

**MILLSTONE TOWNSHIP
PLANNING BOARD
MEETING MNUTES
MARCH 11, 2015**

7:31p.m., Chairman Mitch Newman called the meeting to Order.

The Secretary read the Adequate Notice.

Salute to the Flag.

Roll Call: Present: Grbelja, Bailey, Kurzman, Pepe, Newman, Pinney, Beck and Ziner.
Absent: Kinsey, Kocur and Pado

APPOINTMENT OF PROFESSIONAL PLANNER:

Chairman Newman asked Mr. Fred Heyer to introduce himself to the Board. Mr. Heyer is a partner at the firm of Heyer, Gruel and Associates in Red Bank. They have been retained by the Township and the Board of Adjustment to represent their interests. He stated that their firm's business is 85% in the municipal arena. His strength is dealing with rural municipalities and helping to keep them rural. Chairman Newman explained the interview and selection process.

Chairman Newman made the Motion to appoint the firm of Heyer, Gruel & Associates with Mr. Heyer as the principal Planner and Committeewoman Grbelja offered a Second.

Committeewoman Grbelja advised that she has been in office for 12 years at which time she was happy to bring in Mr. Richard Coppola on board. She explained they had worked hard on the Master Plan and protecting the Master Plan and stated that they made sure that the Township had a COAH plan that was functioning and successful. She offered that she respects him tremendously. She offered that Heyer, Gruel & Associates is one of the groups that came highly recommended from Mr. Coppola. She is happy to have Mr. Heyer and his firm on board.

Roll Call Vote: Newman, Grbelja, Bailey, Pepe, Kurzman, Beck, Pinney and Ziner voted yes to the appointment.

Mr. Heyer thanked the Board.

APPROVAL OF MINUTES: January 14, 2015

Everyone having reviewed the January 14 meeting minutes, Committeewoman Grbelja made a Motion to approve and Ms. Pinney offered a Second. Roll call Vote: Grbelja, Pinney, Beck, Pepe, Bailey, Kurzman and Newman voted yes to approve the minutes.

PUBLIC COMMENT PORTION: 15-Minute Limit

Chairman Newman Opened the public comment portion of the meeting to the public at 7:40 p.m. Seeing no public comment, he closed the open public portion at the same time.

EXTENSION OF TIME:

P14-11 PERL ACRES SOUTH – Block 55, Lot 2, - Located on Route 526. Previously Zoned R-130 consisting of 158.2 acres. Applicant received Preliminary Major Subdivision approval for a 43-residential lot subdivision and 2 lots for Township dedication received 6-25-03. Final Approval granted and Resolution Memorialized 4-11-07. Applicant requested and received extensions of time, pursuant to 40:55D-70, through 7-12-14. Applicant returns to the Board for an additional extension of time through December 31, 2014. Zone is presently RU-P. Carried from 8-13-14; 9-10-14; 11-12-14; 12-10-14, 1-14-15. No additional noticing required.

Peter Klauser, Esq. representing the applicant, appeared before the Board. Mr. Klauser explained to the Board that this is a request for the extension of approvals previously granted. This extension relates to the contract that they have with the State. Mr. Pape had submitted a letter to the Board Chairman outlining the parameters of the contract identifying December 19, 2014 as the date the contracts were signed. The applicant requests that the extension be granted through December 31, 2014. He will bring it to the State and satisfy that condition.

Committeewoman Grbelja concurred with the explanation made by the applicants. She reported that the State has confirmed approvals must be in place on the date that the contract was signed. She has no problem with granting the extension of time through December 31, 2014 so that the contract can be effective and a closing can take place.

Committeewoman Grbelja stated that the funding is available and everyone is committed to the preservation.

Board Attorney Steib stated that Committeewoman Grbelja is correct in that the Board has been looking all along for the State to put something in writing that this approval needed to be in place as of the closing or at some other point in time. He advised that we now have a letter from them stating that December 19, 2014 is that date and we have extended that to December 31, 2014. Attorney Steib, in anticipation of the Board's decision, has put a Resolution together to that affect.

