

MANSFIELD TOWNSHIP PLANNING BOARD
REGULAR MEETING
November 25, 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, Dalpat Patel, Scott Preidel and Secretary Ashley Jolly. Robert Higgins was 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.

APPLICATION: PB2019-3: Minor Subdivision Completeness Review

Attorney Coleman swore in the applicant **Mr. Sanjiv Chandel**, 330 Mansfield Road East. **Attorney Coleman** explained that in reviewing the application and the letter provided **Planner Fox's** office, he asked the board to defer to the Professionals as to whether or not the application is complete enough to proceed.

Planner Fox referenced his review letter dated November 20, 2019. He recommends the board should find this application incomplete for consideration of a minor subdivision. The township requires a checklist with a minor subdivision. Said checklist was not completed for this application. The checklist requires the applicant submit to any outside agency, in this case, being the Burlington County Planning Board which reviews subdivisions. The Burlington County Board of Health, which would review the change of the lot of 4.01 to see if there could be a septic system on that lot. Also the NJ DEP in regards to a wetlands delineation. This is important because there is a lot of wetlands on the property. In speaking with the applicant, he seems to believe some of the site might be wet some of it is not. Without a wetlands delineation we are not sure where the ground mounted solar system could go.

Mr. Chandel explained that he has lived on the property for 30 or so years. There is a pond on the lot which he is taking some land out of the pond area. The solar panels are going right next to the pond, and there is no wetlands involved in that area. There is most likely wetlands in the back, which is a forested area. That area will not be touched. He is asking for ground solar because his roof does not face south. The lot he lives on is less than an acer. He thought he had done everything that was required. He stated he is not doing anything in regards to wetlands. Discussion ensued over whether or not wetlands were located on the property. **Mr. Chandel** stated the back of the property has wetlands but where the solar panels are being installed, it is not a wetland area.

Chairman Preidel questioned whether ground solar panels can go on wetlands with DEP approval. **Planner Fox** explained that DEP approval is required anytime a freshwater wetlands area is altered. **Planner Fox** continued going over his review letter by item. He questioned Mr. Chandel if there were any easements, covenants, or restrictions on the property. **Mr. Chandel** stated there were no easements. **Planner Fox** went over several other items included in his review letter. He questioned if there were any

field drains or old tiles on the property. **Mr. Chandel** stated there are none. **Planner Fox** questioned what the property was prior to Mr. Chandel owning it. **Mr. Chandel** explained it was a farm before and his wife has lived there for over 50 years. At the time 3 acres was not necessary for the house, so that is why the house sits on less than an acre. The requirement by the Township is for a ground mounted solar system more than one acre is required. There are areas on the property that are not wetlands so he can go anywhere on the property as required.

Engineer Agresta spoke about soil conditions and the septic field. There needs to be some sort of testing involved to know if the land is suitable to handle septic system. He believes this is a necessary item because the town will not want to end up with a lot that you cannot do anything with. **Mr. Chandel** explained that he is not creating a new lot; the lot already exists. The second lot where he does not live, is a 5.8 acre lot. The present lot with his house is less than an acre. He was not permitted to put the solar on the 5.8 acre lot as the primary use. He would not need to do the subdivision if he was able to put the solar panels on the 5.8 acre lot. **Chairman Preidel** explained that if the other lot is made smaller and it does not perk than the board would have given approvals to have a lot that's worthless. **Engineer Agresta** stated that was correct. The applicant is adjusting an existing lot not creating a new lot. He explained that his office did not do a complete review of the application because it was not deemed complete by the Planners office. **Mr. Chandel** stated that if this continues to be so difficult, he may just drop the application.

