

TOWN OF CLARKSTOWN
SPECIAL TOWN BOARD MEETING

Town Hall

6/25/86

8:03 PM

RESOLUTION NO.(650 - 1986)

MODIFYING DECLARATION
AND COVENANT IMPOSED AS
CONDITION OF ZONE CHANGE

Co. Lettre offered the following resolution:

WHEREAS, by action of the Town Board subsequent to a public hearing, a resolution was adopted on December 20, 1972, which changed the zoning district on premises described in Schedule "A" (FILED IN TOWN CLERK'S OFFICE) from various zones to an RG-2 zone to permit development of property which is now commonly referred to as Kingsgate, and as a condition of said zone change, a Declaration of Restrictive Covenant was required to be filed, and

WHEREAS, a Declaration of Covenant dated December 20, 1972, was duly filed by the then property owner (s) and subsequently on December 19, 1973, certain modifications to the restrictive covenant were approved by the Town Board and a modification of said declaration was duly recorded on December 21, 1973, and

WHEREAS, the present owners of a portion of the premises affected by said declaration and covenants have requested certain modifications to same by petition dated March 14, 1983, and upon the Town's own motion, by resolutions dated May 27, 1986, and June 10, 1986 a public hearing was duly called for the 25th day of June, 1986 at 8:00 P.M. to consider said application, and

WHEREAS, notice of said public hearing was duly published as required by law and the public hearing was duly held at the time and place specified in the notice;

NOW, THEREFORE, be it

RESOLVED, that for the reasons of public health, safety and welfare, the Declaration of Covenants made the 20th day of December, 1972, and as modified by further Declaration dated December 19, 1973, which are recorded in the Rockland County Clerk's Office in Liber 920 at Page 887, and Liber 941 at Page 377, respectively, are hereby authorized to be modified as follows:

1. Paragraph "SECOND" of Declaration dated December 20, 1972, may be stricken in its entirety and replaced with a new Paragraph to read as follows:

"SECOND: That the construction on the subject premises may commence upon compliance with all provisions of law and receipt of Planning Board final site plan approval (s), provided that no more than 240 units may be constructed in any one twelve (12) month period (60 remaining phase), except that the Planning Board may authorize the applicant to construct up to 120 total additional units on the remaining undeveloped parcels within said twelve month period upon submission to the Planning Board of evidence that sufficient site access improvement has occurred due to construction of the by-pass road, and if and when the by-pass road is completed from West Clarkstown Road to Route 59, there shall be no restrictions on the number of units developed in any period of time."

2. Paragraph "FIFTH" of Declaration dated December 19, 1973 may be stricken in its entirety and replaced with a new Paragraph to read follows:

"FIFTH: Declarant further covenants and agrees to keep and maintain in perpetuity in its

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natural state a buffer zone being 100 feet in width along the Easterly and Northerly periphery of the premises described on the overall Site Plan which was approved by the Clarkstown Planning Board during 1973, and if required by the Town of Clarkstown, to execute, acknowledge and deliver to the Town of Clarkstown a Conservation Easement in form suitable for recording in the Office of the Clerk of the of the County of Rockland, covering said buffer zone, provided, however, nothing herein shall restrict the Planning Board from authorizing the installation within said buffer zone of subsurface utility, drainage or sewer lines or surface walkways."

3. Paragraph "EIGHTH" of Delcaration dated December 20,1972, may be stricken in its entirety and replaced with a new paragraph to read as follows:

"EIGHTH: Declarants shall make application to the Town Board for creation of a open development area pursuant to Sec. 280-a(4) of the Town Law. Installation of private roads to service such open development area shall be as approved by the Town Board and in accordance with applicable Site Plan Regulations and approvals."

4. That paragraph "SIXTH" of the Declaration dated December 20, 1972 shall authorize the declarants to redesign the clubhouse and recreation area so as to be able to reduce the clubhouse size to 3,000 square feet, and provide for the installation of a children's playground, and be it

FURTHER RESOLVED, that a Declaration modifying said Declarations referred to herein in a form approved by the Town Attorney shall be accepted by the Supervisor and recorded in the Office of the Rockland County Clerk.

Seconded by Co. Carey

On roll call the vote was as follows:

Co. Carey.....Yes
Co. Lettre.....Yes
Co. Maloney.....Yes
Co. Nowicki.....ABSENT
Supervisor Holbrook.....Yes

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AUTHORIZING TOWN LAW
280-a(4) (KINGSGATE).