Chairman Newman asked for clarification as to the procedure and Attorney Steib replied that the Board can take action and memorialize the Resolution in one step.

Chairman looked for a Motion to extend the approval up to and including December 31, 2014. Committeewoman Grbelja made the Motion to approve the Extension of Time and Memorialize the Resolution and Vice-Chairman Pepe Offered a Second.

Committeewoman Grbelja stated that she is happy and that this preservation was a long time coming.

Roll Call Vote: Grbelja, Pepe, Bailey, Beck, Kurzman, Pinney, Ziner and Newman voted yes.

Mr. Klouser and Mr. Perlman Thanked the Board.

OLD BUSINESS:

New FCC Collocation Rules:

Attorney Steib had sent the Board an article from the New Jersey Planner (Nov/Dec 2014) advising that the FCC had adopted a few new Rules relating to collocation. In the final paragraph of the article, they set forth items to consider.

Attorney Steib explained that the article defines substantial change and insubstantial change. Attorney Steib stated that, if insubstantial, you have little discretion whether or not to approve a change collocation. If there is a substantial change you do have discretion.

The FCC recommend that Towns develop new forms that require specific information necessary so that when we receive an application, we can look and determine if the change is substantial or insubstantial. If substantial, we know that we have discretion.

The second recommendation is that because they have shot gun time frame, the MLUL provides a 45-day period from the time an application is received to either deem complete or incomplete. If deemed complete, they can go to the Board for a hearing. If deemed incomplete, the administrative officer sends a letter advising of what is needed to deem the application complete. When the applicant resubmits, the 45-day clock starts again.

Attorney Steib advised that this is not the procedure under the new regulations for collocation. There is a thirty (30) day period to deem complete or incomplete. When applicant resubmits, we have a ten (10) day period to re-review. The FCC suggested that the town needs a thorough checklist that contains everything needed to consider the application. The regulations state that if we need anything additional and it is not on the checklist, then we are out of luck. Mr. Steib suggested a new and thorough checklist containing the new timelines.

The Board concurred with updating our checklist and include that as part of our Ordinance.

This is for collocation only not new towers. Engineer Shafai reported that collocation is done administratively, as long as the existing tower is in place, we can approve administratively. He advised that our Ordinance provides a Map of existing towers. An example was that an administrative approval was granted to the existing tower on Backbone Hill.

Planner Heyer stated that if you substantially increase the footprint or the height, it triggers a Board Action.

Vice-Chairman Pepe expressed his concerns about the existing towers in the Township.

The Board discussed and took an informal vote to ask Attorney Steib to prepare a letter to the Township Committee to address this discussion.

NEW BUSINESS:

COAH:

Attorney Steib has circulated a memorandum on the Supreme Court Decision that just was handed down on March 10, 2015. He explained that there are timelines and provided an overview on the new ruling.

COAH did not adopt third round regulations in 1999. In 2004, COAH provided Rules that were found to be unconstitutional and were overturned because they were based on growth share methodology and not based on regional methodology that was articulated in the Fair Housing Act and prior round regulations.

COAH adopted a revised set of Rules that were overturned as well. They were sent back to the drawing Board and the new Rules were not received in Spring 2014 as required. COAH requested and received an extension until October 2014 but they did not keep that deadline. Attorney Steib reported that COAH has consistently done nothing so the Supreme Court made a determination based upon COAH's inaction.

Attorney Steib reported that the Supreme Court took the reins and advised they welcome the Legislature to come back with new Fair Share Housing regulations. At the January 6th COAH meeting, a representative from Attorney General's office reported that COAH has not met and do not intend to meet to look at new regulations. The Supreme Court said that they would take control and appoint Mt. Laurel Judges to the vicinages to handle the matters.

Attorney Steib advised that the Court set up a schedule eliminating any repose based upon the Fair Share Housing Act to those who have submitted for substantive certification or who have been accepted as a party having filed but not yet received the substantive certification.

