

North Smithfield Zoning Board of Review

November 19, 2008, 7:30 pm

Kendall Dean School

83 Greene Street, Slatersville

1. Roll Call

Present: Mr. Jühr, Mr. Marcantonio, Mr. Kearns, Mr. Scarpelli, Mr. Denizard, Mr. DiNunzio. Also present were Building Official Bob Benoit, Assistant Solicitor Bob Rossi, and stenographer Shelly Deming from Allied Court Reporters.

2. Disclosure of no compensation or pension credits received by the board members.

3. Continued application of Joe Jenks (owner Mary Zurowski), requesting to construct a building to be used as a religious institution, which requires a Special Use Permit, per section 5.4.4, subsection 5. Locus is 1054 Victory Highway, Plat 1, Lots 141 & 151.

The Chair stated that attorney John Shekarchi had sent communication to the Building Official asking for a continuance to review the latest traffic information. Mr. Scarpelli stated that he is concerned that some members of the Board's terms are set to expire on December 1. Mr. Rossi said that the Board can deal with those

problems if they do arise in the future. Anthony Winiarski, the engineer who conducted the peer review of the traffic study, has completed his review and can make comments this evening if the Board wishes. The Chair entered the following exhibits into the record: B5) letter from the North Smithfield Police Department concerning the traffic, P22) letter dated November 16, 2008 from Bryant Associates, P23) Traffic Impact Analysis 2nd Revision, dated November 2008.

Mr. Kearns made a motion to continue the application to December 16, 2008. Mr. Denizard seconded the motion, with all in favor.

4. Continuation of the appeal by John Boucher for Laurelwood, LLC, of Building Official's decision of assessing impact fees for construction of new single-family dwellings. Locus is 170 Providence Pike, Plat 5, Lot 430.

Attorney Michael Kelly addressed the Board and asked that the following exhibits be entered into the record: P9) Declaration of the Laurelwood condominiums, limiting occupancy to ages 55+, and P10) table prepared by Larry Koff Associates. Mr. Kelly also referred to P8, page 2, stating that the Planning Board required the donation of land on Pomona Street and 5.8 acres as a conservation easement, totally 11.2 acres of donated open space and easement. The Chair asked if the Town Council granted the developer more density. Mr. Kelly replied that the Planning Board is not authorized to grant density

bonuses, and he is not aware of other board's actions.

Mr. Kelly stated that at the last meeting the Board had a question on how credit was calculated from taxes paid, (state statute requires future taxes credited toward any need), and asked the witnesses to come back. Roberta Cameron of Koff Associates addressed the Board and explained table P10, which outlines property tax contribution and principle payment for education and recreation. She stated that she got her numbers from the town finance director. Over the time of the bond repayment, approximately 5,000 households will be paying for a \$30 million bond. Taking out state reimbursement and 10% impact fees, results in a total of \$2,399 per household for education. For recreation there is no current bond, but Ms. Cameron assumes it will be \$3.2 million in the next couple of years. Adjusting the principle payment similarly to education [10% (no state reimbursement)] will result in \$327 per household. Referring to page 10 of the previously submitted report (P1), Ms. Cameron concluded that the impact fee total should be \$133 for Laurelwood.

Mr. Rossi asked for the statutory site for providing credit due for taxes paid. He said he is not certain what authority they are referring to. Ms. Cameron pointed out that it is noted in the report as Chapter 45-22.4 Rhode Island Development Impact Fee Act. Mr. Rossi said that he read a portion of the statute and does not see anything that states that future taxes be used to offset fees. He said it doesn't have that interpretation, and if that's the case, they wouldn't need impact

fees. He added that he doesn't see the word "credit." Mr. Kelly responds that the Board interprets and makes findings of fact. He said it only makes sense if the town has a bond issue, and referred to page 6 of the report which states bond issues are paid through property taxes.

Mr. Kearns stated that he would have liked to have insight from the town as to how the impact fees were assessed. Mr. Kelly said that he wrote a letter asking if Mr. Teitz and Mr. Shamoon (the town's consultants) would be attending this meeting but did not get a response. Mr. Kearns stated that the consultants had submitted a letter. Mr. Kelly stated that the letter was not signed, thought it appears that the consultants agree with the applicant with regard to impact fees for education. Mr. Jühr stated that Mr. Teitz submitted the letter in lieu of testimony, as maybe his schedule didn't allow him to attend the meeting. Mr. Jühr stated that he does not think that the donation of open space would relieve the developer of having to pay impact fees for recreation. The Chair stated that his memory on the issue is that in exchange for density of the development, the Planning Board required the open space donation. Mr. Jühr asked Mr. Kelly what is his objection to the letter submitted by Mr. Teitz. Mr. Kelly said it was unsigned and the testimony was not given under oath. Mr. Rossi said there was a very short time span between when Mr. Teitz got the letter to him and the meeting date. He added that Mr. Teitz charges a fee for appearance, but if the applicant would like, the Board can get the letter signed and notarized if necessary.

Mr. Juhr stated that the fees should be recalculated for a 55+ community, at least for education fees. He asked if the applicant should go back to the Planning Board for recalculation then the refund can be given. He stated that since the Zoning Board didn't make the calculations, perhaps someone else should recalculate the fees. Mr. Rossi stated that the Board can request that the applicant go back to the Planning Board. Mr. Kelly disagreed, as he said the Planning Board did not set the fee, the Town Council did. He also said that the appeal process was written into the impact fee ordinance and the Planning Board has no authority to set fees. Mr. Rossi said that the only issue before the Board is the age-restricted aspect of the development. Mr. Scarpelli said that given that, it seems clear that education fees should be eliminated. He said that as to future tax credits, he does not fully understand the applicant's argument and does not agree with it. Mr. Juhr stated that for future units, impact fees should be calculated correctly, so the developer does not have to go through this process for each unit.

Mr. Juhr made a motion to grant the appeal by John Boucher for Laurelwood, LLC, of Building Official's decision of assessing impact fees for construction of new single-family dwellings. He moved that the Laurelwood age-restricted condominium development should not be assessed impact fees for education, but the \$692 fee for parks and recreation shall remain as calculated. Further, the applicant should get an appropriate refund for both Units 105 and 106 for the fees

already paid for education costs. Locus is 170 Providence Pike, Plat 5, Lot 430. Mr. Denizard seconded the motion. Roll call was as follows: YES: Mr. Jühr, Mr. Kearns, Mr. Marcantonio, Mr. Scarpelli, and Mr. Denizard. Motion passed, with a vote of 5-0.

Mr. Kearns made a motion to adjourn at 8:22 pm. Mr. Scarpelli seconded the motion, with all in favor.