

RESOLUTION

OLD TAPPAN PLANNING BOARD

WHEREAS, the Old Tappan Planning Board hereby states the following by way of preface:

1. By Resolution dated December 1, 1993, the Old Tappan Planning Board granted to Colonial Realty Development Corp., as applicant, planned residential development conditional use approval and preliminary site plan approval for the development of a 140 unit project on Orangeburg Road, commonly referred to as Woods Edge, all on terms and conditions more specifically stated therein.

2. The Village, Inc. and/or Colonial Realty Development Corp., have applied to the Old Tappan Planning Board for amended preliminary site plan approval and amended planned residential development (PRD) approval as a conditional use for said development.

3. By said application, the applicant is seeking the following relief from the Planning Board.

A. To modify the affordable housing component of the plan so as to utilize the regional contribution option which is now permitted by the Old Tappan Zoning Ordinance, but which was not provided in said ordinances at the time of the original application. The net effect of said amendment would be to reduce the number of low and moderate income units on site from 28 to 14,

with the other 14 units to be transferred to a receiving municipality pursuant to a regional contribution agreement.

B. To modify condition 2(a) of the Board's original Resolution of Approval, which condition essentially provided that no construction of any type and no clearing of the site could take place unless and until the on-site and off-site sanitary sewer plans for the proposed development have been approved by all governmental agencies and authorities having jurisdiction thereof.

4. The application, plans and supporting documents have been reviewed by the Planning Board and the Board's professionals, including the Borough Engineer and the Borough Planner, from whom the Planning Board has received reports.

5. The Board conducted a public hearing on the application on various dates with proper notice in accordance with law.

6. The Board has received and reviewed studies and reports from professionals engaged by the applicant as well as the testimony of representatives of such professional consultants.

7. Over the several public hearings on the matter, the Planning Board has received and considered extensive questions and comments by members of the public.

8. The Board has reviewed and considered the plans, reports and documents submitted by the applicant, the evidence, both testimonial and documentary, presented by the applicant, the reports of the Board's consultants, the evidence, questions, arguments and objections, if any, presented at the public hearings by members of the public and their attorneys, as well as the

pertinent ordinances of the Borough.

9. At its meeting of August 17, 1994, the Board took action to approve said application subject to the adoption of a memorialization resolution of approval, which is set forth herein.

NOW THEREFORE, BE IT RESOLVED by the Old Tappan Planning that, based upon the evidence and information presented at the public hearings, it hereby makes the following findings of fact:

1. The developer has filed with the Planning Board an application for amended preliminary site plan approval as well as amended PRD conditional use approval as shown on amended site plan maps entitled Woods Edge at Old Tappan, consisting of 29 maps, prepared by Harper & Palmieri Consulting Engineers and Land Surveyors, P.A., sealed by Rocco Palmieri, P.E. & L.S., dated September 29, 1992 and amended to September 13, 1994.

2. The property in question is comprised of approximately 26.70 acres situated on the west side of Orangeburg Road North in the Borough and commonly known as Block 602 - Lot 9, Block 603 - Lots 1 and 2, and Block 303 - Lot 8 on the current tax assessment map of the Borough of Old Tappan.

3. The approval previously granted by the Planning Board was for a planned residential development consisting of a total of 140 housing units including 7 single-family residences, 105 "marketplace" townhouse units and 28 low and moderate income housing units, with a total overall density of 5.24 units per acre.

4. The amended preliminary site plan as submitted proposed a modification of the original project so that, although the

project will still consist of 140 total units, 50% or 14 of the originally proposed 28 low and moderate income units would not be built on site but would be transferred to a receiving municipality under a regional contribution agreement. The Mt. Laurel units transferred would be replaced with marketplace units.

5. The Board's original resolution of conditional approval dated December 1, 1993 contained the following specific condition as condition number 2 (page 9)

"2. No construction of any type and no clearing of the site may take place unless and until: (a) the on site and off site sanitary sewer plans for the proposed development have been approved by all governmental agencies and authorities having jurisdiction thereof, including but not limited to the State of New Jersey Department of Environmental Protection and Energy, the Bergen County Utilities Authority, the Borough Engineer and the Mayor and Council of the Borough of Old Tappan; and (b) any and all improvements necessary to connect the subject property to a fully approved and operational sewer system, including on site and off site improvements, have been adequately secured by developer's agreement and appropriate performance bonds or letters of credit, meeting the approval of the Board Attorney and Borough Attorney as to form and the Borough Engineer as to amount. In addition, the developer must obtain grants of rights of way and easements in form satisfactory to the Board Attorney and Borough Attorney to permit the installation of all requisite sewer system improvements on or across the adjacent property owned by Dorotockey's Run Development Corporation."

