

MINUTES

CRESSKILL PLANNING BOARD

OCTOBER 12, 2010

Mr. Vaccaro called the meeting to order at 7:40 PM and announced the requirements of the Open Public Meetings Act had been fulfilled.

Members present at roll call: Mayor Romeo, Councilwoman Tsigounis, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Vieni, Mr. Laurita and Mrs. Schultz. Also present were Mr. Paul Azzolina, Borough Engineer and Mr. Steven Schuster, Board Attorney.

Mr. Galdi made a motion to approve the minutes of the September 28, 2010, meeting. The motion was seconded by Mr. Morgan. All present were in favor of the motion. Motion approved.

Correspondence

Letter from Mr. Steven Schuster, dated September 30, 2010, regarding open invoices #657 for Application #1376, #700 for the Open Space Resolution, and #709 for Application #1396, totaling \$2,917.50. Mr. Schuster is looking for payment on these past due invoices.

Vouchers from Mr. Steven Schuster for the Month of August in the amount of \$1,390.45 and for the Month of July in the amount of \$1,978.45. Motion to approve made by Mr. Vieni, seconded by Mr. Galdi. All present were in favor. Motion approved.

Copy of the notice made by Ms. Barbara Nasuto for the Public Hearing to be held by the Planning Board on October 12, 2010 to adopt amendments to the Fair Share Plan as an element of the Borough of Cresskill Master Plan. File.

Notice from the Borough of Demarest Planning Board that on Wednesday, October 13, 2010, they will hold a meeting to adopt and incorporate revisions to the Re-examination of the Demarest Master Plan. File.

Subdivision Committee

Councilwoman Tsigounis had nothing to report.

Report from the Borough Engineer's Office

Mr. Azzolina had nothing new to report.

Old Business

Mayor Romeo noted that we are still holding the Resolution for Mr. Frank DeCarlo, Application #1396, 187 Broadway.

New Business

None.

Public Hearing – Borough of Cresskill Housing Element and Fair Share Plan

Mr. Michael Hakim was present to present the Fair Share Plan. He noted that this is a Public Hearing for a Master Plan amendment. It is an adoption of the revised Fair Share Plan, what's known as the Fair Share Plan Addendum, dated August 18, 2010. This hearing has been properly advertised in local papers, surrounding towns have been notified, copies have been sent to the Bergen County Planning Board, all in accordance with the Municipal Land Use Law of New Jersey. A Fair Share Plan was adopted back toward the end of 2008. Since that time, Mr. Hakim has been actively involved in negotiating with COAH and has gone back and forth. The rules have changed. This Fair Share Plan Addendum is the product of all those negotiations. He will point out the differences by giving a brief synopsis.

Mr. Hakim stated that we thought we had a 10 unit carry-over credit from the second round. At least we did have, at the time. That was the laws in place at the time of the second round. A court decision negated that rule and COAH subsequently took 10 affordable housing credits away from the community. We found ways of getting nine of those back by convincing them that the Medicaid assisted beds over at Sunrise qualified for affordable housing credit, so we got nine of the 10 back. We have had to make other shifts in where the units are going to be. There are two property redevelopments on Union Avenue, the old Bev Bel building and the North Jersey Community Bank, which will have one and two units. The Cresskill Plaza, the Daibes development right on the town square, will have six units and we have a redevelopment plan, which we are calling an innovative approach. Initially we called it an overlay zone. COAH wouldn't buy it or accept it. It was along Broadway. Once we called it an innovative approach, they accepted it. What it is, basically, is that we took the properties on the south side of Broadway and west of Willow Run that are marginally operating and we provided them with an opportunity to redevelop and put affordable housing on the second floor. There is one unit that will take place at the development on the corner of Milton Street and Broadway. All sum total, plus the bonuses we got for the rentals, because they give you bonuses if you exceed the minimum of 25% of your COAH obligation, we were able to get right at the number of our obligation of 50. Also included in that is some accessory apartments. We had a plan in place during the second round for three accessory apartments. That is now six accessory apartments. That is a Borough subsidy, from the Affordable Housing Trust Fund, which is money that can't be used for anything but affordable housing, that would assist a homeowner who chooses to accept up to \$20,000 for a moderate income family and \$25,000 for a low income family, modify their house and put in a separate apartment. That can happen in six different places. To date, from round two, nobody has taken them up on the offer from the three they had available. All total, when you add up all of them, you end up at our total obligation of 50. COAH accepted all of those after a couple years of negotiation. The Borough has received substantive certification.