Co. Carey offered the following resolution:

WHEREAS, by resolution dated December 20, 1972, the Town Board of the Town of Clarkstown approved a zone change for property described in Schedule "A" (ON FILE IN TOWN CLERK'S OFFICE), which premises is now commonly referred to as Kingsgate, to permit construction of 1,200 units in condominium ownership in 5 phases of 240 units per phase, and

WHEREAS, as a condition of said zone change, the property owners and successors in interest were required to secure approval pursuant to Town Law Section 280-a(4) to create an "Open Development Area" which would permit construction of dwelling units not having frontage on Town owned roads, and

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WHEREAS, the current property owners for the developed and undeveloped portion of Kingsgate have made application to the Town Board of the Town of Clarkstown for the creation of said Open Development Areas for the above premises which are also known and designated on the Clarkstown Tax Map as Map 164 Block A, Lots 34.01 and 34.02; Map 165, Block B, Lots 2, 3, and 4; and Map 165, Block B, Lots 33 through 298, and

WHEREAS, pursuant to resolutions dated May 27, 1986, and June 10, 1986, a public hearing was duly scheduled and held in the auditorium of the Clarkstown Town Hall, 10 Maple Avenue, New City, New York, on the 25th day of June, 1986 at 8:00 P.M., relative to said application for Town Law 280-a(4) approval, and

WHEREAS, all parties in interest have been heard by the Town Board

NOW, THEREFORE, be it

RESOLVED, that under the provisions of Section 280-a(4) of the Town Law and pursuant to the recommendations of the Planning Board, Director of the Department of Environmental Control, Superintendent of Highways, and Town Attorney, the Town Board hereby establishes an Open Development Area for the property described herein and commonly known as Kingsgate provided, however, the following conditions shall be met by the owners and other parties in interest:

1. The Open Development Area shall consist of the premises encompassed by the tax map parcels referred to above. It is understood that specific site plan approval has been obtained or shall be obtained from the Town of Clarkstown Planning Board for each phase of the development. Building Permits may be issued for no more than 1200 dwelling units to be contained in the various buildings to be erected upon said sites (no more than 240 dwelling units per phase), and that access to said dwellings shall be obtained by private right-of-way or easement from Smith Road, Nanuet, or other public highways in the vicinity of said development;

2. Kingsgate Parkway which shall be the primary access to said Open Development Area shall be a private road to be maintained by the owners of the dwelling units constructed or to be constructed, or an association having authority to do so at the expense of the benefited properties.

3. Kingsgate Parkway shall be completed with a wearing course installed in accordance with applicable Town specifications and to the satisfaction of the Director of the Department of Environmental Control, provided, however, the wearing course need not be installed until all construction which may effect said right-of-way has been completed;

4. Concrete curbing along Kingsgate Parkway shall be installed where, when, and if required by the Clarkstown Planning Board;

5. Drainage along Kingsgate Parkway shall be installed or modified as required by the Clarkstown Planning Board;

6. Development shall be constructed in stages as determined by the Clarkstown Planning Board so that Kingsgate Parkway shall not serve as the exclusive ingress and egress point to the development for more than 40% of the anticipated traffic;

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7. The issuance of Building Permits and Certificates of Occupancy shall be as determined by the Clarkstown Planning Board so as to provide for orderly development of each phase consistent with the improvement in safe additional access to be afforded by the construction of a new north/south roadway referred to as the "Tunnel By-Pass Project" planned for a portion of the former Route 45 By-Pass property presently held by the New York State Department of Transportation;

8. Prior to the issuance of any Building Permits for any new construction or permanent Certificates of Occupancy for any construction already in place, a declaration of restrictive covenant which shall run with the land in a form acceptable to the Town Attorney shall be provided by the record property owner(s) and shall be recorded in the Rockland County Clerk's Office, containing the following declaration and covenants:

A. That the property owners and parties in interest acknowledge that access to the nearest public road has been obtained by private easement or right-of-way;

B. That said property owners shall not receive any municipal services consisting of road maintenance and resurfacing, snow removal, or sanding, pothole repair or other services provided to other residents of the Town of Clarkstown whose property fronts on a public road;

C. That any deed of conveyance for the subject premises shall recite that it is subject to declaration of covenants herein required;

D. That the fee ownership of the easement or right-of-way shall be held by the owners of the premises affected or by an association with authority to provide for the continued maintenance of the private roadway and the imposition of the cost of same against the benefited premises;

E. That the Certificate of Occupancy issued for any premises shall be conditioned upon observance and subject to conditions of the declaration herein required;