6. The reason for this condition as stated was the language of section 14-9.1(d) of the Planned Residential Ordinance of the Borough Code, which permits planned residential developments of this type as a conditional use only if certain enumerated conditions are met. Condition (d) states as follows:

"Sanitary Sewer System. A planned residential development located in an RA residential zone shall be required to be joined to a centralized sanitary sewer

system as defined herein. Such linkage to a sanitary sewer system must be reviewed and approved by the State of New Jersey, Department of Environmental Protection, the Bergen County Utilities Authority, the Mayor and Council and the Borough Engineer."

7. The developer intends to fully comply with subsection (b) of condition 2 referred to above and has taken substantial steps in fulfillment of that condition.

8. Through primarily the testimony of Robert Bradley Kennedy, the applicant's president, the Board learned that the applicant had originally devised an independent plan to provide sewer service to the project but the Planning Board, on behalf of the Borough, had suggested that the developer connect into the DeWolfe Road pump line, as this would allow other properties on Orangeburg Road to be sewerred.

9. On May 19, 1994, the NJDEP denied, without prejudice, the applicant's plan to sewer the project. Although the plan was in technical conformance with the Department's regulations, it was learned that the northeast corner of the Borough, in which the subject property is situated, is outside the approved sewer district to be serviced by the Bergen County Utilities Authority. Apparently, this was due to a technical drafting error which was not the responsibility of either the developer or the Borough. Under the terms and conditions of a contract between the BCUA and the Borough entered into in 1987, the Borough of Old Tappan in its entirety was to be included within the BCUA service district.

10. It is reasonably anticipated that the necessary technical changes to the maps by BCUA and incorporation of the aforementioned

northeast corner of Old Tappan into the BCUA service district so as to permit approval of the subject sewer system by the NJDEP will take approximately 7 to 8 months.

11. Effective on or about March 2, 1994, the NJDEP assumed environmental and wetlands authority over the site. The applicant has previously received from the NJDEP an LOE, or letter of exemption and statement that a transition area waiver was not required for the construction and development of certain structures on site. At that time, although there was no legal requirement to mitigate with respect to any wetlands to be impacted, the developer voluntarily agreed to create new wetlands as part of its project.

12. However, under the State "Permit Extension Act," N.J.S.A. 40:55D-130 et. seq., the presently existing environmental approvals and permits with respect to this property will expire on December 31, 1994. The consequences of same will be that if certain improvements on the site specifically relating to construction of the private road to service this development are not completed before the end of the year, the expiration of these permits and imposition of more stringent conditions of the Freshwater Wetlands Protection Act will result in a reduction of the number of townhouse plexes to be constructed by two buildings.

BE IT FURTHER RESOLVED that, based upon the foregoing findings of fact, the Old Tappan Planning Board hereby makes the following conclusions:

1. With respect to the amendment sought by the applicant so as to permit 50% or 14 of the originally proposed 28 Mt. Laurel

units to be transferred outside the municipality under a regional contribution agreement, such device is now permitted under the amended planned residential development provisions of the Old Tappan Zoning Ordinances, Section 14-9.1 et. seq. This was not an option at the time the subject application was originally filed.

2. Although an issue has been raised as to whether, by the effect of such an RCA, a developer would be required to build more Mt. Laurel units on site in order to comply with the mandatory 20% set aside, the developer has obtained a written letter opinion dated 8/17/94 by principal planner, James E. Cordingly, of the State of New Jersey, Council on Affordable Housing, to the effect that the developer would not fail to comply with the 20% mandatory set aside by constructing half the number of affordable housing units on site (10%) exporting the other half of the original number of affordable units on site (10%) to a receiving municipality under a Regional Contribution Agreement (RCA), and by replacing the number of units to be exported off site with additional marketplace units, thereby continuing with the same total number of original units for the project.

3. Under these circumstances, this aspect of the amended application as proposed complies in all respects with the provisions of the Old Tappan Zoning Ordinance and the regulations of COAH as interpreted by its officials, and said amendment is approved subject to the conditions hereinafter set forth.

