



BOROUGH OF EAST RUTHERFORD PLANNING BOARD MEETING MINUTES MAY 8, 2017

A meeting of the East Rutherford Planning Board was held on **May 8, 2017** at 7:00pm at the Borough Hall, located at 1 Everett Place, East Rutherford.

ROLL CALL

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| <input checked="" type="checkbox"/> Carmen Polifronio, Chairman <input checked="" type="checkbox"/> Kaz Dabek, Vice-Chairman <input type="checkbox"/> Mayor James L. Cassella <input checked="" type="checkbox"/> Councilman Saverio Stallone <input type="checkbox"/> Robert Roth <input checked="" type="checkbox"/> Joseph Morris <input checked="" type="checkbox"/> John Fusco <input checked="" type="checkbox"/> Michael Homyachak, Mayor's Alternate | <input checked="" type="checkbox"/> John Giancaspro, Secretary <input checked="" type="checkbox"/> James Novello, Attorney <input checked="" type="checkbox"/> Mark Everett, Planner <input checked="" type="checkbox"/> Glenn Beckmeyer, Engineer <input checked="" type="checkbox"/> Robert Regan, Special Monitor |
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Denotes in Attendance

The meeting was called to order by Chairman Carmen Polifronio, followed by the Pledge of Allegiance.

APPROVAL OF MEETING MINUTES

| APPROVAL OF MINUTES OF APRIL 10, 2017 | | | | | | |
|--|-----------------|---------------|------------|-----------|----------------|--------------------|
| MEMBER | MOVED BY | SECOND | AYE | NO | ABSTAIN | NOT PRESENT |
| Polifronio | | | X | | | |
| Dabek | | | X | | | |
| Cassella | | | | | | X |
| Stallone | X | | X | | | |
| Roth | | | | | | X |
| Morris | | X | X | | | |
| Fusco | | | X | | | |
| Homyachak | | | X | | | |

APPLICATIONS

DOCKET #16-005

Application for Preliminary and Final Site Plan Approval

10 Morton, LLC

10 Morton Street

Block 8, Lot 4

Applicant seeks preliminary and minor site plan approval to construct a 76-unit multi-family affordable housing residential development.

Mr. Brian Chewcaskie, Attorney for the Applicant came forward to reintroduce the application to the Board and noted that following the last meeting, copies of the Applicant's traffic study, planning study, and environmental response were provided to the Board. He also noted that responses were provided to Mr. Beckmeyer, as well as a drawing of the 12 inch clay pipe. He explained that the Applicant had no further testimony but may have rebuttal based on the Objector's witness.

Mr. Adam Faiella came forward representing Lester Entin Associates, Objector to the application. Mr. Faiella called upon Mr. Eric Keller, a professional engineer and planner to provide testimony on the application. Mr. Keller was sworn in.

Mr. Keller testified that he had reviewed the Applicant's plans, reports, traffic study, and stormwater management plan. He also noted he visited the site on January 27th, April 10th, and April 24th, and a member of his office visited the site on a date in February. He further noted that he had attended the February and April meetings of the Planning Board.

Mr. Keller began his testimony by stating he felt the application did not meet the State and Borough's standards for stormwater management, specifically as it relates to the rules governing water quality and quantity controls. He testified that he believed that existing runoff is not minimized and there is inappropriate infrastructure and an inadequate proposed detention system design to handle the site's stormwater. He pointed out that the application proposed elimination of an existing berm which would present an issue to the adjacent property owner.

Mr. Keller explained that the Applicant is required to reduce runoff based on calculations of existing conditions and post-development conditions. He expressed his opinion that the Applicant was overstating the current runoff calculations by improperly classifying the soil classification, calculation of times of concentration, and modeling of the topographic conditions. He felt that these together reduced the runoff by 10-20%, thereby reducing the difference between pre- and post-development conditions.

Mr. Keller presented Exhibit O-1 which depicted seven photos and topographic maps of existing conditions. Based on the exhibit, Mr. Keller explained that the entire site was not entirely gravel as previously testified by the Applicant's professionals, and there were areas of vegetation and trees. He noted that the conditions presented by the Applicant in comparison to his observations

change the perceived run off. He expressed his opinion that three quarters of the site should be considered brush in poor condition, and the remaining quarter should be considered gravel.

Mr. Keller further testified that he felt that the Applicant had not properly calculated the time of concentration and had significantly underestimated. He explained his position by stating that the Applicant had used a point at a steeper area of the property, where a point further on the site should have been utilized. He noted that by doing so, the Applicant had lowered the existing condition.

Mr. Keller introduced Exhibit O-2, a photo array of site conditions and a color coded map of where the pictures were taken from. He explained the colored areas, specifically noting the red area was a low area. He also called attention to the existing berm area and explained elevations throughout the drawing. He further explained that a channel was present on site that provided an area of runoff from the Applicant's property to the adjacent property.

