

Adopted 12/17/09

**RESOLUTION
of the
Township of Hamilton Planning Board**

RESOLUTION # 2009-10

**RESOLUTION OF MEMORIALIZATION OF THE TOWNSHIP OF
HAMILTON PLANNING BOARD GRANTING GENERAL DEVELOPMENT
PLAN APPROVAL TO HARDING HIGHWAY, LLC. FOR PROPERTY
LOCATED AT THE INTERSECTION OF COLOGNE AVENUE AND
HARDING HIGHWAY OTHERWISE KNOWN AS BLOCK 1134, LOT 1 AS
SHOWN ON THE TAX MAP OF THE TOWNSHIP OF HAMILTON
TOWNSHIP**

WHEREAS, Harding Highway, LLC. has filed an application to the Hamilton Township Planning Board seeking General Development Plan approval pursuant to N.J.S.A. 40:55D-45; and

WHEREAS, the General Development Plan proposed has been named **Woods Edge**; and

WHEREAS, the within Application arises as a result of Mount Laurel litigation brought before the Superior Court of New Jersey and captioned as Harding Highway, LLC v. Township of Hamilton, et al., Docket No. ATL-L-155-04, which litigation was settled by and between the Applicant, the Township of Hamilton Township and the Hamilton Township Planning Board by written Settlement Agreement dated August 31, 2006; and

WHEREAS, the Applicant has properly notified surrounding property owners of its application and has satisfactorily published notice of its application and the Board's meeting to consider the same as required by N.J.S.A. 40:55D-12; and

WHEREAS, the Applicant has demonstrated site control of the premises by virtue of its ownership of Block 1134, Lot 1; and

WHEREAS, proper subject matter jurisdiction for the Hamilton Township Planning Board was established with respect to the relief requested and the statutory powers granted to the Board by the New Jersey Legislature as embodied at N.J.S.A. 40:55D-45 et seq.; and

WHEREAS, the application was deemed complete on November 19, 2009; and

WHEREAS, the Board conducted a public hearing on said application November 19, 2009; and

WHEREAS, Philip Sartorio, Hamilton Township's Planner addressed the Board with background information relating to the application and the underlying litigation referenced above; and

WHEREAS, the Applicant, Harding Highway, LLC, appeared through its attorney, Nicholas T. Menas, Esquire of the Cooper, Levenson Law Firm; and

WHEREAS, at the time of the hearing the Applicant presented the testimony of John Canuso a principal in the Applicant entity and Robert Bower, the Applicant's planner who utilized Exhibit A-1 (General Land Use Plan dated August 10, 2007) in their testimony; and

WHEREAS, the Board has reviewed the application, documents, plans and exhibits as previously submitted and/or filed and has heard the arguments of the Applicant and has considered the comments of its professional consultants and the public; and

WHEREAS, the Board does hereby make the following findings of fact:

1. Preliminarily, the Application for General Development Plan approval in the Planned Village Development Zone was **DEEMED COMPLETE** and in compliance with the provisions of N.J.S.A. 40:55D-45.1.
2. The site is composed of approximately 111 acres and is known as Block 1134, Lot 1. The site is zoned as Planned Village Development pursuant to Ordinance § 203-242 et seq.
3. In reaching the decision memorialized herein, the following items were reviewed and considered by the Board:

- A. Land Use and Development Application booklet dated October 13, 2009 as prepared by the Applicants with attachments including:
- i. A general narrative of the Application.
 - ii. The Settlement Agreement of Mount Laurel litigation captioned as Harding Highway, LLC v. Township of Hamilton, et al., Docket No. ATL-L-155-04.
 - iii. A narrative description of a circulation plan.
 - iv. A narrative description of a community facility plan.
 - v. An environmental overview with threatened/endangered species survey and inventory report dated January 18, 2008 and October 27, 2008.
 - vi. Housing plan.
 - vii. Local service plan.
 - viii. Open space plan.
 - ix. Stormwater management plan and report.
 - x. Utility plan.
 - xi. Timing schedule.
 - xii. Woods Edge General Development Plan dated October 8, 2009 including the following:
 - a. Title sheet
 - b. Existing features plan
 - c. General land use plan
 - d. Stormwater management plan
 - e. Utility plan
- B. Pineland Commission Certificate of Filing (Inconsistent) dated September 11, 2009.
- C. Dixon Engineering Associates, LLC, review memorandum dated November 12, 2009.
- D. Polistina Associates, LLC review memorandum dated November 9, 2009.

