

**HILLSBOROUGH TOWNSHIP PLANNING BOARD**  
**PUBLIC MEETING MINUTES**  
**March 22, 2012**

Chairman Sireci called the regular Planning Board meeting of March 22, 2012 to order at 7:30 p.m. All stood for the Pledge of Allegiance. The meeting took place in the courtroom of the Municipal Complex.

Chairman Sireci announced the meeting has been duly advertised according to the Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law").

**ROLL CALL**

Deputy Mayor Gloria McCauley - Present  
Greg Burchette - Absent  
Committeeman Frank DelCore - Present  
**Steve Cohen, Vice Chairman** - Present  
Tod Mershon, *Secretary*- Present  
Neil Julian - Present

Sam Conard - Absent  
**Steven Sireci, Jr., Chairman** - Present  
Marian Fenwick - Present  
Daniel Marulli (Alt. #1) - Present  
Robert Peason (Alt. #2) - Present

Also present were Robert Ringelheim, P.P., A.I.C.P., Township Planner; Phillip George, Esq., Board Attorney (Eric M. Bernstein & Associates); Eric M. Bernstein, Esq., Board Attorney (Eric M. Bernstein & Associates); William H.R. White, III, P.E., P.P., C.M.E., Board Engineer (Maser Consulting, P.A.); John Jahr, P.E., Board Traffic Engineer (Maser Consulting, P.A.); and Lucille Grozinski, C.C.R.

**ACCEPTANCE OF MINUTES**

March 01, 2012 - Executive Session

A motion to approve was made by Committeeman DelCore, seconded by Dr. Marulli.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Dr. Marulli – yes; Mr. Peason – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci - yes. Motion carries.

**ACCEPTANCE OF RESOLUTIONS**

None

**PLANNING BOARD BUSINESS**

None

**SPECIAL COMMITTEE REPORTS**

None

**BUSINESS FROM THE FLOOR**

None

**CONSIDERATION OF ORDINANCES**

None

**PUBLIC HEARING – SUBDIVISION/SITE PLAN APPLICATIONS**

***County of Somerset – CARRIER CLINIC*** – File #12-PB-02-MR – Block 176, Lots 14.01, 15, 15.01, 16 & 16.01 (formerly known as Block 176, Lots 14.A, 15, 15.A, 16 & 16.A) – East Mountain Road. Applicant seeking Minor Subdivision approval; Waiver for payment of application and escrow fees; and Waiver for submission of an Environmental Impact Statement.

**Exhibits:** **A1** – Color Index Map  
**A2** – Color Aerial Photo

William Robertson, Esq., appeared as Somerset County Counsel on behalf of the applicant. This application is for a minor subdivision in the AG Zone. Carrier Clinic is the owner of a large piece of property, approximately 367 acres, approximately 99 acres in Hillsborough Township and the remainder in Montgomery Township. The County of Somerset is the contract purchaser of approximately 256 total acres for the purpose of open space preservation. The County wishes to acquire 81 of the 99 acres located in Hillsborough Township. The County seeks approval to reconfigure those lot lines to carve out a 17 acre parcel which will be retained by Carrier Clinic in connection with their existing solar facility. A similar application has been filed in Montgomery Township for the remaining acres.

Thomas J. Boccino, P.E. of the Somerset County Engineering Department was sworn in and gave the following testimony:

Exhibit A1 is a composite map which shows the parcels the County is looking to purchase in green. Everything above the black line is in Hillsborough Township and the subject of this application. Similarly, Exhibit A2 is an aerial photo with that same area crosshatched in yellow. The area in green is land that is currently held by Somerset County as open space as part of the

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Sourland Mountain Preserve. The land to be purchase from Carrier is to be incorporated into the Sourland Preserve for

passive recreational use. For the foreseeable future we have no plans of development but development may include trails. The current use of the Carrier Clinic property to remain is for a solar field. There is also a small residence in the northwest section along the curb on East Mountain Road which is currently vacant. The County proposes to demolish that building and clean up the site once acquisition been taken.

Chairman Sireci asked if there is any farm use.

Mr. Boccino said I believe there is some farming that exists on the property right now. The County would assess it following acquisition to see if we want to continue farming it for a period of time or find another use but generally, would continue the farming operation until a new use was determined.

In response to Mr. Robertson's questioning, Mr. Boccino said I am familiar with the comments made in the Maser report. The plan will be revised to reflect the new lot numbers. The County is requesting a waiver from the submission of an Environmental Impact Statement since we do not propose any improvements. It is our intent to file by deed with the proper signature blocks.

In the current configuration there are lots that do not front on an approved street. We would likely be merging these lots with the existing County lands which does have frontage on East Mountain Road and Pleasantview Road. The County is agreeable to the dedication noted in the report. Steep slopes, critical areas, etc. are not shown on the plans since no improvements are being proposed.

No questions from the professionals.

Open to the public

No questions or comments

Close public

A motion to approve application #12-PB-02-MR was made by Vice Chairman Cohen, seconded by Deputy Mayor McCauley.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Mershon - yes; Vice Chairman Cohen – yes; Dr. Marulli – yes; Mr. Peason – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci - yes. Motion carries.

Break

### **EXECUTIVE SESSION**

RE: Green Village – File #11-PB-11-SR - The Board will convene to discuss potential litigation and attorney-client privilege matters.

Eric Bernstein, Esq. asked the Board for a motion to go into Executive Session.

Motion to move to Executive Session was made and seconded. Roll call was taken, all were in favor.

Executive Session 7:51 – 8:15

A motion and second was made to come out of Executive Session to public hearing was made and seconded. All in favor.

Mr. Bernstein gave an overview of the Executive Session for the public.