Mr. Keller continued by stating that the 12-inch clay pipe that has been discussed at previous meetings is inadequate to handle runoff of what is on-site today. Mr. Dabek asked if Mr. Keller felt a dedicated stormwater line should be installed. Mr. Keller explained that he felt it should be replaced to increase capacity or a detention system should be designed to meter out the runoff from the proposed development. Mr. Keller also stated that the off-site runoff must be accounted for in determining the appropriate drainage.

Mr. Keller introduced Exhibit O-3 which compared the allowable runoff rates and noted the Applicant's values are higher than they should be under current conditions, which would reduce the requirement post-development and would negatively impact his client's site.

Mr. Keller discussed the proposed outlet structure and explained that the structure will meter off runoff to the existing 12 inch pipe. He stated his opinion that this was inadequate because the downstream capacity was insufficient and calculations did not account for runoff from other sites. He explained that once the system was overburdened, the system would spill on to a grass area on the Applicant's site which would then runoff on to his client's site which is at a lower elevation. He commented that the detention on site should be designed to four times the size of what is already proposed.

Mr. Keller introduced Exhibit O-4 which was a color coding of the existing stormwater management system.

Mr. Keller introduced Exhibit O-5 which was the Objector's site plan dated August 12, 2010 with a revision date of March 2, 2011 showing Mr. Keller's client's property, and noting the location of the 12 inch drainage line. Mr. Keller pointed out the significantly lower elevation of the Tenant A space on the plan, in comparison to the application site.

Mr. Keller continued by explaining that the proposed plan included removal of a pre-existing berm, which would create a negative impact on his client's site. He explained that the berm as it currently

exists is mature with vegetation and reduces runoff to his client's site. He noted removal would create an increase in sheet runoff and provide a negative impact on his client's property and tenants' ability to operate.

Mr. Keller testified that he did not believe the Applicant was meeting stormwater regulations as it pertained to quality control, specifically total suspended solids. He referred to Exhibit O-1 and noted that it was not reasonable to consider the entire site gravel and therefore to consider the site impervious. He noted that gravel is considered pervious by NJDEP regulations, unless testing is done and demonstrated proof is provided.

Mr. Keller introduced Exhibit O-6 depicting pre-existing ground cover based on the information provided from PS&S's survey. He noted that the application provides a 1 ½ increase in impervious surface, which therefore requires water quality treatment which has not been provided.

Mr. Keller introduced Exhibit O-7 a flood hazard exhibit depicting the floodplain in comparison to the site. He argued that the Applicant was not using the proper elevation, and areas of the proposed building are below the required elevation (19). He noted that as proposed, access to the site could be impeded by flood water and Net Fill requirements could not be met based on the need to raise building elevations.

After a short recess, Mr. Keller continued his testimony with Exhibit O-9, depicting the Access Easement along the properties. He explained that the western driveway to the proposed development, which would be highly traveled to gain access to the parking garage, would require use of the easement. He noted that there was no consent by his client to allow such access.

Mr. Keller introduced Exhibit O-10, a site plan with driveway sight distances and six photos taken on January 27, 2017. Mr. Keller noted that sights are blocked by vegetation and trees and the site cannot provide 200 feet of sight distance to the east. He also noted that there is insufficient sight distance to the west from the proposed stop line, and an existing gate and fence line block the view to 50 Morton Street. He also explained that vehicles exiting his client's site will have difficulty see vehicles exiting the Applicant's site.

Mr. Keller testified that the Applicant proposes to improve the driveway to RSIS standards, however, RSIS should not apply because the driveway is shared and services a commercial/industrial area, and the Applicant should follow the Borough's requirements.

Mr. Keller testified that that a traffic count was performed by his office between the hours of 7am and 5pm, resulting in 235 vehicles, of which 120 entered his client's site and 115 exited his client's site. Of those vehicles, 32% represented truck traffic. Mr. Keller noted that based on the dimensions of those vehicles, improvements to the driveway should be to the 50 foot requirement, and not the 24 foot as proposed by the Applicant. Mr. Keller also introduced Exhibits O-12, O-13, and O-14 which depicted driveway truck accessibility and the driveway area occupied by

different size trucks. Mr. Keller noted that based on these exhibits and the space occupied by exiting truck traffic, the driveway was inadequate to accommodate new vehicle traffic.

Mr. Keller addressed a previous concern of emergency vehicle access and noted that the Applicant's traffic engineer's proposed improvements to the Morton Street / Chadwick Street bollard area would be insufficient because the intersection was east of the property and would require using other properties during flood conditions.

Mr. Keller also noted that there was no internal connection between the Applicant's proposed parking area, and pedestrian improvements in the area of Chadwick Street and Morton Street would require work within the easement area.

Mr. Homyachak questioned as to why there has been no flooding conditions observed in the area if the system is currently inadequate. Mr. Keller responded that runoff is stopped by a retaining wall, and new pipes will go into the existing 12 inch pipe which will create a negative condition and exceed the capacity, creating an overflow / sheetflow condition.

