

TOWNSHIP OF VERNON

TOWNSHIP COUNCIL SPECIAL WORK SESSION MEETING

September 24, 2009

A Special Work Session Meeting of the Township Council of the Township of Vernon was convened at 4:35 p.m. on Thursday, September 24, 2009 in the Vernon Municipal Center, 21 Church Street, Vernon, New Jersey with Mayor Austin Carew presiding.

The purpose of this Work Session Meeting was to discuss a detention basin policy for the Township of Vernon. Official action was not taken.

STATEMENT OF COMPLIANCE

Adequate notice of this special meeting was provided to the public and the press on September 21, 2009 in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-7. Notice of this meeting was sent to the New Jersey Herald and was posted on the bulletin board in the Municipal Center and posted on the Township's Website.

ROLL CALL OF MEMBERS

Present were Council Members Richard Carson, Gary Grey, Valerie Seufert, and Mayor Austin Carew. Also present were Township Manager Melinda Carlton and Township Attorney Michael Witt.

SALUTE TO THE FLAG

The Mayor led the assemblage in the salute to the flag.

DISCUSSION

Detention Basin Policy Discussion

Representatives from the Detention Basin Advisory Committee were invited to attend this Special Work Session Meeting for the expressed purpose of presenting and discussing both the current ordinance in effect regarding the ownership and maintenance of detention basins in Vernon Township and proposed policy changes for Council consideration.

Present from the Detention Basin Advisory Committee were:

- Jack Smith, Local Developer
- Sam Lewin, Land Use Board Member
- Ed Talmo, Local Developer
- Dave Pullis, Director of Public Works
- Louis Kneip, Director of Planning and Development
- Tom Pinand, Construction Official

Also present for Vernon Township was Lynne Schweighardt, CTA, Tax Assessor for Vernon Township.

Mayor Austin Carew thanked everyone for their attendance and applauded their efforts in formulating four potential options the Township Council may consider in implementing a new Detention Basin policy for the Township.

Township Manager Melinda Carlton gave a brief update on the creation for the Detention Basin Advisory Committee in December 2008. Seventeen local developers expressed interest in participating on this committee and ultimately, five members were randomly selected by blind ballot draw. The Detention Basin Advisory Committee has met on three occasions to review and propose various options to the Township Council in the ownership and maintenance of detention basins.

Louis Kneip, Director of Planning and Development presented a history and overview of why detention basins have become a concern for the Township and stated the ownership and maintenance of detention basins has become a difficult subject.

During a 2006 Planning Board hearing for the Highland Lakes Realty subdivision on Route 515, Mr. Kneip reported that the Planning Board agreed to begin to implement a condition in the Planning Board approval resolutions requiring the developer to form a Homeowner's Association to own and maintain detention basins within their subdivision. Four (4) subdivisions were approved in this fashion: Highland Lakes Realty (Rt. 515), Black Creek Reserve (Warren Drive), Drew Farm, and Sunset Ridge (Lake Walkkill Road). However, none of these subdivisions have been built, nor were any Homeowner Association's formed.

Mr. Kneip further advised that Preliminary and Final Approvals were given to the Sunset Ridge subdivision with conditions that a Homeowner's Association is to be formed to maintain the detention basins in that subdivision. The Zoning Board suggested that the applicant approach the Township Council to ask them to accept ownership of the detention basins on that subdivision because the existing Land Use Ordinance does not have a provision requiring a Homeowner's Association be formed to maintain detention basins. Mr. Kneip stated that matter has been pending for several years now without a decision from the Council.

Mr. Dave Pullis, Director of Public Works, informed the Council that the Township DPW currently maintains three [3] detention basins located on private property. The Township has been cutting the grass on detention basins in Old Orchard, Dagmar Dale, and Pleasant Valley Lake subdivisions.

Mayor Austin Carew requested that Lou Kneip research the Planning & Zoning files to determine the total number of detention basins constructed in the Township.

Council Member Gary Grey commented that the NJDEP Municipal Storm water Management Regulation Plan requires municipalities to establish and implement storm water management plans but does not specially assign maintenance responsibilities to municipalities. Council Member Grey stated he does not want Vernon taxpayers bearing the maintenance costs for detention basins.

Mr. Kneip then presented the following four [4] policy options for the ownership and maintenance of detention basins for discussion:

Option #1 - Vernon Township to own and maintain all new detention basins in non-private communities.