E. Hamilton Township Fire Department review memorandum dated November 18, 2009.

4. Philip Sartorio, PP, Hamilton Township Planner addressed the Board prior to the Applicant's opening statement so as to educate the Board generally on the application, the underlying Mount Laurel litigation, the settlement agreement by and between the Applicant, the Township of Hamilton and the Hamilton Township Planning Board and the evolution of the General Development Plan being presented by the Applicant.

5. The Applicant's Mount Laurel litigation sought a "builder's remedy" because Hamilton Township was deemed not to be in compliance with its COAH 2nd Round affordable housing obligations. As a result of the underlying Mount Laurel litigation and its mediated settlement, a Settlement Agreement was executed between the Township of Hamilton, the Hamilton Township Planning Board and the Applicant, the terms of which settlement envisioned the within Application and the proposed general development plan. Instead of a court imposed "builder's remedy," the settlement will permit the developer to deviate from the density regulations of the ordinance so as to allow it to develop the premises with sufficient density to offset the cost of selling "affordable housing" in conformity with the regulations of the Council on Affordable Housing (COAH).

6. The mediated Settlement Agreement which was executed by the Board and which was submitted to the Board in the within Applicant's package of materials establishes the underlying required proofs for general development plan approval as mandated by N.J.S.A. 40:55D-45. Those required findings as a condition precedent to General Development Plan approval have been and are the fundamental basis for the Settlement Agreement itself and the Application as presented and the terms of said Settlement Agreement are incorporated herein as if more specifically set forth.

7. The Board specifically finds as fact the findings for planned developments required by the

provisions of N.J.S.A. 40:55D-45 as conditions precedent to General Development Plan approval granted herein.

8. The proposed general development plan is a concept plan only. The general development plan will act as a roadmap for a series of subsequent applications for preliminary and final major subdivision approval and preliminary and final major site plan approval. The general development plan establishes the Board's approval of the project, in its generalized form so as to permit the preparation of a fully developed and detailed plan of the project in its various phases to proceed. General Development Plan approval provides the Applicant with site specific stability to develop a project of this magnitude.

9. As a part of the resolution of the above-referenced litigation, Hamilton Township amended its Land Use and Development Ordinance so as to create the Planned Village Development Zone by Ordinance No. 1579-2006. The purpose of the Planned Village Development Zone is set forth at Section 203-242 so as

to create a realistic opportunity for the construction of a portion of the low- and moderate-income housing obligation of the Township of Hamilton under New Jersey's Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; the rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:93-1 et seq.; and the Mt. Laurel doctrine, as well as to settle litigation entitled Harding Highway, LLC v. Township of Hamilton, et al., Docket No. ATL-L-155-04 (Mount Laurel). Furthermore, the purpose of a planned village development (hereinafter "PVD") is to facilitate the development of affordable housing for low- and moderate-income households within designated portions of the regional growth area while continuing to encourage innovations in residential development and supportive public, quasi-public and neighborhood commercial uses that promote a sense of community for the benefit of the development's residents, minimize the proliferation of roadways, encourage functional open space and passive recreational facilities and, at the same time, encourage land development that is fiscally responsive to the community and yet environmentally sound.

This Board finds that the purposes of the Planned Village Development Zone and Section 203-242 are specifically advanced by the proposed General Development Plan presented.

10. The within application seeks General Development Plan approval in the Planned Village Development Zone. The application seeks approval to construct up to 475 units, of which 15% or 20% of the

units, (depending on final unit mix and use) will qualify as affordable housing pursuant to COAH regulations.

11. The Applicant's General Development Plan seeks approval for up to 475 units which is less than the total number of units originally contemplated under the Settlement Agreement, i.e. 610 units. Although the proposed General Development Plan seeks conceptual approval for 475 units, the Applicant specifically reserves its right to seek subsequent amended General Development Plan approval for increased density up to the 610 units contemplated by the Settlement Agreement.