### **PUBLIC HEARING – SUBDIVISION/SITE PLAN APPLICATIONS**

**GREEN VILLAGE** – File #11-PB-11-SR (*previously referenced as 11-PB-11-MJFSR*) – Block 141, Lot 30 – Route 206 North. (**AMENDED Application**) Applicant requesting Preliminary and Final Major Site Plan approval **Carried from March 01, 2012 without further notice.**

- Exhibits:**
- A1** – Color Exhibit Plan Overlay/Aerial (12-01-11)
  - A2** - Color Exhibit Site Plan (12-01-11)
  - A3** - Color Phasing Plan (03-01-12)
  - A4** – Color Rendering Site – Overlay/Aerial (03-22-12)
  - A5** – Architectural Plans (03-22-12)
  - A6** – Color Rendering – Clubhouse & Retail Elevations (03-22-12)
  - A7** – Color Rendering – Extended Stay Suites – Bldgs. C1 and C2 (03-22-12)
  - A8** – Color Rendering – Extended Stay Suites – Bldgs. C3 and C4 (03-22-12)
  - A9** – Color Rendering – Market Rate Bldg. C1 (03-22-12)
  - A10** – Color Rendering – Market Rate Bldg. D2 and D3 (03-22-12)
  - A11** – Color Rendering – Affordable Bldg. E1 (03-22-12)

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A12 – Color Rendering – Affordable Bldg. E2 (03-22-12)

A13 – CME Associates letter of 03-07-12

William B. Savo, Esq. appearing for the applicant said this is a continuation of a public hearing for a preliminary and final site plan. Tonight we will hear from our architect and planner to complete our testimony.

David J. Minno, P.A. of Minno and Wasko was sworn in, qualified and gave the following testimony:

Exhibit A4 is a colored rendition of Mr. Heibell's Site Plan. There are several different uses within the project. The 2 (blue) buildings in the front are retail buildings, each 10,000 sf.; the (yellow) buildings in the center are extended stay buildings. Within the central building there is some conference space as well as the hotel services for the extended stay. The (green) buildings in the front are the affordable housing components; the remaining (red) buildings are market rate housing. The main clubhouse is centrally located.

In designing this project we thought about saving trees and buffering our neighbors to the south. We strategically planned it so that the lower one-story buildings are closer to the neighbors to the south. The majority of the remainder of the project is three-stories. The closest extended stay building to the property line of adjacent to the single family homes has a setback of 210 ft.; from the D3 2-story apartment building the setback is 200 ft. on the south side and 220 ft. on the east side. We are able to maintain the existing tree cover with a 130 ft. natural buffer to the property line. This is a very walkable community with access to retail and possibly restaurant uses.

Mr. Minno noted the number of units previously reviewed. Exhibit A6 shows 2 sets of elevations of the retail buildings with the parking tucked behind. The 5,400 sf. clubhouse is located in the center of the project which features a main club room, exercise room, pool, business center, small kitchenette with a microwave and refrigerator, restrooms and the support office space for the local community. The clubhouse and retail buildings are 35 ft. high which is in accordance with the ordinance.

Exhibit A7 shows the 2-story C2 and C1 buildings which are closest to the residential dwellings; A8 shows the 2-story C3 and C4 buildings. The C3 building is the central building, two C4 buildings will flank it on either side leading into the main complex. The C4 building is 3-stories in the center but stepped the edges down to 2-stories along the entry drive. Exhibit A9 shows a D1 market rate building. All D1 buildings have 24 units in each and are 2-bedroom. A similar palate of materials will be used throughout the project which we feel will fit into the surrounding woodlands. Exhibit A10 shows the D2 building which is one of the smaller 3-story buildings; D3 units which are closest to the residential dwellings have only 8 units per building and are basically the height of a single 2-story house. Exhibit A11 shows an E1 affordable housing building which has 24 units. The same building materials such as the same brick and horizontal siding will be used in these units as well. Exhibit A12 shows an E2 affordable housing building which has 3 stories in the center and scales down to 2 stories on the ends.

Mr. Savo asked Mr. Minno if the project meets the COAH/DCA Regulations. Does the project as proposed meet the bedroom regulations?

Mr. Minno said yes. The mix of bedroom 117 COAH units on the site cannot be more than 20% can be 1-bedroom; no less than 20% can be 3-bedrooms. We have 23 1-bedroom units, 70 2-bedroom units, and 24 3-bedroom units. The market rate units are all 2-bedrooms.

Mr. Cohen asked that the market rate building exhibit and affordable housing building exhibit be shown side by side. He said the two do not blend in; the market rate building stands out.

Mr. Minno said there is no requirement that affordable housing needs to be identical to market rate housing. The affordable housing buildings are similar in scale and have the same architectural elements. However, there is less brick used and the units are smaller but not by much.

Mr. Cohen asked if the applicant could make the affordable units as similar as possible to the market-rate units.

Mr. Savo said yes.

Mr. Peason asked if there will be conference room facilities in the extended stay.

Mr. Minno said yes and reviewed Sheet A10 of Exhibit A5.

Committeeman DelCore asked if there are similar extended stay types or if there is a particular chain which this layout was modeled after.

Mr. Minno said the layout is taken from a number of prototypes we have looked at. Most of the hotel chains have an extended stay brand. Each room is basically an 850 sf. 1-bedroom suite furnished suite for extended stay.

Mr. Ringelheim asked Mr. Minno to confirm the size of the conference facility.

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Mr. Minno said Exhibit A5, sheet 10 shows the 2 areas noted as flex conference space as 1250 sf. and 1020 sf. The business center in the front has conference table and facilities totaling 460 sf. These are the only conference facilities within the hotel.

