

**MANSFIELD TOWNSHIP PLANNING BOARD
REGULAR MEETING
October 28, 2019**

The Regular Meeting of the Mansfield Township Planning Board was held on the above shown date with the following in attendance: Randy Allen, Douglas Borgstrom, Frederick Cain, Shane Fleming, Colleen Herbert, Rudy Ocello, Scott Preidel and Secretary Ashley Jolly. Robert Higgins and Dalpat Patel were absent.

The meeting was called to order by Chairman Preidel, followed by the flag salute and the following opening statement:

The Notice requirements provided for in the Open Public meetings Act have been satisfied. Notice of this meeting was properly given in the annual notice which was adopted by the Mansfield Township Planning Board on January 28, 2019. Said Resolution was published in the Burlington County Times, e-mailed to the Burlington County Times, and Trenton Times, filed with the Clerk of the Township of Mansfield, posted on the official bulletin board at the Municipal Complex, filed with the members of this body, and mailed to each person who has requested copies of the regular meeting schedule and who has prepaid any charge fixed for such service. All the mailing, posting and filing having been accomplished on January 31, 2019.

**MANSFIELD TOWNSHIP
PLANNING BOARD
RESOLUTION 2019-10-11
PLANNING BOARD RESOLUTION APPROVING
SETTLEMENT AGREEMENT WITH TOWER GATE**

WHEREAS, the Mansfield Township Planning Board is a Defendant, along with the Township of Mansfield, in litigation captioned Tower Gate Associates v. Mansfield Township, et al, Docket Number BUR-L-1739-18, wherein Tower Gate is challenging the Township's satisfaction of its affordable housing obligations; and

WHEREAS, Tower Gate is the owner of Block 70, Lot 6.02, at the intersection of Route 130 and Kinkora Road, consisting of approximately 118.53 acres, and in the litigation Tower Gate seeks to build an inclusionary development on the site; and

WHEREAS, the Township, through the course of litigation, has determined that the site is appropriate for the provision of affordable housing, and the parties of negotiated a Settlement Agreement (a copy of which is attached hereto). Under the terms of the Settlement Agreement, the parties agree to a mixed use (residential and commercial) development that will provide affordable housing units to assist the Township in satisfying its constitutional obligation with regard to affordable housing; and

WHEREAS, the Township has already authorized this Settlement Agreement by Resolution 2019-10-20 dated October 16, 2019.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Mansfield Township Planning Board ("Board"), in the County of Burlington and State of New Jersey, that the Board hereby authorizes and approves the entry of the Settlement Agreement, authorizes and directs execution of same by its Chair and Secretary (as may be required).

Attorney Petrone explained the reasoning behind the above resolution. He stated that Tower Gate Associates initiated a builder's remedy lawsuit against the board and the Township which triggered an affordable housing review by the Superior Court. The Planning Board, Township, and Tower Gate have engaged in settlement discussions and the settlement agreement has been presented to the board. The Township has already authorized the execution of said agreement. The property Tower Gate is looking to

develop is on Route 130 and Kinkora Road roughly 118.5 acres. The settlement agreement calls for a maximum number of dwelling units that can be constructed on the property as 488. That number cannot go up, but it could go down once the developer starts doing engineering on the property. The 488 units are comprised of multifamily rental units which would be seven 3 story buildings, 12 units per floor, a total of 252 units in that area. The remaining units would be 236 Townhouse units, 36 buildings mostly of 6 units per building. Each section would have a clubhouse and a swimming pool. There will be 3 retail buildings to be constructed on the property roughly 13,500sqft each for a total of 40,500sqft. Out of the 488 total dwelling units 15% would be considered affordable housing units for either very low, low, or moderate income. 15% equates to 74 total affordable housing units for this particular development. The remainder of the units would be market rate. In regards to the rules and regulations for the number of bedrooms per the affordable housing unit; 20% maximum would be one bedroom, at least 30% would be two bedroom, and at least 20% would be three bedrooms.

With the settlement agreement there are some timing constraints between Superior Court and action by the Governing Body as well as this board. At some point and time there will be a fairness hearing before the Superior Court. A fairness hearing goes towards the settlement agreement, which is not a global identification of the Townships total affordable housing needs.