12. Of the 475 units proposed, the COAH component units will vary depending upon whether the COAH units are rental units or fee simple ownership units. In the former instance, 15% of the total units will be dedicated COAH rental units. In the later instance, 20% of the total units will be dedicated as affordable housing for fee simple ownership.

13. The Applicant's filed materials, as well as the Settlement Agreement, provide for a term of zoning protection of 20 years as is contemplated pursuant to the provisions of N.J.S.A. 40:55D-45.2(k) and N.J.S.A. 40:55D-52(b). The Applicant is requesting that 20 year term of zoning protection which term will not begin until the Applicant receives its first final subdivision approval or site plan final approval as a result of the implementation of the Applicant's General Development Plan.

14. Robert Bower testified for the Applicant detailing the discussions between Hamilton Township and the Applicant and the evolution of this General Development Plan. Although commercial uses were initially envisioned in the Settlement Agreement, no commercial uses are proposed in the within application.

15. Because the Pinelands Commission has issued an Inconsistent Certificate of Filing dated September 11, 2009, discussions between the Applicant and Pinelands are ongoing. Any approvals granted herein will be subject to subsequent Pinelands review and approval.

16. Mr. Bower spent a substantial portion of his testimony addressing site access. As proposed, site access is not optimum and is other than as contemplated by the Settlement Agreement. Presently, the

primary site access is from Harding Highway into the site at an uncontrolled intersection approximately 300' west of New York Avenue's intersection with Harding Highway, a controlled intersection. The Applicant would prefer to extend Harding Highway into the site at New York Avenue because of the existing intersectional improvements. However, Block 1133, Lot 1, an irregularly shaped and improved lot is not owned by the Applicant. Therefore, without the Township's assistance in condemnation, the Applicant can not provide access at this location. Such municipal assistance was anticipated at Section 4 of the Settlement Agreement. RSIS calculations estimate a total of about 3,700 daily vehicular trips for the 475 units proposed. An uncontrolled intersection at 300' removed from New York Avenue can not accommodate that number of trips and turns into and out of the site.

17. Although the proposed General Development Plan has been approved herein, the Board specifically finds that the proposed access at an uncontrolled intersection, not aligned with New York Avenue, is a very poor functional alternative. The Board urges the Applicant and the Township to facilitate whatever necessary processes must be implemented to provide site access by extending New York Avenue across Block 1133, Lot 1.

18. An additional access issue arises in connection with existing on-site wetlands. Of the total 111 acres, approximately 18.6 acres are wetlands. Most of the on-site wetlands areas will remain in their natural, protected state with applicable buffers. However, the Applicant has proposed a second access from Cologne Avenue at Denmead Drive. That proposed entrance road from Cologne Avenue, sidewalks along Cologne Avenue and Harding Highway at a point near their intersection and a public sanitary sewer main along Cologne Avenue and Harding Highway will at various points intrude into portions of the on-site wetlands. Even though most of the wetlands themselves are protected and appropriately buffered, the entrance road, Cologne Avenue sidewalks and sewer main and portions of the Harding Highway sidewalks and sewer main cannot be located in any location other than where proposed, i.e. fringe wetland areas and buffers.

19. The Board concludes and finds as fact that the Cologne Avenue entrance road is critical to the free flow of traffic through the area and will serve to diminish traffic congestion at the already busy and congested intersection of New York Avenue and Harding Highway. The entrance road is located in a way to preserve and limit adverse impact upon the site's wetlands and promotes sound transportation and circulation principles.

20. The Board also concludes that sidewalks along Harding Highway and Cologne Avenue are essential for pedestrian safety. With 475 homes proposed on the site, pedestrians on these heavily traveled roadways are reasonably foreseeable. Sidewalks will protect the pedestrians from the likelihood of personal injury even though those sidewalks may infringe upon wetlands or wetlands buffer. Like sidewalks, the sanitary sewer main is an indispensable element of public health best located along Harding Highway for connection with the Township's collection system.

21. The specific findings of Paragraphs 16, 17, 18, 19 and 20 are intended by the Board to address the comments of the Pinelands Commission at Page Three of its September 11, 2009 Inconsistent Certificate of Filing. To be clear, it is the finding of the Hamilton Township Planning Board "that there is no feasible alternative to the proposed locations" of the sidewalks, entrance road and public sanitary sewer main along Harding Highway and Cologne Avenue.

