floor. He expounded that the number of bedrooms in the affordable housing units is dictated by state statute, while the number of bedrooms in market units is not regulated. Mr. Hoff said that most units in the development will be 3-bedroom units and some buyers will have the option of a 4-bedroom unit.

OPEN PUBLIC PORTION

Kari Gribbon (359 Franklin Avenue) asked if a new traffic light would be proposed for this area if the development is constructed because the road is already a heavy traffic area due to the proximity of Morris Knolls High School.

Mallary Steinfeld (147 Casterline Road) wanted to know why Toll Brothers decreased the density of their proposed development from 150 units to 116 units. Mr. Hoff said the number of proposed units was decreased to minimize any environmental impact and to accommodate the integration of the affordable housing units.

Michael Anderson (12 Cambridge Avenue) asked Township Planning Board Attorney Buzak if the Township has the ability to find properties on their own and evaluate them for possible rezoning without any involvement with
developers. Mr. Buzak said a municipality can do that but, in order for a plan to be approved, the opportunity has to be realistic so a property owner needs to be interested in either selling their property or developing their property.

Irving Cohen (19 Copeland Road) asked if other municipalities or counties have developed their own housing committees that would evaluate areas for housing development without ratios. Mr. Buzak said that Denville has worked with various groups over the years in previous rounds and that opportunity remains a way to proceed, however, one difficulty lies in the availability of funding. He explained that Morris Plains is currently constructing approximately 100 units on Route 53 in Morris Plains. Mr. Cohen wanted to know if the Township has done a cost-benefit analysis and believes that one should be completed and presented to the residents.

Bob Grant (114 Ridgewood Parkway East) asked Mr. Buzak if he is handling the declaratory judgment action before the Judge, to which Mr. Buzak responded yes. Mr. Grant asked if the three proposed projects (Glenmont Commons, Toll Brothers, and Redmond Press) as well as the recently constructed Estling Village will be presented to the Court as part of the Township’s housing plan. Mr. Buzak said that at this time, the Township would be committed to modify the zoning for these sites and, if the developer presents an application, it would be submitted as part of the housing plan.

Mr. Grant asked Toll Brothers how many parking spots are estimated to be generated for the proposed development. Mr. Hoff said the project proposes a total of 296 parking spots based on State guidelines and regulations. Mr. Grant then asked Toll Brothers if they have investigated the sewer capacity for this site, to which Mr. Hoff responded that Toll Brothers is in the process of retaining an outside source to evaluate the sewer and water capacity at the site. Mr. Grant asked if a traffic study will be conducted for the area and Mr. Hoff disclosed that a traffic study would occur if and when the proposal goes to the Township Planning Board for site plan approval.

Mr. Grant said all of the proposed developments combined would result in a number of 343 housing units, which he believes would impact Township schools, traffic, and the entire community as a whole. Mr. Grant stated that he believes the public should be made aware if a new school will need to be built, if new traffic lights will be required, and what the impact will be on the Township’s infrastructure.

Mayor Andes shared that he empathizes with Mr. Grant’s position on these issues and asked Township Planning Board Attorney Buzak to explain the Court’s position on these areas of concern.

Mr. Buzak explicated that none of the potential impacts mentioned by Mr. Grant are taken into account by the Court when they determine a municipality’s obligation. Mr. Buzak explained that if it is determined that additional sewer lines are needed within the Township, the developer is not obligated to pay for the entire cost, but only his pro rata share. He further explained that any impacts on municipal services such as schools, police, etc. will have to be absorbed by the municipality.

Mr. Grant expressed his opinion that the projected cost to build a new school and any details regarding the same should be disseminated to the public so they are informed of what could occur.

Administrator Ward announced that the Denville Board of Education (BOE) will present their student population analysis, which will include the potential impact of proposed future developments, at the October 3, 2017 Council meeting.

Alex Raybould (145 Casterline Road) expressed his belief that a cost-benefit analysis should be done and then asked the Council if they are willing to entertain any proposals based on a prospective need for a new school.

President Golinski confirmed he is willing to entertain any proposals that are presented to the Administration.