Mr. Kneip advised that this policy option is essentially the current policy contained in section §330-132 of the Vernon Township Land Use Code. Vernon Township had been accepting detention basins in subdivisions with public roads. Mr. Kneip cited the Dagmar Dale subdivision off Lake Pochung Road as a recent example.

Beginning around 2006, the Planning Board began putting a condition in the resolution of approval of new subdivisions that required the formation of a Homeowners Association to own and maintain the detention basin facilities. Four (4) subdivisions were approved in this fashion, Highland Lakes Realty (Rt. 515), Black Creek Reserve (Warren Drive), Drew Farm, and Sunset Ridge (Lake Walkkill Road). None of these subdivisions have been built, nor were any Homeowner's Associations formed. This condition of approval was recently removed from the Sunset Ridge subdivision when it received final approval from the Land Use Board.

Advantages presented:

- Provides for consistency with past practice, with the exception of the subdivisions listed above. The conditions in the above subdivisions could be modified if this policy was chosen.
- Alleviates the concern that small HOA's may not be functional or able to keep up with maintenance responsibilities.

Disadvantages presented:

- Requires Township Department of Public Works (DPW) staff to be responsible for maintenance. The recent NJDEP storm water regulations require detailed

maintenance plans for new basins that have to be followed which could be costly and time consuming.

- Vernon Township would be responsible to repair or replace a failed basin. Two recent problem examples are the Woodmont Homes basin failure in 2007 and the non-functional infiltration basin on Rt. 515 in the Town Center.

Option #2 - Vernon Township to require developers of new subdivisions to form a Homeowner's Association to own and maintain detention basins.

Mr. Kneip stated this policy option has been the approach suggested by the Planning Board the past several years. A Homeowner's Association would be formed to take sole ownership and maintenance responsibilities for all new basins constructed in Vernon within any new subdivision.

Advantages presented:

- No cost to Vernon Township for the maintenance, repair or replacement of any new detention basins.
- This is consistent with the conditions of the resolution of approval for all subdivisions approved since 2006, Highland Lakes Realty (Rt. 515), Black Creek Reserve (Warren Drive), Drew Farm, and the Sunset Ridge (Lake Walkkill Road). This condition of approval was recently removed from the Sunset Ridge subdivision when it received final approval from the Land Use Board.

Disadvantages presented:

- Developers have expressed concern that small HOA's will be non-functional and incapable of meeting the maintenance requirements because they lack the equipment, funding and knowledge.
- Developers object to the legal costs of establishing the HOA, and they feel it would have a negative impact on sales.
- Arguments have been made that Vernon Township is ultimately liable anyway for all basins within the Township per the NJDEP storm water regulations. This argument does not appear to be supported by the NJDEP regulations or the Vernon Township Ordinances.

Option #3 - Vernon Township to own and maintain all new detention basins and to collect fees by way of a special benefit tax assessment on all properties that are served by the detention basin.

Mr. Kneip commented that this policy option arose from discussions by the Detention Basin Policy Advisory Committee (DBPAC). This policy would incorporate an extra tax assessment on lots within a new subdivision to pay for the cost of maintaining the detention basin facilities.

Advantages presented:

- Vernon would have a source of income to defray the costs of maintaining new detention basins.
- The DPW staff would be maintaining all detention basins in non-private developments, similar to current arrangements.

Disadvantages presented:

- According to the Tax Assessor, this option is likely not feasible. There is no precedent that she is aware of for a special benefit assessment for detention basin facilities.
- This would generate additional workload for the Tax Assessing and Collecting Departments.
- The amount of income would be very small since there are a limited number of new subdivisions that would be contributing. Applying it retroactively to existing subdivisions with detention basins would be very difficult and unpopular with residents.

Ms. Lynne Schweighardt, the Township's Tax Assessor, advised the Council and Detention Basin Advisory Committee that special assessments are for a finite number of years and may not be imposed on property in perpetuity. Further, Ms. Schweighardt stated there is no provision in state law for special assessments for the care and

maintenance of detention basins. Ms. Schweighardt also advised that easements, ownerships and deed restrictions are determined at the time of the Final Approval of a Subdivision site plan by the Land Use Board and would be indicated on the subdivision and lot deeds.

Option #4 - Vernon Township to own and maintain all new detention basins in non-private communities and collect and one-time fee for each new lot in a subdivision.