Planner Fox stated this is a very unique situation. The plan shows Mr. Chandels garage partly on the other lot and his two out buildings are all on the other lot. The well for the house is also on the other lot. The question being if placing the solar panels on the adjacent lot as an additional accessory use. He is not aware of the law on this issue. **Attorney Coleman** explained that there may be an additional variance required. **Planner Fox** explained that the larger lot is currently vacant, but has accessory uses that relate to the other smaller lot. **Mr. Ocello** questioned if a house could be built on the larger lot. **Planner Fox** stated that approval from the County for a septic system would be required, but otherwise he would just need zoning approval to confirm he meets all the setback requirements. The question however, is whether you can have an accessory use on the adjacent lot servicing the primary lot. **Attorney Coleman** explained that the Construction Official could take a look and address as to whether or not a garage or house be built there. Also with having working knowledge that there could be wetlands and require the applicant to provide a wetlands delineation.

Chairman Preidel questioned the board's thoughts on completeness. With all the checklist items missing he does not think the application should be deemed complete. The applicant should work with the Planner on the items and then come back to the board once everything is straightened out. **Planner Fox** stated another way to do it, would be a use variance for the solar panels on the adjacent property (larger lot). **Mr. Patel** questioned if the pond was man made. **Mr. Chandel** stated that it was and it's not a wetland. It was created long ago for the fire department to use in case of a fire. Drainage problems occurred when the township removed the ditch from the front of the house, which did create flooding in the front yard. He thought he was doing a good thing installing the solar panels. He had thought this would be a minor lot line adjustment. He asked if there could be any waivers. **Planner Fox** explained there are two choices: one is to accept the application as complete and discuss/vote upon it even though the engineers have not done a proper review; even if you were to discuss and approve conditionally based upon doing all these things, the concern is it may turn out that the new lot is not buildable. More discussion ensued on the larger lot being buildable. **Engineer Agresta** stated that until the wetlands are appropriately delineated, a decision cannot be made.

Chairman Preidel made a motion to deem the application incomplete. He advised the applicant to talk to the Planner and Attorney. **Mr. Allen** seconded the motion. Motion carried on a roll call vote recorded as follows:

AYE: Preidel, Allen, Borgstrom, Cain, Fleming, Ocello, Patel

NAY: None NOT VOTING: Herbert ABSENT: Higgins

APPROVAL OF MINUTES:

A motion to approve the minutes from October 28, 2019 was offered by **Chairman Preidel** and seconded by **Mr. Allen**. Motion carried on a roll call vote recorded as follows:

AYE: Preidel, Allen, Borgstrom, Cain, Fleming, Ocello

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

COMMENTS FROM THE BOARD:

There were no comments from the board.

PUBLIC COMMENT:

Frank Pinto, 420 Island Road – He had a few questions with respect to the Towergate litigation and settlement. He stated that he was at the board meeting when the board unanimously approved the settlement agreement that was sent by the Township Committee. Since that time, he has had the opportunity to read the document. He questioned if the Planning Board members were given a copy of the settlement agreement prior to the last meeting. **Chairman Preidel** stated that yes they had received it. **Mr. Pinto** asked if they read the agreement. **Chairman Preidel** stated yes. **Mr. Pinto** questioned if the Planning Board and the Planning Board Attorney were aware that the Township Committee was negotiating away requirements that are normally the responsibility of the board. He continued saying there are a lot of waivers for land use and zoning included in the settlement. The environmental impact statement being included as a waiver is very concerning given the proximity of this development next to Crystal Lake Park. Landscape buffers, Traffic Impact Studies, Trees shrubbery and landscaping requirements, Water resource conservation zone requirements, Community Impact Statement etc. were all waived as part of the settlement. He further stated it was interesting listening to Mr. Chandel's application and seeing the trouble he is having, even though he understands the wetlands issue, having worked for DEP for 33 years. When there is a 488 unit development next to Crystal Lake Park and all of these waivers of the very important requirements, it is a bad settlement in his opinion. He has been involved in years with negotiating settlements with responsible parties with DEP for the site remediation program and when negotiating a settlement there are always compromises on both sides. He believes this settlement is very one sided because it's hard to find any compromises that Towergate made. He plans to ask the Township Committee specifically what compromises were made by the other party. The environmental impact state he believes is very important. There are known threatened and endangered species at Crystal Lake Park. This property has known wetlands. It has suspected vernal pool areas. It also has a section of an archeological state grid that enters into that property and when the State Historic Preservation Office was contacted they said it would need to be evaluated if there is anything of archeological importance on the site. Crystal Lake Park is arguably this Township's natural resource gem as well as Burlington County Park system most important natural resources. He questioned why anyone would want to develop a development of this size directly adjacent to the park and waive all the land use and zoning requirements. **Mr. Pinto** questioned Chairman Preidel how he feels about waiving all the requirements for this project. **Chairman Preidel** explained that he does not feel good about it. **Mr. Pinto** stated that at the last meeting there seemed to be in his opinion some