Councilman Kuser advised that the Township is being forced by the Court to build additional affordable housing units and the Township needs to move forward with the Court. Mr. Kuser noted that all of the developers have reduced
the number of proposed units from their original proposals. He assured the public that no Council member wants additional housing to be built in the Township, but no one has provided an alternative solution to address this situation. He stated his concern is to keep the Township from losing immunity from builder’s remedy lawsuits.

Township Planning Board Attorney Buzak said that the Township avoided builder’s remedy lawsuits by filing the declaratory judgment action and now has to pursue the declaratory judgment action diligently and vigorously or the Township runs the risk of having its immunity revoked and therefore being vulnerable to a builder’s remedy lawsuit.

Councilman Murphy asked Mr. Buzak if the Township could wait before agreeing to any development proposals until after the affordable housing obligation has been determined by the Court? Mr. Buzak said the Court is only satisfied when a municipality demonstrates they are trying to meet their obligation.

Mr. Raybould asked if the Toll Brothers proposal was always for “for-sale” units and asked them to elaborate on the steep slopes on the property. Mr. Hoff responded they have always proposed “for-sale” units. Mr. Hoff then explained there are steep slopes on the site and stated that the units shown in the conceptual drawings have been located to avoid the steep slope areas based on the Township’s ordinance. Mr. Hoff stated this is a conceptual plan which is still being developed with input from both Toll Brothers and Township experts. Mr. Raybould asked for an approximate cost for the market units to which Mr. Hoff said that the sale price of the market rate units has not been determined yet but they anticipate that the base price will start above $500,000 and that the affordable housing unit rates will be established by guidelines for the region established by the State. Mr. Raybould then asked about ingress and egress from the site and Mr. Hoff advised that environmental and steep slopes issues on the site inhibit where access points can be located.

Marianna Lindsay (536 Openaki Road) asked if they are aware of vernal pools on the property. Mr. Hoff stated they will require a Letter of Interpretation (LOI) from New Jersey Department of Environmental Protection (NJDEP) and said that wetland areas have different values which will need to be considered. Ms. Lindsay said Denville BOE had previously looked at this site for the construction of a school and, when they conducted an environmental study, they were told there are vernal pools and endangered species on the site.

Kathleen Gould (87 Woodstone Road) asked what the area of disturbance is in acreage, to which Mr. Hoff stated it is approximately 24 acres. Ms. Gould asked if the proposal complies with the Residential Site Improvement Standards (RSIS), to which Mr. Hoff explained that, as conceptualized, he believes that it does. Ms. Gould then asked the assumed distance of the buffers shown in the conceptual plan of the development, which she understands require NJDEP approval, to which Mr. Cruz stated they assumed a 50-foot buffer. Ms. Gould further asked if additional NJDEP permits or any variances are required for this project. Mr. Hoff responded that it is unknown if additional NJDEP permits or other variances would be required.

President Golinski advised that there is nothing before the Council for approval at this meeting. This is a presentation of conceptual plans to the public. He stated that if this does go forward, a zoning change would be required, with a public hearing, planning board review, etc.

Mr. Buzak confirmed that a zoning change would be accomplished because of a settlement being reached based on the conceptual plan being currently presented.

Mallary Steinfeld (147 Casterline Road) asked if the Township housing plan submitted to the Court could be amended without impacting the Township’s immunity and Mr. Buzak replied to Ms. Steinfeld that it could. She then asked if it would be better to fund a limited number of affordable housing units instead of allowing a developer to construct market rate units and integrated affordable housing units.
Mr. Buzak confirmed that would be a policy decision and would most likely still require a zone change to allow for higher density construction.

Amanda Gray (140 Franklin Road) asked the current zoning of the property, to which Mr. Hoff responded it is located within the Township’s R-1 zone. Ms. Gray asked if they plan to clear any of the trees on the property and Mr. Hoff said some of the trees would be cleared to develop the site. Mr. Hoff said a tree survey would have to be submitted to the Township Planning Board. Ms. Gray asked if an environmental impact analysis had been done by Toll Brothers, to which Mr. Hoff answered that it had not.

Councilman Kuser asked how many single-family homes could be built on this property in the R-1 Zone. Township Planner Kasler estimated 38-40 homes could be built at this location and confirmed there is no limitation on the number of bedrooms allowed in this zone.