Mr. White had no questions/comments.

Open to the public

**Joan McGee** – Stony Brook Watershed Association

Ms. McGee asked if the neighbors had been surveyed to see if they had objections to larger/taller buildings.

Mr. Minno said I personally did not but my client had several conversations with some of the neighbors adjacent to us about in particular the setbacks from the property line to any development on our site.

Mr. Savo said we will call the applicant back up to answer that question.

Ms. McGee said if you designed up to the height limits, could you reduce the footprint of this development?

Mr. Minno said really what controls the development is parking. I do not think you could significantly reduce the footprint of the project by building up further. You may be able to eliminate a building, maybe two, but you still have the surface parking to contend with.

Anatol Hiller, applicant, still under oath said the neighbors were contacted at least a dozen times. We are very sensitive to the neighbors. They came to the initial meetings and I personally met every neighbor. We agreed on a 130 ft. undisturbed tree buffer and wanted the adjacent buildings to be compatible with their residential homes. That is why every single building adjacent to a single family home is a 2-story building. The discussions took place over months and years and the neighbors are all satisfied.

Mr. Savo pointed out the buffer requirement is 25 ft.

**Howard Greenberg** – Merritt Drive

Mr. Greenberg asked if the 3-story buildings will have an elevator and asked for clarification on the amount of parking.

Mr. Minno replied said our engineer testified to that but we meet the RSIS parking requirements.

Chairman Sireci called Mr. Heibell, still under oath, back up to answer the question on parking.

Mr. Heibell said the residential parking is 957 spaces; 70 spaces for retail; 130 spaces for the executive suites.

**Suzanne Ochse**

Ms. Ochse asked if the entrances are similar for both the affordable and market-rate housing and where the 3-bedroom units are located.

Mr. Minno said that is correct. Each has sidewalks leading up to the entrance of the buildings. The only 3-bedroom units are the 24 affordable housing units that COAH requires.

Ms. Ochse asked if the plan is in compliance with the Township's design standards.

Mr. Minno said for this particular zone there are not architectural design standards. We are not in the overlay zone.

Mr. Ringelheim said the architectural design overlay standards were not incorporated into the Green Village District. There are zones along Route 206 that are currently in the overlay district. We have also incorporated newer zones that have their own design standards.

Ms. Ochse asked if that is called spot zoning.

Mr. Ringelheim said no.

**Susan Gulliford** – Hunt Club Road

Ms. Gulliford asked about the placement of the residential and commercial buildings.

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Mr. Minno said the engineer already gave testimony to this but the area in the center of the entry roads is a detention basin. The affordable buildings are fairly close to the road but mostly buffered by the stream corridor and existing tree cover except for a portion over the detention basin.

Ms. Gulliford asked why not switch the placement of the residential and commercial?

Mr. Minno said in order to make the extended stay successful it works well with the retail. We feel this proximity is proper and easily accessed by the main entry road.

Ms. Gulliford asked why not add another affordable unit rather than redesign one of the buildings.

Mr. Minno said the number of 117 units was decided upon in the meetings with the Township.

Ms. Gulliford asked where the emergency access for Gateway was in relation to this project.

Mr. Minno showed it on the display. It is towards the back of the project by a D1 building.

Chairman Sireci asked Mr. Minno to show the buffer for the affordable housing is and what the depth is.

Mr. Minno measured 240 ft. from the corner of the first building to the highway right-of-way.

### **Tom Biro – East Mountain Road**

Mr. Biro asked if there is a grade change throughout the site.

Mr. Minno said there is.

Mr. Biro asked are you going to flatten the site out.

Mr. Minno said I will defer that to the civil engineer who did the grading plan.

Mr. Biro said in the Green Village Ordinance, supplemental #5: 'Building exterior design shall be coordinated with regard to color, types of material, architectural form and detailing. Multiple buildings on the same site shall be designed to form a cohesive relationship between the buildings. The requirements in the Architectural Site Design Overlay Zone contained in Section 188-167 to 175-12 shall apply.' Those are architectural design standards in those sections.

Mr. Minno said in this particular section I think we have demonstrated tonight that there is a cohesive design of these buildings within this particular site.

Mr. Biro said #11 in the standards reads: 'On a lot with multiple buildings, those buildings located in the interior of the site shall front towards and relate to one another both functionally and visually. Additionally, interior buildings shall be organized around features such as courtyards, greens, plazas and other small public spaces in order to encourage pedestrian activity and social interaction.'

Mr. Minno said we have demonstrated that. Each one of the building clusters is organized around green courts. They are public spaces.

Mr. Heibell said there are complete grading plans within the site plan. I checked the elevation difference between the highest and lowest building on the first floor which is 18 1/2 ft. All the buildings were not leveled out. Each building has an elevation and a floor that was set.

Mr. Biro said if the building was designed so that you would not have to accommodate the grade, you would not have to flatten it out and perhaps save more trees.

Mr. Heibell said I don't believe so on this project. This project has the required number of buildings and parking spaces. I believe we have taken down trees because we needed to take them down within the area of disturbance. Outside of the area of disturbance we have kept all of the trees.

Mr. Biro disagreed.

### **Pieter Ruiter – Hillsborough Road**

Mr. Ruiter said I am from Holland so I am very familiar with high density development. I am curious if you considered parking under the building?

Mr. Minno said they had not.

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Mr. Ruiter asked if there is an estimate of how many restaurants could fit in the retail space.

Mr. Minno said it is approximately 20,000 sf. of retail. In a small project like this you would expect 2 maybe 3 restaurants.

Mr. Ruiter asked if any of the buildings have LEED or more environmentally efficient certifications.