Chairman Preidel questioned the number of required affordable housing units. **Attorney Petrone** explained that number has not been finalized yet through a declaratory judgment action. **Chairman Preidel** asked what the last number of required units was. **Attorney Petrone** was unsure what the last number was and he was not even sure the township was ever into round 2 or 3 because it was pulled from the administrative side before anything was finalized. The 3rd round has been assigned to the Superior Court. This Township did not file a declaratory judgment action because of the lack of sewer. **Mr. Ocello** questioned who would be providing the sewer to Tower Gate. **Attorney Petrone** explained that the Tower Gate lawsuit filed as a builders remedy and if it goes the full litigation route the risk to the municipality is that the court is now ordering what can be developed on that property. Generally when builders remedy situations occur the density permitted is much greater than the normal density that a township would be accustomed too. Some of the design standards are modified so that there will less cost to a developer. This allows the municipality to have some say in the project as opposed to a court ordering an X number of units. This project will provide for 74 affordable housing units as well as a bonus credit for rental units. As presented this project would yield 129 credits for affordable housing units.

Mr. Fleming questioned if this would fulfill the townships obligations. **Attorney Petrone** stated that it would not. **Chairman Preidel** questioned why the ratio for affordable housing is so low for this project. **Attorney Petrone** explained that is because the developer needs to have market rate units in order for the economics to work. The courts recognize that in order for an affordable housing development to go through, there needs to be economics behind it. One of the things this particular developer needs to do is have utilities extended to the project, which is an expenditure on the developer. There have been discussions on getting the sewer extension and the only obligation the township has in regards with that is to cooperate with the developer. The municipality is not obligated to spend public funds for this developer to bring sewer into the project. **Vice-Chairman Borgstrom** questioned if the next project would be similar at 15% COAH units. **Attorney Petrone** it would most likely be in the 15-20% range.

Attorney Petrone went on to explain that the municipality would need to have a compliance hearing and most municipalities have done that by filing a declaratory judgment action, the court gets involved, the special master get assigned to participate in conversations. Fair Share housing center is always an interested party in affordable housing litigation. Fair Share housing is aware of the settlement agreement being negotiated between the township and Tower Gate associates. At some point in time Fair Share housing will get involved in the global resolution of the townships affordable housing obligation. Right now there is not a definitive obligation number; however, it will be greater than 74. **Chairman Preidel** questioned the sewer and the possibility of future development in this area. **Attorney Petrone** stated that the developer is working with some options, possibly Bordentown, but unsure of the numbers are or what excess capacity Bordentown has. **Chairman Preidel** is concerned about the taxes being increased. **Attorney Petrone** explained that at some point the courts will take it out of the hands of the township and

that will be more of a risk than if the township was involved in the discussions. **Mrs. Herbert** questioned the number of affordable units currently in the township and stated that other municipalities have affordable housing officers that are employed by the municipality. Would that be something that Mansfield will need to consider or will the affordable housing be managed by the State? **Attorney Petrone** stated that he is unsure what the resolution of that issue will be. Some towns do have affordable housing officers; other small towns do not. There are other documents that need to be prepared and voted upon by the Governing Body and the Planning Board; such as, adopting a housing element and fair share plan. **Chairman Preidel** questioned where the affordable houses would be in the development. **Attorney Petrone** explained it is his understanding that the 74 affordable housing units will not be within the Townhouse project.

Public Comment: Chairman Preidel opened the meeting to the public for comment.

Bob Tallon 2454 Axe Factory Road: Was concerned about the sewage. He noticed that on Bordentown's ERI (Environmental Resource Inventory), they have their publication online and he saw they extended their sewer service area into Mansfield Township; down Route 130 and down towards Hedding. Out of curiosity he went to the County to do an OPRA search and the County was not aware of anything. He questioned if the Township was involved with the extension of the sewer service area. **Chairman Preidel** stated that the Planning Board has nothing to do with the sewer service as far as he is aware. **Attorney Petrone** confirmed same. He further explained that the sewer from Bordentown was most likely not discussed by the Township. Any approval granted would be conditioned upon outside agency approval. **Committeeman Cain** added that the Township has expended zero dollars in putting pipe anywhere. All of which rests on the Developer. **Mr. Tallon** questioned the Environmental Commission checklist and the items they would like to have amended. **Chairman Preidel** stated the board has not received anything to review at this time.