confusion or not a full understanding of what the settlement meant. There also seems to be an opinion that the Planning Board had to approve the resolution. The counsel for the Planning Board that evening (not Attorney Coleman), recommended approval of the resolution and the only reasoning behind the recommendation at the time, was that there were other litigations that go through the whole process and the Judge may impose higher density then this settlement ended up. **Chairman Preidel** commented it was not only higher density, but parking on one side of the street, narrower roads, sidewalks on one side of the street and a lot of things the ordinance has that they can impose that the developer won't have to put in. He did read the waivers in the agreement, but he does not know what was negotiated. He explained that in the Mapleton development for instance, the Township ended up with narrow road and parking on one side. Country Walk is another development where they ended up with the same types of issues after a lawsuit. **Attorney Coleman** stated that Mr. Pinto was right and he was not here the evening the settlement agreement was adopted. He explained that he was not intimately involved in the negotiations of the settlement with Towergate Associates in the litigation. The Township Attorney took the lead on that and it was recommended to the Planning Board through the Township and the Township's Attorney that the Planning Board approve the settlement agreement. What the Chairman had eluded to, it potentially could have been a worse impact for the Township and this was the best possible deal that the Township could take given the position we were in. That is why there was a recommendation from the Township that the Planning Board adopt the settlement agreement. **Mr. Pinto** questioned if Attorney Coleman had any input at all or if he was counseled by the Township Attorney at all during the process. **Attorney Coleman** stated that the Township Attorney took the lead here and it was their recommendation that this was the best possible outcome for the Township and Planning Board. **Mr. Pinto** stated that did not really answer his question. He further questioned if Mr. Coleman was involved at all... **Attorney Coleman** stated that he was not. **Mr. Pinto** explained that he did take a look at the Master Plan from 2016 and the Land Use Plan Element update and the Farmland Preservation Element update, and also the Route 130 Corridor analysis which was done in 2017. He questioned if the Township paid for the amendments. **Planner Fox** commented that he did all of the documents. He and the Township previously worked with the Burlington County Bridge Commission, so the Township did not pay for the studies. The Township did pay for any resolutions and legal work and clerical work that was done. **Mr. Pinto** stated that to a major extent the plans focused on the implementation of a transfer of development rights program (TDR) as primary component to focus development in Town Center of nodes to thus keep other areas rural. The Towergate property was slated ultimately to become a TDR sending area. Along with use of TDR was the focus of affordable housing planning within these plans to a certain extent the 2017 Route 130 analysis also speaks of an affordable housing overlay. He questioned the board that since those were submitted to the Township Committee in 2016/2017, what has the Planning Board done to follow up to see whether those plans were implemented? Such as, the passing of ordinances and any zoning changes that were recommended in those plans. **Planner Fox** stated when the board adopts a plan under the New Jersey Municipal Land Use Law it is not required to be sent up further to the Governing Body to approve; it is just an informational piece. If the Governing Body wishes to adopt those plans and change the zoning that's the basis upon which they should do that. **Mr. Pinto** stated that to the best of his knowledge the Township has not made any of the recommended changes. **Attorney Coleman** stated to the best of his knowledge they have not implemented those changes. **Planner Fox** stated he is not privy to what discussions the Township has had. **Attorney Coleman** confirmed same. **Mr. Pinto** explained that it's his opinion that if the board is going to take the time and spend the professionals time to come up with reexamination of the Master Plan and the Land Use portion etc., which are important documents, that would have protected the Township from builders remedy lawsuits such as Towergate being filed; that there would be some obligation to follow up with the Township Committee to see what their thoughts are and not just pass them along. **Mr. Pinto** questioned Attorney Coleman asking if his colleague who recommended approval at the last meeting if that recommendation was under his direction. **Attorney Coleman** stated that it was and it was based upon the recommendation of the Township Attorney. **Mr.**