22. Mr. Bower also explained that the proposed development in parcels A, B, C and D will include different structures types within each parcel. The COAH units will be located in Parcel D. All housing types proposed are permitted, as is the proposed housing mix. As planning progresses, it is conceivable that variances will be necessary, but at the present time no variances are needed as a part of the General Development Plan. It is anticipated that the COAH units will be proportionately developed in Parcel D in relation to development of Parcels A, B and C.

23. The Board's engineers and planner noted that the plans submitted are in compliance with

N.J.S.A. 40:55D-45.1. The technical design information for streets, sidewalks, recreation areas, stormwater basins and maintenance plans will be examined at the time of the subsequent site plan and/or subdivision applications.

24. The Board's traffic engineer noted that pursuant to the settlement agreement, the Board can not request or require the Applicant to provide a traffic study. For a development this size, a traffic study would normally be required, but in the mediated and negotiated Settlement Agreement, the Township and Planning Board have knowingly waived their right to receive the same. However, in the event that the Applicant is required to seek county planning board approval, this planning board will be entitled to receive any of the materials the Applicant files with the county, including any traffic study the county requires.

25. Following the presentation of the application, the meeting was opened to the public at which time John Percy, 5841 Laurel Street, Laureldale, New Jersey, asked questions of the Board confirming that the public will be permitted to comment on subsequent fully developed plan applications. The Board assured Mr. Percy that questions and/or comments from the public would be solicited during the course of those subsequent applications. No other members of the public spoke for or against the application.

ON MOTION BY Wigglesworth, second by Kurtz, it was moved to **GRANT** the Applicant general development plan approval together with zoning protection for a term of 20 years and subject to the following conditions:

- A. The Applicant will comply with the relevant comments of the Board's professional staff as contained in Paragraph 3, subparagraphs C, D and E above.
- B. The within approvals are subject to all other necessary governmental and/or regulatory approvals.

The motion was thereafter unanimously approved by a vote of eight (8) in favor and none (0) opposed.

NOW, THEREFORE, BE IT RESOLVED by the Hamilton Township Planning Board the Applicant shall:

- A. Comply with all representations made to the Board during the course of the hearing or as otherwise contained in filed documents.
- B. Indemnify and hold the Board harmless in connection with any claims made of any sort as a result of any deficiencies in the application materials.

BE IT FURTHER RESOLVED THAT a copy of this Resolution be forwarded to the Planning Board Administrator, the Applicant, the Township Clerk and the Hamilton Township Construction Office.

BE IT FURTHER RESOLVED THAT the Applicant publish a notice of this Decision in an official newspaper of the Township of Hamilton Township within ten days of its adoption.


Gordon Dahl, Chairman

I hereby certify the foregoing to be a true copy of a Decision and Resolution adopted by the Hamilton Township Planning Board on the 17th day of December, 2009.


Nancy Rainbow, Planning Board Administrator

HARDING HIGHWAY, LLC

Cologne Avenue and Harding Highway, Block 1, Lot 1134

DECISION AND RESOLUTION

Meeting Date: November 19, 2009

Motion to Grant General Development Plan Approval

<u>ROLL CALL VOTE:</u>	Motion	<u>YES</u>	<u>NO</u>
<u>Present</u> GORDON DAHL, Chairman -Class IV		X	
<u>Present</u> DAVID WIGGLESWORTH , Vice Chair – Class IV	M	X	
<u>Absent</u> JACK CARSON -Class IV			
<u>Present</u> RICHARD CHEEK – Class IV		X	
<u>Present</u> WILLIAM CHRISTMAN -Class IV		X	
<u>Present</u> WAYNE CHOYCE – Township Official Class II		X	
<u>Present</u> NELSON GASKILL, Mayor - Class I		X	
<u>Present</u> JOHN KURTZ, Class IV	2nd	X	
<u>Present</u> CHARLES PRITCHARD, Township Committee Member - Class III		X	
<u>Absent</u> HENRY DORSEY, JR - 1 st Alternate			
<u>Vacant</u> VACANT (2 nd Alternate) - Class IV			