In order to memorialize that certification (Ms. Nasuto has the certificate in her office), we now have to finalize the various ordinances that are part of the Affordable Housing Plan and those are all done at the Mayor and Council level. They include the Affordable Housing ordinance, the spending plan and there are a whole series of other ones, some minor zoning changes, etc. Also, this includes the Fair Share Plan Addendum. Because this is part of the Master Plan, it is not a Mayor and Council action, it is a Planning Board action. Presumably this takes us through 2018. There was a surprise court case last

week, which threw everything up in the air, but that won't affect our certification. Our certification is in place and whatever happens as a result of the court case and pending litigation and also the actions being debated right now in the Assembly of the Legislative Branch of the New Jersey Government, whatever happens there, we have our certification. That certification is in place through 2018 and that is not going to be taken away from us. We will have an option to revisit it if we should choose to and we might want to. That is something we will look at when we see what the new rules are. The new rules may say instead of a 50 obligation it is 45, in which case we would say it is not worth going through the expense of reworking and going through this process again. But, let's say it is 25, rather than 50, then we might choose to go through the effort.

Mr. Laurita asked about what was passed in August, which they stated everything was held in abeyance and it's up to litigation. He wanted to know how far do we go with this in mind. Mr. Hakim noted that what was passed was the Senate passed Senator Lesniak's bill to completely overhaul affordable housing in New Jersey. They passed that 28-3 and passed it on to the Assembly, with the full expectation that they would pass it right through as the Senate did and they haven't acted. The Assembly had promised to act no later than the end of November and we expect it to be approved and it will hit the Governor's desk and he will sign it as soon as it hits his desk because he is chomping at the bit to change the affordable housing laws. Mr. Hakim explained that while COAH may go away, the underlying court decision that every municipality in New Jersey has an obligation to provide for moderate, low and very low income housing it not going to go away. The rules will change. As far as he is concerned, nothing is ever finalized when it comes to affordable housing in New Jersey.

Mr. Morgan asked what that means to the towns that are not compliant at all. Mr. Hakim noted that they will have to go under some new rules, whatever they may be. He expects that once the Governor signs this S1 bill, the ink won't be dry before all the lawsuits hit the courts. By the Planning Board adopting the addendum to the Fair Share Plan, which was approved in December of 2008, it is being adopted as a revised element of the Master Plan. That will be attached to all the ordinances that have been adopted by the Council, sent to COAH, and that will memorialize our certification through 2018.

Mr. Schuster asked if the ordinances need to be in place before we adopt this addendum. Mayor Romeo noted that they were first read at last week's meeting. Mr. Schuster clarified that we will adopt and memorialize the resolution once all of the ordinances are in place. Mr. Hakim noted that the Fair Share Plan is just a plan. It modifies the Master Plan. This needs to be done right now and not as part of the overall revision of the Master Plan. We have only a week to get all this memorializing information down to COAH. This will be a modification of the Master Plan that was adopted in 2004 and it will be rolled right into the Master Plan that will be adopted in December. Mayor Romeo noted that the ordinances will be voted on next Wednesday, which will finalize this part of it. Mr. Hakim noted that the only thing that we are waiting on is a couple of manuals from Steve Weinberg, who is the administrative agent for affordable housing in the community.

Mr. Hakim noted that this is subject to adopting all the draft ordinances that we submitted and they accepted and said were satisfactory. Once they give us certification, we have to actually adopt them. Mr. Salvatore asked when this whole thing has to go to COAH. Mr. Hakim stated that he thinks it should all go in one package with the Mayor and Council ordinances. It has to be in Trenton by October 22. He noted that we will send it as an adopted addendum and we will send him a memorialization afterward. Mr. Schuster thinks that the actual action is complete once the Board votes. Anything else is strictly bookkeeping. He thinks that the minutes should be sufficient. Mr. Salvatore suggested sending a proposed resolution and a copy of the "draft" minutes. Mr. Hakim thought that would be very helpful. Mr. Schuster noted that he will have a draft resolution by Friday.