Pinto questioned if the Planning Board could have tabled the vote on the resolution and asked the Township Committee for more information and details on the negotiations. He asked if that was a possibility. **Attorney Coleman** said perhaps. **Mr. Pinto** asked if it would have made sense for his associate to let the board know that they have that option, because his perception was the board did not think they had that option and they felt they had to approve it that night. **Attorney Coleman** stated that he could not comment nor does he think it's appropriate for anyone to speculate what the board knew that evening. **Mr. Pinto** questioned if Attorney Coleman would say that it's his job to make sure the board knows all of their options. **Attorney Coleman** said perhaps. **Mr. Pinto** stated that the Burlington County Times stated that the Township and the developer have agreed that the Township has a prior round obligation of 114 units and a 26 year 3rd round obligation perspective need and expand the present need of 221 units. **Planner Fox** stated if it adds up to 335 then that is the numbers. **Mr. Pinto** questioned how long Attorney Coleman has represented the Planning Board. **Attorney Coleman** stated that he's not sure exactly, but a number of years. **Mr. Pinto** stated that on Attorney Coleman's company website, it notes his experience on real estate, land use, as well as other areas. On a link to the bio there is an interesting article regarding affordable housing and one particular comment in the article was "particularly vulnerable would be remote and lesser developed municipalities which have relied on fortuitous demographics, for example lack of public sewer, to not peruse Mount Laurel compliance." He questioned if that statement would apply to municipalities such as this. **Attorney Coleman** stated he would say that Mansfield could be categorized that way. **Mr. Pinto** questioned what Attorney Coleman has done over the time period that he has represented the Planning Board, to counsel the board on measures to take to protect the Township from this type of lawsuit that was filed by Towergate. **Attorney Coleman** explained that he does not represent the Township. He represents the Planning and the Zoning Board. There is a stark difference in representing the Planning Board and representing the Township Committee. He is not in any way intimately involved in the agenda or the issues that come before the agenda. He has to rely that his colleague, whoever that may be representing the Township, is overseeing and has prepared the necessary documentation to comply with the various Mount Laurel submissions that were required at the time. He's now come to discover that the Township was vulnerable to a Mount Laurel lawsuit, but he does not counsel the Township he has to rely that the Township Solicitor is overseeing those affairs. It would not be appropriate to step on his or her shoes. **Planner Fox** added that the bulk of the 335 units involve three inclusionary sites one of which is the Mapleton development of which 97 units will be counted and those are existing units. The Towergate farm, much of the property is in a planning area too and the state plan for development and redevelopment which is an area that could be serviced by sewer service if it were available. He's not saying all of the areas were in sewer areas but most of them were. **Mr. Pinto** asked Attorney Coleman if he represents Bordentown Sewage Authority. **Attorney Coleman** stated that he does. **Mr. Pinto** stated that although Towergate may not have formally come before the sewage authority with a proposal, we know they have approached representatives of the authority. There was also some discussions regarding that in closed session at one of the authorities meetings. **Mr. Pinto** asked Attorney Coleman if he feels his involvement with the Towergate settlement in Mansfield as far as recommending approval of the Planning Board resolution, which ultimately will fast track this development, plus Mr. Coleman's responsibilities with the sewage authority which obviously could have a future interest in future service which would generate increased revenues for the authority, Mr. Pinto thinks that would be a conflict of interest or at minimum a perception of a conflict. **Attorney Coleman** stated no. **Mr. Pinto** stated that part of his responsibilities at the DEP as an assistant director of the site remediation program was to manage all of the contracting for the site remediation program. He stated he has a lot of experience working with the Office of the Attorney General in making determinations on conflicts and perceived conflicts and he stated that he disagrees and he will follow up on that.