Mr. Minno said these buildings will be designed to meet energy star requirements. They will be very efficient for the future tenants to operate.

Mr. Ruiter asked for further review of the courtyard area shown on the display.

Mr. Minno said the closest point across is 70 ft.; the length approximately 230 ft.; the D1 buildings are 48 ft. in height.

Mr. Ruiter questioned whether or not the sun would quite reach that area, except at midday.

Mr. Minno said it depends on the time of year. There is a fair amount of southern sun into that courtyard.

Mr. Ruiter asked if there are sidewalks throughout the project and if there are do they connect to other parts of town. Bike connections as well?

Mr. Minno said there are sidewalks throughout the project but I do not believe they connect outside of the project. There are no bike connections to other parts of town.

**Claire Liptak – Amwell Road**

Ms. Liptak said I am a New Jersey Certified Tree Expert. What precautions will be taken during construction to be certain that the trees in the buffer are not disturbed?

Mr. Heibell replied, because Mr. Hiller agreed to this extensive buffer, we will stake out the edge of that buffer when the project starts. I have proposed not grading and no improvements within that buffer.

Ms. Liptak asked if that would include fencing under the drip line, no heavy equipment under the canopy and no building materials stored under the canopy.

Mr. Heibell said yes.

**Judd Mandell – Fieldhedge Road**

Mr. Mandell asked if there would be an opportunity to consider connecting to the Kohl's parking lot to utilize the area for biking and walking trails.

Mr. Minno said there is a lot of frontage between us and Kohl's. That is more of a Township wide issue. It is something that this applicant cannot control.

Mr. Mandell asked if there is ample parking for outside parking for not only the restaurants but the public spaces.

Mr. Minno said there is.

**Bill Dondiego – Gulick Drive**

Mr. Dondiego said I appreciate Mr. Cohen's point to make the affordable housing more like the market rate buildings. How will the interiors be appointed?

Mr. Minno said they are not a great deal different. This applicant makes the affordable units larger and better appointed than most because it is sometimes difficult to market these units. They tend to use better materials for long term use and the quality will generally be the same as the market rate.

Mr. Dondiego asked what was the reasoning behind having all of the affordable housing in one or two locations.

Mr. Minno said COAH only allows an isolation of affordable units when it is a rental project. We are committed to the Township under the COAH Agreement that these will be rental COAH units. The market rate portion of the project can be either rental or condominium. It is more efficient for COAH to manage an affordable project if it is in a single location.

Mr. Dondiego asked if the COAH units standing out will be a detriment to the town.

Mr. Minno tonight my client committed to increasing the amount of masonry on the exterior of those buildings to get them to be very similar to the market rate units so there will be a change from what I have shown you this evening.

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**Thuy Anh Le** – Ivy Lane

Ms. Le asked if there is a rendering of Phase I.

Mr. Savo said the reason the project was going to be phased was to accommodate left turns out of the site. Since the applicant has agreed there will be no left turns out of the site until there is a traffic light to accommodate such turns, the project will no longer be phased.

Ms. Le said since we now know there are no sidewalks that lead outside of the development, how access to someone living within the development would be provided to employment.

Mr. Minno said there would not be a lot of jobs but they could work in the extended stay facility, for the retail or for management for the residential community. Outside of the project we provide vehicular access to the broader Hillsborough community.

Ms. Le asked how a resident might access public transportation. Will there be sidewalks out to a bus stop?

Mr. Minno said there are sidewalks that come all the way down. The problem now is that there are no sidewalks on Route 206 to connect to. Right now we do not need to bring the sidewalks to Route 206 because there is no connection. There is no place to walk or bike in that location.

Ms. Le asked are you going for a particular level of LEED certification.

Mr. Minno said we are not going for LEED certification. We will meet the energy star requirements which are a separate set of requirements for building envelope, building insulation, and mechanical equipment within the units themselves being a higher level than normal. There is a certification process for that.

Richard T. Coppola, P.P., A.I.C.P., was sworn in, qualified by the Board, noted his experience with Affordable Housing and gave the following testimony in response to Mr. Savo's questioning:

Mr. Coppola said I am familiar with the Green Village Ordinance since I worked with Jennifer Beahm and the municipal officials and staff back in 2008 when the Township was formulating its Fair Share Plan. I am not here to talk about the site plan but to talk about the provisions of the Green Village Ordinance and the Tree Preservation Ordinance provisions. The Green Village Ordinance provisions call for a mixed-use inclusionary development, adopted May 2010. The Housing Plan Element and Fair Share Plan was adopted and forwarded to the Superior Court. I believe the components of this site plan are consistent with your Ordinance. The 2008 requirements you are working under with the Court required Hillsborough Township to provide a very significantly high, in my opinion, 650 affordable units. The Township has been aggressive on this matter since 2008 to try to work within the rules but get the number down by using as much as possible higher set asides negotiated with developers as well as available credits. Back in December, 2008 the Township was able to submit a Fair Share Plan to the Court that provided 296 affordable units to be constructed. With the credits, bonuses and everything else, that covered Hillsborough for the requirement of the rules. In 2010 the Township was further able to reduce the number of affordable units that needed to be constructed in order to meet its mandated affordable housing obligation, from 296 to 191 units which is an amazing accomplishment.