Mr. Vaccaro opened the meeting to the public. No public wished to be heard.

Mr. Galdi made a motion to close the meeting to the public. Mr. Vieni seconded the motion. All present were in favor. Motion approved.

Mr. Galdi made a motion to adopt the Fair Share Plan Addendum dated August 18, 2010. The motion was seconded by Mr. Morgan. On Roll Call: Mayor Romeo, Councilwoman Tsigounis, Mr. Vaccaro, Ms. Bauer, Mr. Galdi, Mr. Morgan, Mr. Vieni, and Mr. Laurita all voted yes. Motion approved.

Mr. Hakim stated that it is expected that once the Governor signs the bill that there will be a host of lawsuits. He noted that last week a court case was decided on. They jumped the gun and surprised everybody. You had the Fair Share Housing Center, which are the Affordable Housing advocates on one side and municipalities on the other and what the judge did was throw out basically half the current rules. He said that the laws as they currently stand do not provide a reasonable incentive for developers to actually build affordable housing, so he threw out those sections. He said that using growth share at all, permitting a municipality to basically control their own destiny by how much growth they permit or don't permit is unconstitutional because that would just induce communities to just zone 25 acre lots and not let anybody come into town. He also ruled on some factors in the other direction, against the affordable housing advocates. Everything now has been thrown up in the air because of this judge's ruling and COAH has been given five months to completely rewrite the COAH rules. The judge said that their methods of determining how much housing is actually necessary in the community and how to distribute it among different communities was faulty and he threw that all out and said go back to square one and you have five months to do it. Fortunately, we have our certification.

Other Business

Ms. Hee Sun Ko was present with architectural drawings for 50 Piermont Road. Mr. Scott Kim is proposing to put a grocery store (mainly fruits and vegetables) at this location. The drawings show details of what they are proposing to do to the property. They don't believe that they need any variances. They have 52 parking spaces and according to the plan they are only required to have 39. Their deliveries will be early in the morning.

Mr. Azzolina noted that this drawing is in no way able to satisfy the requirements of our ordinances. Ms. Ko noted that this is just a concept drawing. She pointed out that the mechanicals will be on the second floor. Mr. Hakim asked if there was a residential area neighboring the property and was informed that there was. They were informed to check the zoning for the proper buffer requirements. Mayor Romeo noted that they don't have it now. Mr. Hakim noted that it is a requirement. Ms. Honey Hwang asked what the maximum height the fence could be. Mr. Galdi said that it is six feet. Ms. Tsigounis asked if it was six feet even if it was a buffer between the residential zone and commercial. Mr. Galdi thought it was but informed Ms. Hwang that they need to check with the Building Department to be sure.

Mr. Azzolina explained that they need to file a formal application with the Borough Clerk. She needs 16-18 copies of the plan which needs details. It has to have a site plan which shows grading, lighting, landscaping, a zoning schedule based on an accurate survey of the property. They also need to find out if they need a buffer and what the requirements are for that. He also advised them that they may want to consult with an attorney to prepare the necessary paperwork. He recommended to them about a month ago to consult with an engineer. Mr. Vaccaro instructed Ms. Ko to submit her application to the Borough Clerk.

Mr. Berberoglu, 90 E. Madison Avenue, was present and was wondering what was going on with the water runoff situation on East Madison. He dropped off pictures to the Mayor of the water running down E. Madison on October 1st. He had water in his basement and it is becoming a health problem. He looked at the catch basin across the street and said that it is just a cement box with drainage to nowhere. All the drainage coming down the street is coming into his house. They were fully aware of the water table going in to this. They took all the necessary precautions to provide for the water table. The question that was to be addressed was whether it was a water table issue or the runoff from East Madison. All the water that is in question is basically coming into his house. Mr. Morgan recalled that this was the house that they recommended that putting the garage down there was a problem in the

beginning. He also said that they brought it up a couple of feet from what they originally presented. Mr. Schuster noted that we let them elevate it.