Frank Pinto 420 Island Road: Questioned if the build out would be 488, then anything less than that would be based on the results of the DEP Letter of Interpretation, with respect to wetlands and buffers. **Attorney Petrone** explained it would be based on all of the engineering. If there is wetlands on the property, the buffer requirements may affect the uplands area. **Mr. Pinto** asked if the COAH units would be reduced proportionally if the number goes down. **Attorney Petrone** stated that 15% of the overall number would be the end result. **Mr. Pinto** questioned if the Township tried to negotiate a higher percentage of COAH units or if they accepted what was proposed. **Attorney Petrone** explained there were negotiations. **Mr. Pinto** asked if an ordinance would finalize everything. **Attorney Petrone** stated it would be an ordinance, the housing element and fair share plan once adopted, and any other ordinance as well as, eventually the Superior Court.

Bob Tallon 2454 Axe Factory Road: Being considered about the environmental impacts on the area, there was a lot of public input when Crystal Lake was going to be developed into 700 houses. That was saved because of the environmental constraints and since the park has been there, there has been additional environmental elements such as more endangered species that are contiguous with that area. He questioned if the Courts order this, would the Township be able to use the Environmental Commission and the ERI to outline things like buffers and threatened and endangered species. **Attorney Petrone** explained that because the Township will be creating ordinances, there is some amount of control; however, there are certain things the Township will be giving up the right to require the developer to provide. The reason the Courts do this is because of the economics. **Mr. Tallon** brought up the trails that run through that area and the development may impact that view. He also mentioned the aqua recharge area and other environmental concerns that he has regarding this site.

A motion to approve the above resolution was offered by **Mr. Allen** and seconded by **Vice-Chairman Borgstrom**. Motion carried on a roll call vote recorded as follows:

AYE: Allen, Borgstrom, Cain, Fleming, Ocello, Preidel (statement below)

NAY: None NOT VOTING: Herbert ABSENT: Higgins, Patel

Chairman Preidel stated prior to making his motion that unfortunately he's not sure what would be worse; the amount of taxes that the residents will need to pay for all the extra children to go to school, or if it went to court and what we would end up with. He was not sure if anyone had looked into what the difference of that would be, or if there is even a way to know for sure. He explained he is not too happy about it but it seems like the board's hands are tied.

Approval of Minutes:

A motion to approve the minutes from August 26, 2019 was offered by **Chairman Preidel** and seconded by **Mr. Fleming**. Motion carried on a roll call vote recorded as follows:

AYE: Fleming, Preidel

NAY: None NOT VOTING: Allen, Borgstrom, Cain, Herbert, Ocello

ABSENT: Higgins, Patel

Comments from the Board:

Mr. Ocello commented that if there are wetlands on the property, it may cut down on the number of units. **Attorney Petrone** explained that it could. **Chairman Preidel** commented that 400 homes will make a big difference in the taxes. There are no positives with this many homes.

No further comments were made by the board members.

Public Comment:

Bob Tallon 2454 Axe Factory Road: He stated that when there was a plan for COAH there was going to be a bypass at the Carty Farm during the County growth and preservation plan. Maybe because this plan did not happen quickly enough, it gave the builders the opportunity to come in and decide how we as a township develop rather than the residents. **Chairman Preidel** explained when the Re-examination of the Master Plan was done, the TDR portion was done and was sent to the Township Committee. **Mr. Tallon** stated there is a time when the reexamination of the master plan comes up, the public can be involved in the input. **Attorney Petrone** explained that the master plan is reexamined every 10 years. There have been some updates during the last few years with the Burlington County Bridge Commission. The Township Committee ultimately decides what gets adopted from that reexamination.

Frank Pinto 420 Island Road: He questioned if there was a county growth and preservation plan in effect similar to the one from 2008. The plan from 2008 talked about the vision for the county as far as growth. **Chairman Preidel** explained that he is familiar with that plan, however with the reexamination of the master plan the board went over all the elements and sent everything to the Township. **Mr. Pinto** questioned getting copies of the master plan and he was advised to contact the Land Use Office.

Adjournment:

A motion to adjourn the meeting was offered by **Mr. Borgstrom** and seconded by **Mr. Allen**. All ayes. Motion carried.

Respectfully Submitted by:

Date Approved:

Ashley Jolly, Land Use Coordinator