According to Hillsborough Township's website, the reason for the downward adjustment of the required units resulted mainly from two developments; the Green Village inclusionary development before you, and the conversion of 283 of the 698 units in the Gateway at Sunnymede development from age restricted to non-age restricted. With that development including a mandated 20% component of affordable units in accordance with the 2009 Conversion Law. It is clear to me that if the Green Village development is prevented from being constructed as previously agreed to and is now before you for approval; it will be necessary to find other lands to achieve the numbers. You would then have to redo a Plan and submit it to Superior Court. It is also clear that the remarkable success of the Township's efforts to formulate and receive Court approval for a Fair Share Plan in a manner that safeguards the Township's zone plan and avoids the potential adverse impacts from the excessive residential development that may otherwise have resulted if you had not struck such positive negotiated arrangements with this particular developer will be negated if this particular development is not able to proceed.

The Tree Preservation Ordinance provisions, Article 9, of the Land Use and Development Ordinance were adopted many years before the adoption of the Green Village Ordinance. They were adopted November 2000 and later amended in 2002. The Green Village Ordinance, adopted in 2010, is silent regarding the tree preservation provisions. Section 188-163 of the Ordinance requires mitigation 'for the removal of trees on any residentially zoned lot or any non-residentially zoned lot' and further stipulates that 'in no case of more than up to 20% of all the count of trees on a residential zoned lot or up to 60% of the count of the trees on any non-residential lot be removed even with mitigation measures.' It is interesting that the Green Village Zoning District Ordinance designates the subject property as neither residentially zoned lot nor a non-residentially zoned lot. More specifically, as indicated in the stated purpose for the Green Village District in Section 188-113.4 of the ordinance, the subject property is situated in a 'mixed-use zone'. The purpose of the GV Zone District is to 'establish a mixed-use zone that provides for affordable housing, multi-family housing, hotel, retail, office and restaurant uses at a location that

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provides access to employment areas through adjacency to major roadways and/or public transportation. The standards are intended to offer maximum flexibility for site design and selection of dwelling unit types in order to offer a balanced housing program attractive to all income and aged segments of the community as part of the Township's Fair Share Housing Plan for meeting the regions low and moderate income housing needs.'

The conflict between the Green Village Ordinance and the Tree Preservation Ordinance provisions result in a significant potential problem for the continuance of the Township's zone plan to fulfill its housing obligations. The GV Ordinance provisions can only result in the mixed-use inclusionary development proposed to the Court, most recently as 2010, if the Tree

Preservation Ordinance provisions last amended in 2002 are not applied in some manner or another. It is also readily apparent that the GV Ordinance provisions were formulated and adopted based on a conceptual plan for the mixed-use inclusionary development which was prepared before the enabling ordinance provisions were adopted in anticipation of the site plan currently being reviewed.

I would offer the following gross density and affordable housing set aside provisions which provide very specific numbers within the ordinance such as: The maximum residential density of 9.38 units per acre of gross tract area are permitted provided a minimum of 24.9% of the dwelling units are to be low and moderate income units in accordance with applicable affordable housing regulations.

In my experience in working with coming up with ordinances for Housing Plan Elements and for Redevelopment Plans, one always tries to work with the developer to come up with a concept plan first that is agreed to among the community. Then the ordinance is backed into that plan. Concept plans are often included in the Housing Plan Element as a benchmark but of course require site plan review, engineering review and the like. It provides a comfort level to the Township to know what is going to happen and to the developer to know what is going to be expected. In this case the unique numbers clearly were based upon a concept plan. Mr. Coppola further reviewed Mr. Heibell's previous testimony on the tree removal and the percentages calculated. He reiterated that if the Tree Preservation Ordinance were applied, this development cannot occur.

I have read the March 07, 2012 letter from the Township's COAH planner, Jennifer Beahm. I want to go on record that I agree with her observations and opinions. Mr. Coppola read some excerpts from the March 07, 2012 letter.

Mr. Savo said Jennifer Beahm used an interesting word, 'inadvertent'. The Planning Board recommended the zoning; the governing body adopted the zoning; and it has been submitted to the Court as part of the Fair Share Plan. If the Tree Ordinance applied, the plan submitted to the Court would not work and the Township would be obligated to come up with another site or sites to make up the difference.

Mr. Coppola said there is a 25% set aside which is unusual. Normally, the set aside in COAH's rule is 20% as a maximum, not as a requirement. There are also bonus credits of 2 to 1 for rental projects once the threshold obligation.

Mr. Coppola agreed with Mr. Savo's statement that the Township would not adopt a Plan that greatly reduces the obligation only to have it go out the window because the tree mitigation was inadvertently omitted. You can say it does not apply as the COAH Planner has said or you could say it requires a variance. If you decide on a variance, I believe a 'c'2 flexible variance would be appropriate. Mr. Coppola elaborated on his findings in support of the 'c'2 variance.

Mr. Savo said if the Tree Ordinance did apply, the COAH rules would take precedence but if the previous reasons did not apply, you believe there is a valid basis for a 'c'2 variance because of the reasons stated in the MLUL and because it provides affordable housing.

Mr. Coppola agreed.

Chairman Sireci read further excerpts from the 03-07-12 CME letter.

Mr. Savo asked that the letter be marked as an exhibit.

Chairman Sireci said the affordable housing mandates have come in rounds. The third round is under legal challenge but the second round has gone through and was established. Its regulations still exist and are in effect. The third round is merely a guideline that a court can or cannot use as to whether a court does or does not want to certify or provide substantive certification for this Township. We are still required to get substantive certification on affordable housing whether the rules for Round 3 are in dispute or not, whether COAH exists or not, the State mandates still apply.

Break

### **Joan McGee**

Ms. McGee asked that the letter from Jennifer Beahm that has been read from or eluded to be disregarded since she is not present to testify and be cross examined.

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Chairman Sireci said part of the letter is a reading directly from State regulations so regardless of the rest of the text that is Ms. Beahm's own, the parts that talk about the need to eliminate cost generating features from the municipal land use ordinances stands on its own.