Councilman Gabel asked if fencing would be used to establish the borders of the property, to which Mr. Hoff said that generally Toll Brothers prefers to use natural landscaping as buffering instead of fencing. Mr. Gabel asked if there are amenities proposed for the development, to which Mr. Hoff said a clubhouse and pool have been proposed. Mr. Gabel asked if there would be a security gate house at the proposed development, to which Mr. Hoff said no.

Councilman Murphy asked for clarification on the number of units and the number of bedrooms per unit proposed. Mr. Hoff stated that there are 92 market rate units and 24 affordable housing units. He then said that as proposed five (5) of the affordable housing units would be 3-bedroom; four (4) would be 1-bedroom and the remainder would be 2-bedroom units. He confirmed affordable housing units would be evenly distributed between low and moderate-income housing. Mr. Murphy asked if Toll Brothers would continue to negotiate with the Township regarding the overall composition of the units. Mr. Hoff said the number and type of the affordable units is set by state statute and is therefore non-negotiable and that they have been negotiating with the Township and the concept plan presented is what they are currently proposing. Mr. Murphy asked if Toll Brothers would be willing to convert any of the proposed ninety-two units into 2-bedroom units and Mr. Hoff said it would be very unlikely.

Councilman Kuser said that the Regency development was very successful and asked if another 55 and older development could be created. Township Planner Kasler explained the Township has maxed out on senior housing credits.

Councilman Fitzpatrick said that performing studies, which will have no bearing on what the Courts are imposing, is costly. Mr. Fitzpatrick stated that if the Township were to build developments without the participation of developers, they would need to front the costs themselves and would have to have a large budget and therefore this is a more suitable approach for cities. He said he believes that Chatham has a citizen advisory committee on affordable housing and stressed that affordable housing is a very complicated matter.

President Golinski re-opened the public portion.

Mallory Steinfeld (147 Casterline Road) asked if the Township has maxed out on rental bonus credits, to which Mr. Kasler confirmed that under the plan submitted the Township has maxed out the rental bonus. Ms. Steinfeld asked if Glenmont Commons could be asked to change their proposed development to for-sale units instead of rental units and Mr. Kasler said the Township would then not receive the bonus credits. She then asked about Estling Village, to which Mr. Ward responded that Estling Village is all rental units and the Township received 13 bonus credits for the affordable units there. Ms. Steinfeld asked why the Township would want Glenmont Commons to be rental units if the Township has 10 years to meet its obligation. Mr. Kasler stated that the advantages associated with rental units...
decreases once you have a certain number of rental units. He also explained that rental units only require a 15% set aside and not the 20% required for “for-sale” units.

Bob Grant (114 Ridgewood Parkway East) asked Toll Brothers how they came to select this site for their proposed development. Mr. Hoff said that Toll Brothers finds site opportunities in many ways such as through real estate brokers, lawyers, etc. Mr. Grant asked who owns the property, to which Mr. Hoff responded that RAM Associates owns the land.

CLOSE PUBLIC PORTION

Councilman Fitzpatrick said interest was previously expressed several years ago in constructing 400 units at this site.

President Golinski stated that, with regard to the Township pursuing an independent party to create a 100% affordable development, the affordable housing would then not be integrated and he feels strongly that affordable housing should be located throughout the community.

Administrator Ward advised that they contacted Township of Parsippany Troy-Hills regarding Glenmont Commons and that letters and documents pertaining to the application made by Glenmont Commons to Parsippany Troy-Hills in 1996 were located and distributed to Mr. Buzak and Mr. Kasler. He noted that no determinations have been made as to the contents of the file.

The Council went into Executive Session at 9:10 P.M. upon approval of the following Resolution. It was announced that no further action would be taken following the Executive Session.

R-17-208: Resolution Authorizing Executive Session to Discuss Collective Bargaining Negotiations

MOTION TO APPROVE R-17-208:
MOVED BY MEMBER GABEL, SECONDED BY MEMBER KUSER
AYES: GABEL, KUSER, WITTE, FITZPATRICK, MURPHY, PRESIDENT GOLINSKI
ABSENT: LYDEN

The Council came out of Executive Session at 10:04 P.M.

MOTION TO ADJOURN
MOVED BY MEMBER WITTE, SECONDED BY MEMBER KUSER
AYES: UNANIMOUS
ABSENT: LYDEN

The Meeting adjourned at 10:05 P.M.

Danielle M. Lewis
Deputy Municipal Clerk