Mr. Kneip advised that this policy option is similar to Option #1 except there would be a source of income to help defray the DPW cost of maintaining the basins. The developer of each lot would be required to pay a single one-time fee for each lot created within a new subdivision. The funds could be kept by the Finance Office in a dedicated fund to be used solely for basin maintenance and repair. Startup funds could be generated fairly quickly, depending on the amount established. For example, a \$500 per lot fee in a new 10-lot subdivision would generate \$5,000.00 for the maintenance fund.

Advantages presented:

- Provides for consistency with past practices in that the Vernon DPW would continue to be responsible for basins in non-private developments.
- Provides a source of funding for basin maintenance and repair, though it may be inadequate in the beginning.
- Alleviates the concern that small HOA's may not be functional or able to keep up with maintenance responsibilities.

Disadvantages presented:

- Requires Township DPW staff to be responsible for maintenance. The recent NJDEP storm water regulations require detailed maintenance plans for new basins that have to be followed which could be costly and time consuming.
- Vernon Township would be responsible to repair or replace a failed basin. Two recent problem examples are the Woodmont Homes basin failure in 2007 and the non-functional infiltration basin on Rt. 515 in the Town Center.
- The fees will be unpopular with developers.

Mayor Austin Carew asked each member of the Detention Basin Advisory Committee to state the policy option they favor.

Jack Smith, Local Developer, stated he preferred Option #3 since costs are spread over the users. Mr. Smith further commented that small informal Homeowner's Associations do not work and often maintenance concerns are left to languish since there typically is no taxing authority.

Sam Lewin, Land Use Board Member, stated he favored Option #3 because only the homeowners who use and benefit will pay for the maintenance. He further stated that no one knows the long-term costs of maintaining a detention basin and did not want taxpayers to be burden with the costs.

Ed Talmo, Local Developer, stated the Township should maintain underground detention basins.

Louis Kneip, Director of Planning and Development, advised he preferred Option #2 and commented that storm water management regulations require specific and regular maintenance of detention basins. Detention basin failures may cause significant damage off-site and pose an extraordinary liability to property owners.

Dave Pullis, Director of Public Works, stated he favored Option #2. He further offered that the Township should not take ownership of private roads which costs the Township additional road maintenance, snow plowing and street lighting costs.

Tom Pinand, Construction Official, advised that the Township should change the zoning ordinance to require underground detention basins, making the ground above the detention basin usable for other uses and easier to maintain.

PUBLIC COMMENTS

Mayor Carew opened the meeting for Public Comment.

Bruce Zaretsky, a developer in Vernon, questioned if an analysis was performed to determine what the cost would be to an average taxpayer if the maintenance of all detention basins in the Township was spread among all taxpayers. Mr. Zaretsky believed the costs would be minimal.

Harry Shortway, Drew Road, commented that any and all costs associated with detention basin maintenance should not be a burden on taxpayers but rather should be paid by the developer.

Seeing no one from the public wishing to speak, Mayor Austin Carew closed the public portion of the meeting.

COUNCIL DISCUSSION

Council Member Gary Grey reiterated that he does not want to burden the taxpayers with detention basin maintenance costs and further expressed concern that there may be liability costs to the Township under the NJDEP Storm water Management Regulation Plan should the Township have a role in the maintenance of detention basins.

Mayor Austin Carew asked Township Attorney Michael Witt what liabilities, if any, may likely be imposed on the Township if the Township took over the maintenance of new detention basins.

The Township Attorney advised that he and Land Use Board Attorney Pat McNamara agreed that they have read nothing in the state Storm water Management Regulations Plan requiring a municipality to maintain detention basins.

Council Member Valerie Seufert questioned if any research was gathered from neighboring municipalities to determine how they handle detention basins and what, if any, requirements are in their land use ordinances regarding the maintenance of detention basins.

Township Manager commented that equity issues to taxpayers must be properly addressed.

ADJOURNMENT

There being no further items of business to be conducted on the Special Meeting agenda, a motion for Adjournment was made by Council Member Valerie Seufert. Motion seconded by Council Member Richard Carson with all members voting in favor.

The Regular Meeting of the Township Council of the Township of Vernon was adjourned at 5:30 p.m.

Respectfully submitted,

Robin R. Kline

Robin R. Kline, MAS, RMC
Municipal Clerk

Minutes approved: November 12, 2009