Ms. McGee said I have a problem with her characterization of the 'inadvertency'.

Chairman Sireci said that is up to the framers of the ordinance to decide. Ms. Beahm has worked on the Affordable Housing Plan for years with this Township so to characterize it as completely unsubstantiated is not accurate either. She is someone who is intimately aware of all of the details over a number of years.

Mr. Coppola said the substance of my testimony were the regulations. That was the essence of Ms. Beahm's letter as well.

Mr. Savo said Mr. Coppola did work on this ordinance.

Mr. Coppola said I believe it was inadvertent but nevertheless, COAH rules prohibit those kinds of things and it would negate all of the work the Township has done since 2008.

Ms. McGee asked Mr. Coppola, do you feel tree preservation provides the substantial public benefit.

Mr. Coppola said within reason, yes. Like with anything in planning you have to balance the positives but tree preservation deserves attention.

Ms. McGee asked if Mr. Coppola was familiar with the court decision on Homes of Hope v. East Hampton.

Mr. Coppola said I am but there is no parallel to the Tree Preservation Ordinance provisions as they effect this agreed upon development.

Ms. McGee stated the Tree Ordinance requires that any deviation from the ordinance requires a 'c' variance. Ms. McGee asked again about reducing the number of buildings to reduce the footprint.

Mr. Coppola said you are asking to raise the building height closest to the neighbors to eliminate a building or two in order to save trees. The buildings are lower near the neighbors per the agreement with the neighbors and the developer. There has to be a balance. With all due respect to the trees; I would opt to go in favor of the people.

Ms. McGee asked if the parking could be put underneath the buildings to reduce the footprint and save some trees.

Mr. Coppola said not only would you reduce the footprint but you then would not have any development because you would not have the economy of scale or the money to build it and provide the units that are being requested for affordable units.

Chairman Sireci pointed out that would fall under unnecessary cost generating features in a municipal land use ordinance which is prohibited by the COAH rules.

Ms. McGee asked if there was anyway the impervious cover can be reduced such as making the parking spaces smaller and reducing the public spaces in order to save more trees?

Mr. Coppola said the parking size cannot be reduced because the RSIS requires 9' x 18' parking stalls. You might save a few trees if you narrowed the 70+ft. x 200+ft. area for public space but then you effect another part of your ordinance which is directed to the people to have places for them to congregate. In balance as a planner, I would say that is not appropriate. I think this plan which as been worked on for many years has tried to achieve a balance of meeting ordinance requirements, provide open spaces, and preserve trees. Witness to that is that there is a 130 ft. fairly heavily treed buffer when only a 25 ft. buffer is required.

Ms. McGee disagreed and repeated her previous questions.

Mr. Coppola reiterated his previous testimony and clarified the point again that he did not review the site plan against all ordinances in the Township. My testimony was limited to the conflicts between the Tree Preservation Ordinance and the Green Village Ordinance.

A vote by the Board was taken to extent the meeting time.

### **Paul Drake – Balmoral Court**

Mr. Drake recognized Mr. Coppola's knowledge of Hillsborough affordable housing. He asked are sidewalks under the RSIS a cost generating structure.

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Mr. Coppola said they are not cost generating but a natural cost of development for the goal of having a pedestrian oriented development. Hopefully this project is the beginning of what will occur down the Route 206 corridor over time in an effort of the Township to work with DOT and the individual property owners to get something done. Right now you have the core of this development that can be tied into the Route 206 corridor at which time it is pedestrian oriented.

Mr. Drake suggested that the people in the 117 COAH units will want to walk and they will have no place to walk other than within their own development. We have an opportunity to make this project more pedestrian oriented in

relation to the rest of Route 206 with a design that can accommodate that aspect.

Deputy Mayor McCauley reiterated the Planning Board looks at environmental issues for all applications. This one is a little different in that it is COAH related.

Mr. Drake asked would this project allow for additional people to walk from this development out onto Route 206 at this time.

Mr. Coppola said not at this time.

After objections from the Board on the line of questioning, Mr. Drake said the relationship is can the project sustain a viable pedestrian community in relation to COAH and are such things as pedestrian improvements cost generating beyond what COAH would allow.

### **Susan Gulliford**

Ms. Gulliford asked when working with COAH units, is there a time limit in which you need to build or is it open ended.

Mr. Coppola said when working with the court you have a court appointed Court Master; Hillsborough's is Elizabeth McKenzie. She sets the time for action. The outside date according to the rules to have everything theoretically constructed and occupied by 2018.

Ms. Gulliford asked what can be attributed solely to the COAH units as an unnecessary cost generating feature.

Mr. Coppola said if you look at the design, nothing. I was talking specifically to the Tree Preservation Ordinance against the language in the rules.

### **Marilyn Rodriguez – Elmendorf Circle**

Ms. Rodriguez asked if the affordable units can be purchased.

Mr. Coppola said some are for sale, some are for rent. All of the affordable units in this project will be for rent. They specifically will be for rent in order to give the town bonus credits.

Ms. Rodriguez asked why the affordable units seem to be segregated from the market rate units with 1/3 of them overlooking a mud hole.

Chairman Sireci restated the answer previously given that all of the affordable rental units are kept together in one area to allow a management company to manage them more efficiently. When affordable units are for purchase they can be spread out because there is no central organization managing them. The 1/3 overlooks a detention basin which is landscaped itself.

Mr. Coppola added in addition to the regulations the Planning Board upgraded the architectural elements of the affordable units.

### **Tom Biro**

Mr. Biro asked for the percentage of trees to be eliminated.

Mr. Coppola said 74.55% of the tree count.

### **Thuy Anh Le**

Ms. Le asked about water run-off that was previously answered by the civil engineer.