Mr. Homyachak asked Mr. Keller how he delineated the easement, to which Mr. Keller responded he did a survey and conducted research. He showed on Exhibit O-5 that a 20 foot strip ran along Lots 26, 27, and 28, and the remainder widens into Lot 9. He explained that the western edge of the driveway is within the easement.

Mr. Chewcaskie cross-examined Mr. Keller, beginning by noting differences on Exhibits O-5 and O-9 as it relates to the access easement. Mr. Keller disagreed with Mr. Chewcaskie's analysis of the easement.

Mr. Chewcaskie asked if stormwater conditions were addressed in the Objector's last application to the Board, to which Mr. Keller stated he was not involved in the application and was unaware.

Mr. Chewcaskie asked Mr. Keller to explain why RSIS would not apply to this application. Mr. Keller stated it would not apply because it is pre-existing and that the driveway is for commercial/industrial use, not residential. Mr. Chewcaskie pointed out that the Applicant was seeking to develop a residential building which would apply to RSIS, and noted improvements to the driveway for the commercial/industrial use were not the Applicant's responsibility.

Mr. Chewcaskie questioned the traffic count conducted by Mr. Keller's office, and noted that the Applicant had not been provided any type of report or data that assisted in developing Mr. Keller's testimony. Mr. Faiella stated that the Objector could provide a report and back up data. Mr. Chewcaskie asked if it was possible to have more truck traffic than cars, to which Mr. Keller responded that it was possible but unlikely.

Mr. Chewcaskie asked Mr. Keller questions related to the stormwater testimony he had provided, specifically, if the Borough and NJDEP regulations are in alignment, to which Mr. Keller responded they are close in matching.

Mr. Chewcaskie asked if Mr. Keller believed a retention system four times greater than what was currently proposed could be achieved on site. Mr. Keller responded it may be feasible but questioned whether there was enough room and if it would be cost effective.

Mr. Chewcaskie asked Mr. Keller what the weather conditions were 2 days prior to the photos taken in April. Mr. Keller did not know.

Mr. Chewcaskie asked Mr. Keller if he felt water quality measures could be added into the stormwater management system. Mr. Keller stated they could be but were not currently included in the design.

Mr. Chewcaskie asked Mr. Keller if the NJDEP would make the final determination of the flood hazard area and elevations. Mr. Keller stated yes.

Mr. Chewcaskie asked if Mr. Keller had physically observed physical ponding of water on the Objector's site, to which Mr. Keller explained he had observed evidence of water flow from the Applicant's site to the Objector's, essentially leaves and vegetation pushed against the fence.

Mr. Chewcaskie asked Mr. Keller if he agreed with the Applicant's calculation of the off-site runoff calculations and what the applicant was required to do to manage offsite runoff. Mr. Keller stated he agreed with the calculations for the most part and the Applicant would be required to provide a means to convey. Mr. Chewcaskie asked if piping to a connection of an existing system would meet that requirement, to which Mr. Keller agreed that would be acceptable. Mr. Chewcaskie followed up asking if the Applicant would be obligated to improve off-site conditions, which Mr. Keller stated it would not.

Mr. Chewcaskie concluded his cross-examination. Mr. Faiella noted that Mr. Keller had referenced a survey during cross-examination and he asked that the survey be marked as Exhibit O-16.

Mr. Faiella asked Mr. Keller had ever considered hypothetical systems or site conditions during his analysis, to which Mr. Keller stated he had not. Mr. Faiella asked if he believed the Applicant's stormwater system as designed will be sufficient. Mr. Keller stated he did not believe so.

Mr. Faiella asked if the residential and commercial/industrial traffic could be separated. Mr. Keller stated it could not.

Mr. Faiella concluded testimony from the Objector.

The Board discussed various items and agreed that it needed additional time to consider the testimony provided by the Applicant's witnesses, as well as the Objector's before reaching a decision. The Board requested additional information be provided to the Board, including a more delineated explanation of the easement. The Board asked that Mr. Beckmeyer provide a report to the Board regarding the testimony of both sides, as well as his professional opinion.

Councilman Stallone moved to open the meeting to the Public. Mr. Homyachak seconded the motion and all were in favor.

With no member of the Public wishing to be heard, Councilman Stallone moved to close the meeting to the Public. Mr. Homyachak seconded the motion and all were in favor.

After a short recess, the Board agreed to conduct a Special Meeting on Tuesday, May 30, 2017 to continue the application. Mr. Regan, Special Monitor, advised the Board he would report back to the Court that the Board would convene a special meeting in hopes that a decision would be made.

Chairman Polifronio announced a special meeting would be held on Tuesday May 30, 2017. Mr. Novello noted that the Board Secretary would publish notice in the Borough's newspapers.

OLD BUSINESS

Mr. Novello reported back that he was in conversation with Mr. David Crook to resolve the Eros Licensing Agreement and would refer the Agreement to the Mayor and Council once it was completed.

With no further business before the Board, a motion was made by Councilman Stallone, seconded by Mr. Dabek to adjourn the meeting. All were in favor.

Minutes By:
John Giancaspro
Board Secretary