Mr. Azzolina stated that the original recommendation was that a garage under not be constructed on this property, but putting that aside, he was directed by the Mayor and Council to look into the East Madison drainage, which he has done to a limited extent at this time. What he has done is, back in the summer months of 2009, they had done some video inspections of the existing storm drain system east of this property. Basically, what that video reveals is that there is a corrugated metal pipe system underneath County Road that is in very, very poor condition. A lot of it has obstructions in the line. There is a sinkhole in the middle of County Road that, in fact, the County Engineering Department is in the process of repairing. He has spoken to them about extending their work so that the other pipes that he believes are deficient upstream of this property be removed and replaced. Those obstructions may be a partial factor here, in that the water that is supposed to be in a pipe can't make it through the pipe so it is coming up out of the basin and flowing down the street. He would say that minimally they need to replace and repair all the pipes that are defective upstream of his property and then obtain more topographic information on East Madison Avenue, which he has not yet been authorized by the Mayor and Council to do, to define exactly where these extraneous flows are coming from. He wants to look at this further to see what kind of rain flow we had on the day the pictures were taken. He thinks there are things that can be done to improve the conditions here, one of which is putting in an inlet on the other side of his driveway, as was discussed. He also believes that if the water is collected upstream, it wouldn't have the ability to travel down the street and into the driveway as it currently does.

Mr. Berberoglu stated that if you look at the block and the way the block is pitched, it is a severe hump and they are the lowest point of the block and it is basically the whole grade of the street is all basically right at him. Mr. Azzolina recommended that they obtain some additional topographic information, which he talked to Mr. Berberoglu's engineer to see if he happened to have it as part of his design, but apparently he doesn't. In order for him to come up with an intelligent design, he would need the authorization of the Mayor and Council to do a survey on the road and come up with a system that works. Mayor Romeo noted that they are not going to be able to do anything until the County does something. Mr. Azzolina agreed. He recommends that the County make their repairs. They are aware of the one pipe section. He hasn't had the opportunity to share the video he has with them of the other sections of pipe. It is a little bit of a maze there. The pipe system all goes at weird angles and intersect, but basically the lines from County Road then changes to a concrete pipe and that pipe system is clean and functioning. To the west of this property, the Borough, last summer, replaced some failing pipes systems that were metal pipe and replaced them with copper pipe and that system is now functioning. Between the two things, they need to see exactly what is going on with the County system and then find out what is going on with the grading of the road to prevent the water from going into their property. The other issue they had was the bottoming out of the vehicles and the other quick fix would be to elevate the driveway apron, but given the vehicles, that would be a problem. Mr. Berberoglu took Mr. Azzolina's advice with the sand bags. Mr. Azzolina also informed him of floodgates that you can get to put across the driveway garage openings to stop the water from entering the garage.

Mr. Berberoglu asked about the catch basins across the street in the wetlands. Mr. Azzolina said he would make the recommendation to put a camera and make sure those pipes are not clogged. There definitely needs some additional investigation that can be done internally with the DPW and that is the recommendation that he makes to the Mayor and Council.

Mr. Galdi asked about the catch basin on the low side. Mr. Azzolina noted that initially the function of that catch basin was to gain access to the overflow piping that we directed them to install, because their sump pump system discharges to the seepage pits in the rear yard that the overflow then goes into the municipal storm drain. Initially they were just proposing to drop into the top of the pipe, which doesn't allow you to maintain that pipe. We recommended that a drainage structure be installed there for the primary purpose of maintenance to the pipe. Mr. Galdi asked if the catch basin was on the uphill side. Mr. Azzolina noted that, theoretically, that would catch the water. Mayor Romeo authorized Mr. Azzolina to do the topo on E. Madison, but he knows they are not going to get anywhere until the County jumps in. Mr. Azzolina stated that he has already spoken with the County Engineer and he will provide them with a

copy of the tape that he knows shows deterioration of the outlet that is causing the construction at this time, but he knows they have some additional money so they may be able do more. Mr. Azzolina noted that the pipe on the applicant's side of the street is actually in good condition. It may be on the other side of the street that there is a problem.

Mr. Berberoglu thanked the Board for their time.

Mr. Vaccaro opened the meeting to the public. No public wished to be heard.

Motion was made by Mr. Galdi to adjourn the meeting at 8:35 PM, seconded by Mr. Vieni. All present were in favor. Motion approved.

The next four regular Planning Board meetings are scheduled for October 26, November 9, November 23, and December 14, 2010, at 7:30 PM in the Borough Hall.

Respectfully submitted,

Carolyn M. Petillo
Recording Secretary