Bob Tallon 2454 Axe Factory Road: He just wanted to bring in some history and ask several questions. He stated that in 2008-2009 period the township the counties growth and preservation plan and there were a lot of vision meetings with the citizens. **Planner Fox** stated that he recalls and was involved in that. **Mr. Tallon** stated that during that time period he remembers several meetings at the Eco Complex and they had laid out a plan that would have taken care of all of this. He expressed that he has some anger/disappointment right now. He was involved with these meetings and has been involved with the Environmental Commission for at least 15 years. He stated that they put their hearts and souls into volunteering because they care about this community. They have been through builders remedy suits and he was under the impression that this was not going to happen again. These things were supposed to be taken care of. The bypass was supposed to get some of this, the Carty Farm, there weren't supposed to be a whole bunch of kids that are going to raise the taxes. Surely it will be up in the multi thousands. He does not want to see that piece of ground destroyed. This is a real let down and there have been a lot of balls that have been dropped and there are two council members that were here during this period and he does not know what happened, but he will say that they will find out and it will be all over the community because he is really angry and disappointed. This is a very unfair thing to do, Attorney Coleman's role is cut and dry, but the Town Council and whoever has been representing the town over the past eight or nine years has some explaining to do; why this was not addressed. We had plans, there is even a record of plans that were going to have this happen and the DEP was even approving a wastewater treatment plant that would've handled the bypass and what was going down on the Carty Farm. This is dead wrong and that's all he can say. **Planner Fox** stated that Mr. Pinto did identify all the plans mentioned. **Chairman Preidel** mentioned the reexamination report with the TDR. **Planner Fox** said correct. **Chairman Preidel** stated it shows the bypass and he's not sure how many homes were planned to go there. **Mr. Tallon** stated this is...(inaudible). Whoever has been the Town Counsel and professionals for the last 8 or 9/10 years. **Chairman Preidel** stated that he understands and that he believes it was started when the previous planner Harry McVey was still here. He stated there were meetings regarding TDR where they brought everyone in. **Planner Fox** confirmed same and stated that the Township still owes money to the Freeholders for the Wainwright Farm which has TDR credits, which don't really exist. He further mentioned that the current Crystal Lake Park was part of a litigation that was 499 units and just before it was developed it was bought by the County.

There were no further public comments.

LAND USE LIABILITY TRAINING:

Attorney Coleman referenced the training booklet the board members had received. He explained that the Township is a member of the Burlington County JIF and this year JIF has decided to circulate this bulletin to Planning & Zoning Boards throughout the County that they represent. He stated that the items are rather basic and he would hope that all board members know all of these things already. He explained that the board members would be provided with coverage in the event there is a lawsuit that is filed not only against the Planning Board, but the individual members. If you work in a reasonably prudent manner JIF will provide you with coverage. **Chairman Preidel** asked for some examples of what would be an irresponsible way to act. **Attorney Coleman** explained that issues that he's seen in his practice and runs with conflict of interest, if a developer/applicant calls a board member and asks board member to come out to the property and offers to walk around with the board member to review the site and the application. He stated he has seen board members in the past do that; not saying this board or this township, but it does happen. In that particular situation, there is nothing wrong with driving by the property to review the application, however there is a problem if a board members sits down with an applicant to review an application. It is the particular failure to disclose transparency issues, or if a board member pre decided an application and comes in knowing under no circumstances is said board member going to approve or reject an application; this is where a developer may single out a particular board member. **Attorney Coleman**

brought up religious institutions and possible suits from those types of organizations; do not come to the board meeting with a bias. These are basic things to consider. He asked the board members if they had any questions. There were no questions from the board members.

EXECUTIVE SESSION:

A motion to go into executive session was offered by **Chairman Preidel** and seconded by **Mr. Borgstrom**. All ayes. Motion carried.

ADJOURNMENT:

A motion to come out of executive session was offered by **Chairman Preidel** and seconded by **Mr. Borgstrom**. All ayes. Motion carried.

Chairman Preidel stated that there will be a special meeting on December 16th at 6:30pm to discuss professional appointments for the 2020 year.

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

Respectfully Submitted by:

Date Approved:

Ashley Jolly, Land Use Coordinator