### **Bill Courtier - Millstone River Road**

Mr. Courtier asked when the water runs off, what rivers does it run into.

Mr. Heibell answered Roycebrook which ultimately dumps into the Raritan-Millstone, and then goes downstream.

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Mr. Courtier asked if the flood mitigation will be implemented prior to the completion of the project.

Mr. Heibell again reviewed the 5 agencies which need to approve the stormwater management. During the construction phasing, the stormwater detention basin system will be one of the very first points of the infrastructure that will be constructed. All of the roads have storm sewer systems and ultimately empty into one of the 3 detention basins which ultimately empty into the branch of Roycebrook.

Mr. Courtier asked what impact this large development will have on the Raritan Watershed as far as consumption of the water supply.

Mr. Heibell said this project is serviced by public water through New Jersey American Water.

### **Claire Liptak**

Ms. Liptak asked if the water basins could be planted to function as water a recharge system which means that that soil would not be compacted but instead cultivated, graded and planted with appropriate plants so that some water would be eliminated, especially in peak flow.

Mr. Heibell said one of the aspects the project needs is to comply with the recharge requirements. Once it receives approval from the outside agencies it will comply with the recharge requirements.

### **Pieter Ruiter**

Mr. Ruiter spoke of a train accident in the 1960's which resulted in a toxic spill that went to the Roycebrook. I hope this toxicity will not impact these residents.

Chairman Sireci said the engineer did testify that the water is coming from American Water, not from wells in the area.

### **Joan McGee**

Ms. McGee said for construction costs, it is cheaper to build up than build out. There is room for this developer to put additional stories on and can ask for a waiver to reduce the parking size in order to save some trees. You can fashion remedies so that they can save more trees. I vehemently argue that the testimony that COAH trumps environmental ordinances is not correct. I also want to note the lack of testimony concerning violations into the stream corridor buffer. I did not hear testimony why they were entitled to a waiver for that nor did I hear any testimony about their calculations netting out of the critical areas.

I would ask that you not deny this because COAH is a beneficial use but there are substantial public interests at stake to protect your clean water, to remove pollutants by saving trees, maintain the stream buffer and protect as many trees as you can.

### **Thuy Anh Le**

Ms. Le said developments can be sustainable and can be a source of pride for all. I appreciate that there are certain LEED elements within the plan however; the negative impact on traffic, concerns of flooding and that COAH units are segregated from other units do cast out whether this development can be a source of pride. I urge the Board to make the developer comply with our ordinances. The request from the tree ordinance does not set a good precedence. The reduction of the developer's contribution could have gone to open space or for tree mitigation somewhere else in our town. These are the safeguards that all Planning Boards should adhere to.

Chairman Sireci said the biggest responsibility to the Township right now with regard to this is to have an affordable housing plan that gains substantive certification because if we don't, what will come from the lawsuit will be far worse than this. There are developers with hundreds of acres ready to sue, to take down all of the trees and build thousands of units if they can get away with it and if we are not substantively certified in our affordable housing requirement. What is at stake is far more than a few trees in secondary scrub woodland and we are quite aware of that.

### **Tom Biro**

Mr. Biro spoke out against the reasons given in order to comply with COAH regulations. I believe if this project goes through maybe more businesses will go out of business and that will be more expensive than being sued for COAH.

Board members disagreed with Mr. Biro's statement.

### **Paul Drake**

Mr. Drake said this is an exciting project for the town. It is good that you have maintained your COAH certification. Hillsborough is the only town in New Jersey that has had its COAH certification revoked. I am aware of all of the hard work that went into this project over many years. I ask that you look at this project in relation to Route 206. I know you went through a great deal of effort going over the DOT aspects. I ask that you give consideration of the costs related to automobile ownership. It is very likely that people who live in affordable housing units will not have a

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car so the ability to walk and bike to locations within Hillsborough should be their right and opportunity as part of this plan. Ultimately it should be considered as part of a comprehensive plan. People will be walking on the shoulder of Route 206 without any walkway or bikeway. It is not unreasonable for a developer to consider a project in relation to itself.

Close public

Mr. Bernstein reviewed the time of decision clock runs out on March 30<sup>th</sup>.

A motion was made and seconded to extend the time of the current meeting until 11:30 p.m. All in favor.

Chairman Sireci asked Mr. Heibell to show the sidewalks near the entrance of the project on the plan.

Mr. Heibell pointed out the closest sidewalk on the southerly side was up by the retail area; on the westerly side it is by the affordable housing units. There is no sidewalk going into those two stems of the road.

Chairman Sireci asked if the applicant would be amenable to extending the sidewalk to those entrances.

Mr. Heibell responded yes.

Chairman Sireci said as for the rest of Route 206, the applicant does not own that land. The rest will have to come in the future but certainly the developer can link to where a bus stop would be.

Ms. Fenwick asked if bike racks will be provided within the development, especially by the restaurant area.

Mr. Heibell said we will make sure there are some bike racks.

Mr. Savo concluded saying this is our 4<sup>th</sup> hearing on this project which is very important for this town and you have heard why. The Board and governing body reduced the number of COAH units from 600+ to 191 basically from two projects and that the applicant agreed to do 25% set aside. People do not understand that is a tremendous burden, especially with rental units. Because of the Gateway project and this project the need to build other projects has been reduced which saves trees. The town should be commended for a project like this.