F. That in the event the property owner (s) or any successor in interest shall at any time in the future request establishment of a road improvement district, or otherwise seek to dedicate any portion of the right-of-way or easement as a public street, the owners or successors in interest shall gratuitously and irrevocably offer for dedication to the Town of Clarkstown any interest in said easement or right-of-way or any property adjacent thereto necessary to accomplish the widening of the easement or right-of-way the widening of the easement or right-of-way to the then existing standards for public road, and said owners and other parties in interest shall covenant in said declaration to participate in any road improvement district at the request of the Town Clarkstown by resolution duly adopted by the Town Board, with the costs of such road improvement district being assessed in accordance with the provisions of Town Law;

G. That the certified record owners of Section E-1 and E-2 and Section D shall, in addition to the covenants referred to above, shall covenant to contribute the sum of \$480,00 to the Town of Clarkstown, which sum shall be used towards the construction of the proposed north/south by-pass roadway referred to above.

H. That the developers of the remaining undeveloped portions of Kingsgate (Sections B, C, D, E-1 and E-2) shall, in addition to the sum of money provided herein, be obligated to

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install such off-site drainage and utilities as presently shown on a plan (s) developed by Henry Horowitz, Inc., Engineering Consultant to the Town of Clarkstown, which installations are necessary to provide drainage, sewer and utility services to the planned dwelling units. With respect to the off-site improvements herein required in the area which is adjacent to the western boundary of Kingsgate properties referred to herein, north of property presently held by the Russian Orthodox Church, it is understood that such off-site improvements and cash contribution herein required are in lieu of creation of a road improvement district necessary to provide a reasonable and safe alternate access to the Open Development Area created herein. The method for securing the off-site improvements and cash contribution shall be in a form approved by the Town Attorney and shall be provided for in a performance agreement secured by an irrevocable letter of credit drawn on a New York bank for a period of not less than two years or a surety bond issued by a surety company licensed to do business in the State of New York, for a period of not less than two years;

9. Town Law Section 280-a(4) approval is further conditioned upon the property owners and other parties in interest petitioning the Town Board of the Town of Clarkstown for the creation or extension of a water district so that fire hydrants may be provided within each phase or section of the development. Such extension of a water district may result in the imposition of a further covenant running with the land to obligate the property owners and other parties in interest to pay the annual water charges imposed by the utility company servicing the area, plus a 10% handling charge to the Town of Clarkstown.

10. That prior to the issuance of any Certificate of Occupancy or dwelling units to be constructed on Section C, the developer shall install a modified permanent drainage system on Lot B, as discussed during the Public Hearing and in accordance with the recommendations of the Director of the Department of Environmental Control of the Town of Clarkstown to be done as expeditiously as possible.

Seconded by Co. Carey

On roll call the vote was as follows:

- Co. Carey.....Yes
- Co. Lettre.....Yes
- Co. Maloney.....Yes
- Co. Nowicki.....Yes
- Supervisor Holbrook.....Yes

There being no further business to come before the Town Board, on motion of Councilman Lettre, seconded by Councilman Carey and unanimously adopted, the Special Town Board Meeting was declared closed, time: 9:40 P.M.

Respectfully submitted,
Patricia Sheridan
PATRICIA SHERIDAN,
Town Clerk

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TOWN OF CLARKSTOWN
SPECIAL TOWN BOARD MEETING
PUBLIC HEARING

Town Hall

6/25/86

8:03 PM

Present: Supervisor Holbrook
Councilman Carey, Maloney,
Councilman Lettre arrived 8:26 P.M.,
John Costa, Town Attorney
Patricia Sheridan, Town Clerk

Absent: Councilman Nowicki

- RE: 1. Petition to Amend Declaration of Covenants - Kingsgate Condominiums.
 2. The Application for Town Law Section 280 -a (4) - Kingsgate Condominiums.

On motion of Councilman Maloney, seconded by Councilman Carey and unanimously adopted the Public Hearing was declared open, time: 8:03 P.M. Town Clerk read notice calling Public Hearing. Town Attorney testified as to proper posting and publication.

Supervisor Holbrook read a letter from Sylvio Riccio, 79 Tennyson Drive, Nanuet, New York

John Costa read a memorandum dated June 23, 1986, from the Director of Enviromental Control Leslie F. Bollman

Henry Horowitz appeared as engineer for the developers and on behalf of the Town in connection with the bypass road . Mr. Horowitz explained modifications and changes that were being proposed to the existing covenants - Kingsgate Condominiums

Robert Geneslaw, Town Planning Consultant spoke regarding the possible encroachment by the developers on the buffer zone and referred the question to Mr. Horowitz.

Henry Horowitz explained that there would be no foundations built in the buffer zone just walkways and grading for drainage which would encroach not more than 15 feet leaving the remaining 85 feet untouched.