Attorney Steib stated there are three type of municipalities 1) those who have done nothing under COAH and will do nothing and are and will be subject to builders' remedy lawsuit of which there are 200 municipalities in this category, 2) those towns who have submitted under the third round Rules and were granted substantive certification and 3) those towns who have submitted their petitions but not received certification prior to the Rules becoming invalidated.

Committeewoman Grbelja and Planner Heyer stated that is where Millstone is at. We have submitted two different plans but did not receive certification prior to the Rules becoming invalid.

Attorney Steib provided the timeline includes a 90-day cooling period to allow towns to prepare and get ready and allow the Courts to appoint Mount Laurel Judges. The 90-day period concludes June 8th. He explained after that, there is a 30-day period for municipalities who either have the substantive certification, or those who have filed their petitions, to file for Declaratory Judgment action, asking the Court to grant them immunity from builder's remedy lawsuits.

Attorney Steib advised that within a five month period, towns that show the Courts that they are taking action and adopting ordinances and a Fair Share Housing plan and the like have a better

chance of receiving immunity then towns that take no action. Towns must show they are moving along. He reported that the Court made it clear that immunities are for a finite period of time and the Courts will be watching to make sure towns are proceeding and not sitting back doing nothing. They can take the immunity away and in that case, you can be sued.

Attorney Steib explained that towns have an option to not file for Declaratory Judgment at the end of the 30-day period. The result would be any interested party can file a suit challenging a town's zoning. They cannot ask for a builders' remedy, just challenge the constitutionality of zoning. If the Courts determine the zoning is not constitutional, then the builders remedy follows.

Committeewoman Grbelja advised we did have plan for third round COAH Rules for approx.100 units. COAH came back with a number upwards of 240 units. She explained that the Township revised its plan and filed a lawsuit challenging the new numbers that COAH came up with. The numbers and manner in which COAH made the determination included land that was not available or land that was preserved. The Town proceeded to make the adjustments to the plan in the meantime. She explained that subsequently went by thy wayside but during this entire time, she advised the Township has been working on its housing plan originally started in 2007.

Committeewoman Grbelja explained the locations of specific sites where affordable housing has been constructed or is under construction including the Allen House and the property on Burnt Tavern Road and on Novad Court. She advised that during this time, the Township was always moving forward and continued to increase their affordable housing. She stated that Millstone has viewed as being a model town by the DCA. She is proud of the Township's great reputation.

Committeewomen Grbelja stated that perhaps we should go for the Declaratory Judgment but this will be discussed at the Township Committee level. She reported that Millstone Township has always been proactive and on top of the situation.

Planner Heyer offered that Millstone provides the affordable housing in a way that has not impacted the Township adversely. He explained that the market units kill other towns and but necessarily the affordable housing. Committeewoman Grbelja explained that they had a nasty fight when forced to come up with a project that included putting homes through the Open Space and Rural Preservation areas. She stated that the Township rejected that. She stated that the Planning Board took heat but this was the right answer. She offered that the Township came up with a plans that fits into the rural character of the community and she commended the Planning Board for never losing sight of this. She feels that everyone should be educated as to what the zoning means in the Township and that we have to protect the zoning.

Mr. Steib feels that the Supreme Court has thrown us back twenty years and is making the towns go under the round one and two methodology which numbers may be larger than the numbers under round three. Planner Heyer reported that Dr. Burchell, Director of Urban Planning and Policy Development Program at Rutgers, performed a study. Planner Heyer advised that the numbers may change but for Millstone Township he feels that we are in the ball park with a potential of 20 to 30. Committeewoman Grbelja advised that the Township paid for the RCA's to Asbury Park, meeting their round one and two obligations.

Attorney Steib, stated that the Board may want to create a subcommittee to work with the Township Committee. Attorney Steib discussed the Board's responsibility in this process. Committeewoman Grbelja would discuss this with the Township Committee. Attorney Steib clarified that the Township must file their Declaratory Judgment within 120 days.

Seeing no further business, Vice-Chairman Pepe Made a Motion to adjourn and Mr. Kurzman offered a Second and by unanimous vote, the meeting adjourned at 8:15 p.m.

Respectfully submitted,

Pamela D'Andrea