The governing body and the Planning Board adopted an ordinance that was inadvertent. They would not have done that if on its face it was an annulity. It certainly would not have been submitted to the Court knowing it would not work. Because if it does not work it subjects this town to Builder's Remedy lawsuits. The project is well designed. Not only do you get the affordable units but you get some ratables to help offset the cost of affordable units. We are putting trees in and contributing to the Tree Replacement Fund and did not argue if that would be in violation of the COAH rules. We have eliminated the left turn. We are working with the town and the County to get a light. We worked with our neighbors and lowered the buildings. We have reviewed the stormwater management and all issues have been addressed.

Mr. White said my main concern is the signal at the entrance. I ask that the developer continue to work with the town and the County with the endeavor to ascertain whether DOT, with the concerted effort of all parties, will be willing to allow that. I suggest we put a time frame on that. The developer will at some point get his access permit. My concern is that we not overburden him with beyond an acceptable time period. I suggest a 2 year limitation as a condition of approval whereas the developer would be obligated to work for a minimum of 2 years beyond approval on working on getting the signal.

Mr. Savo said that would be no problem. We are working on it now daily. It would make it economically viable to have the light.

Mr. White asked that all correspondence also be copied to Mr. Ringelheim, Mr. Dean, the County and myself for all DOT related matters.

Mr. Savo agreed.

Mr. Bernstein added one of the conditions of this approval would be that the Township Committee adopt an ordinance that there would be prevent left-hand turns out, if and until there is a light.

You have heard Mr. Coppola's testimony and read Ms. Beahm's report regarding the tree mitigation. One of the individuals who have come before this Board this evening has mentioned Kohl's. I remind the members who were not here at the time that that property was an affordable housing project courtesy of a Builder's Remedy case that required as part of the settlement that the project be built under a prior administration.

One of the keys to all of this is substantive certification. This municipality has spend a substantial amount of legal and professional fees dealing with issues of affordable housing or the lack there of because we did not have it. In order to avoid

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that situation, the current and previous committees and this Board, worked to try to avoid that and this development is one of them. A constant for Hillsborough has been Elizabeth McKenzie. Ms. McKenzie was the court appointed Master in Round 2 and by the agreement of all parties, is the Master for Round 3. Ms. McKenzie appointed this zoning designation and was well aware of the Tree Mitigation Ordinance. In fact, Ms. McKenzie advised this municipality in Round 2 to ignore provisions of the Tree Mitigation Ordinance related to the various affordable housing projects that were required to be built under the Court decision; Westmeade, Sunnymead, Hillsborough Promenade, etc. The Court has at least initially, to the extent it can approve, approved our substantive certification. We are currently under protection. As this Board knows, any conditional of any approvals this Board has ever granted is all conditioned upon outside agencies which here include to some extent, the courts.

I am not so sure a 'c'2 variance is applicable here. Above and beyond the 'c'2 variance, there are rules and regulations established under Title 5, Section 93 of the New Jersey Administrative Code Governing Affordable Housing. As Ms. Beahm has sited and as the Chairman has pointed out here, the provisions of 5:93 apply to the situation at hand. This Board has and continues to take into consideration through the testimony and comments, all environmental related concerns for this project. I would indicate to the Board that the Tree Mitigation Ordinance is not applicable because there are overriding considerations

that have to be given by this Board in terms of affordable housing. Inadvertency is a non-issue as far as my recommendation to this Board since I believe 5:93 is applicable. The cases that have been sited are small and I believe non-applicable cases to what is before this municipality and this Board. I believe it is well within this Board's determination to not take into full consideration the provisions of the ordinance as it related to this applicable project. When you vote it will be contingent on all of the conditions, agreements, etc. In your deliberations, you need to acknowledge you have taken significant deliberations and have given consideration to all applicable rules, regulations and laws, and that your decision is based upon such.

Chairman Sireci reviewed key points that were previously made regarding affordable housing and Builder's Remedy lawsuits in Hillsborough's history.

Committeeman DelCore said not only have we met our COAH obligation and so we do not face the same litigation we did a number of years ago that led us to several developments at issue with our planning, but we have reduced our requirement because of aggressive planning. If we run into a situation where we have a problem with this development, we would either have to face the lawsuits or put that additional affordable housing somewhere else that could be more dramatic to the surrounding areas. This plan allows us to limit our obligations and still put a very attractive project in place that will not only benefit the Township but the community. As the Chairman has noted, we cannot face the prospect of not having our certification; it is simply not an option. It is a very significant issue. The impacts would be devastating if we were to lose our substantive certification.

Chairman Sireci noted we have gone from 650 units to 191 by making this plan the way that it is. If we lose this plan, we would have to build at least 500 more affordable units. Based on the ratio where a builder is allowed to build market-rate units in order to afford being able to build affordable units, at best, they get a 20% ratio. That means over 2,000 housing units would be going in on 300+ acres. If you do not think they fit on 300+ acres; a judge will show you how they fit. That is what we would be facing if we play games over scrub woodland. Instead, we have to apply the law including the overriding State Law from the judiciary, from the legislature and from the regulators.

A motion to continue the meeting until midnight was made and seconded. All in favor.

A motion to approve the application with all conditions, agreements, recommendation and according to all reports of the various municipal professionals subject to the normal conditions of outside agency approvals and related items was made by Dr. Marulli, seconded by Ms. Fenwick.

**Roll Call:** Ms. Fenwick – yes; Mr. Julian – yes; Mr. Mershon - yes; Dr. Marulli – yes; Mr. Peason – yes; Vice Chairman Cohen – yes; Committeeman DelCore – yes; Deputy Mayor McCauley – yes; Chairman Sireci - yes. Motion carries.

Mr. Ringelheim reminded the Board the next meeting will be April 12<sup>th</sup>.

### ADJOURNMENT

The meeting adjourned at 11:32 p.m.

Submitted by:  
Debora Padgett  
Planning Board Clerk