4. With respect to the developer's application to seek relief from conditional 2(a) of the original resolution of approval

as aforesaid, the Board finds and concludes that there are substantial differences between this application and similar type of relief requested by another developer as follows:

(1) this developer has taken a pro-active rather than a reactive role in the development of the required sewer system;

(2) this developer seeks permission to do site work only, primarily related to the road to service the development, and does not seek permission to construct any buildings or any foundations;

(3) all work proposed will be on the interior of the site and should have no impact on adjacent property owners; and

(4) this developer does not seek relief from any of the other conditions of initial approval and fully intends to comply with all such conditions prior to commencing such work.

BE IT FURTHER RESOLVED by the Old Tappan Planning Board that based upon the findings, determinations and conclusions contained herein it hereby grants approval to the amended PRD conditional use and site plan applications filed by the applicant as previously referred to and as shown on the plats specifically described herein, subject however to the following conditions:

1. Completion of any and all unsatisfied conditions set forth in the Board's original resolution of approval dated December 1, 1993, which conditions have not been amended or superseded by this resolution. All such conditions are expressly incorporated herein by reference.

2. Amended approval, if required, by the Bergen County Planning Board of the site plan aspects of the application in all

areas as to which the BCPB has jurisdiction.

3. Amended approval, if required, by the New Jersey Department of Environmental Protection of any and all matters within its jurisdiction.

4. Continued compliance by the developer with the provisions of law requiring the approval of soil conservation and sediment control authorities.

5. The developer shall post additional deposits for all planning, engineering and legal expenses of the Borough incurred in connection with this amended application, including but not limited to those with respect to the satisfaction of all conditions set forth herein.

6. Execution of a Regional Contribution Agreement with a receiving municipality for the transfer of a total of 14 low and moderate income units (comprised of 7 low income units and 7 moderate income units) as to which total 14 units the developer is being relieved of the obligation to construct pursuant hereto. Said Regional Contribution Agreement must be fully approved in all respects by COAH. In addition, the developer shall remit the monetary contributions required by said RCA in order to implement said transfer of units.

7. Execution by the developer of a joint sewer agreement among it, the Borough, Dorotockey's Run Development Corp. and United Properties Group, regarding what is commonly referred to as the Phase IIB Sewer Project, including the posting of required letters of credit and payment of sewer connection charges as set

forth therein.

8. Compliance by the developer with any remaining items set forth in the letter report to the Planning Board by Kasler & Associates, P.A., originally dated November 3, 1993 and as amended and supplemented by follow up reports of various dates (excepting paragraph 9 on page 6 thereof).

9. On the amended application, specifically the landscape plan, the applicant has eliminated a recreational use in the northwest corner of the property. However, the site plan as amended continues to indicate an unidentified recreation function. The applicant has indicated that it cannot make a specific commitment to any specific recreational use since same will depend upon determinations to be made by Rockland Electric Company in connection with the relocation of electric power transmission towers on site.

An elimination or modification of this recreational use as shown on the original approved site plan would require the filing of an application for amended site plan approval and a public hearing before the Planning Board. Therefore, by the amended approval embodied herein, the Planning Board expressly does not approve the change in the landscape plan as aforementioned. The landscape plan shall be changed back to reflect that which was originally approved by the Planning Board with any elimination or modification thereof to be the subject of an application to the Planning Board for amended site plan approval.

10. Since by virtue of the developer's plan to transfer

14 affordable housing units under a Regional Contribution Agreement, the phasing schedule and plan for distribution of dwelling units on site, as originally approved, must also be modified. The developer's agreement in this matter shall contain specific provisions with respect to same.

BE IT FURTHER RESOLVED that the Board Secretary shall publish notice of this action in the manner provided by law, and that copies hereof shall be forwarded to the Borough Council, the Borough Construction Code Official, the Borough Attorney and the applicant's attorneys, Pitman, Senesky, Nicola & Selitto, Esqs.

ADOPTED: *September 21*, 1994 on a roll call vote as follows:

AYES: *6*

NAYS: *0*

APPROVED:

PLANNING BOARD OF THE
BOROUGH OF OLD TAPPAN

By: *Walter Frueh*
Walter Frueh, Chairman

ATTEST:

Malcolm Davies
Malcolm Davies, Secretary