Councilman Maloney said the buffer zone would be left 100 feet except in those areas where there was construction .

John Costa explained the two proposed resolutions dealing with the exceptions and the open development area 280-a-(4).

Henry Horowitz spoke regarding covenant 6 - pools and recreation center - and the agreement between sections B, C, D and E with section A to reduce the size of the recreation center from 4,000 square feet to 3,000 square feet.

John Costa spoke regarding the second part of the Public Hearing.

Supervisor Holbrook asked the Town Attorney to reiterate the conditions. Town Attorney John Costa did so.

Richard Paris, Chairman Clarkstown Planning Board said that when the tunnel by-pass becomes a reality and the road is built there will be no objections on the part of the Planning Board to how many units are built. He said that the letter he received this date about the projected cost of the road to the Town did concern him.

John Costa stated that the request for the change in the covenants is for 480 units while the memo from the Planning Board recommends no more than 360 units with 240 units allowed and the applicant having the right to petition the Planning Board for an additional 120 units. Mr. Costa said that the limitations had been put in because of the impact the children would have on the schools.

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Richard Paris explained the sequencing of the development of the lots between Clarkstown and Ramapo. The problem has been with the number of units being built without the assurance of the road and therefore the number of units has been limited to 60 units but once the road has been put in by the applicant this problem will be alleviated.

John Costa asked if the Board grant the covenant will the Planning Board stagger the development to the construction of the road.

Richard Paris said the concern is for the road and once the road is built all 960 units could be built.

Councilman Maloney inquired as to weather the resolution was at variance with the number of units proposed.

Richard Paris said the Planning Board would exercise some degree of control on the development.

John Costa explained that the applicants are the owners of the property not yet developed with respect to the change in the covenants and also we have as part of the application for the 280-a-4 process representative entity of the 240 units in Treetops..He recommened that the applicants or proponents complete their remarks before the comments from the public

Robert R.Granik, speaking for the owners said that they were in general agreement with everything that has heretofore been said. He requested that at the close of the meeting the Board act on the ammendments to the declaration of covenants and act on the approval of the Open Development Area request.

APPEARANCE

Carl Paley
 Baylor Road
 Nanuet, N.Y.
 Spoke regarding fence along road.

Ira Emanuel of
 Lexow, Berbit & Jason
 Mr. Emanuel Attorney representing Mr. & Mrs. Schwartz spoke regarding drainage and flooding problems caused by Treetops. Councilman Maloney stated that the corrective work should be done by the developers before granting approval. Councilman Lettre spoke regarding the litigation.

Mr. Sullivan
 Engineer for Mr. & Mrs. Schwartz presented the ultimate viable solution for correction of the problem causing the flooding and drainage problems.

William Stein
 Concurred with Mr. Sullivan's solution for Mr. and Mrs. Schwartz of relaying the pipe and recapping and taking across Smith Road.

Robert Granik
 Said that Mr. and Mrs. Schwartz problem would be taken care of as soon as the Board grants approval for Kingsgate.

Mr.Schwartz
 Presented the Board with picture taken after the land was cleared a year ago. Only water damage prior to construction now mud comes down as well as water.

Leslie Bollman
Director Enviromental Control
Said 24 inch pipe would be adequate to alleviate the
drainage problem.

Gerald Baron
Baylor Road
Nanuet, N.Y.
Spoke regarding the extra traffic on West Clarkstown
Road and Mirror Lake Road. Supervisor Holbrook said that it was not
acceptable to have 960 units that would open up Baylor Road so the
by-pass road was necessary for traffic patterns in that area. The
N.Y.S. Assembly has approved the land swap so that the new road may
be built.

Bruce Cohen
240 A Assoc.
Treetops, Nanuet
Presented signed agreement between section A and the
Developers and said that all parties concerned are satisfied and
thanked Mr. Goldstein for his cooperation.

Robert Steinman
Spoke regarding North/South Road, number of units,
and Westerly assess to North/South Road toward Pascack Road.

Norman Byrd
Treetop Circle
Nanuet, N.Y.
Mr. Byrd thanked the Supervisor and the Town Board
for their efforts.

Gail Briggs
Baylor Road
Nanuet, N.Y.
Spoke regarding the traffic and the noise and
suggested a sound fence.

There being no one further wishing to be heard, on
the motion of Councilman Carey, seconded by Councilman Maloney the
Public Hearing was closed, time: 9:27 P.M.

Respectfully submitted,

Patricia Sheridan

PATRICIA SHERIDAN
Town Clerk

ADOPTED BY RESOLUTIONS NO. (650-1986 and 651-1986)
AS AMENDED.

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