RESOLUTION NO.: 2018-09

RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING AN ADMINISTRATIVE CHANGE TO PART OF A PREVIOUSLY APPROVED PRELIMINARY AND PARTIAL MAJOR SUDIVISION APPROVAL KNOWN AS AURA II, APPLICATION NO.: AD-18-02

WHEREAS, Application No. AD-18-02 (the "Application") was submitted before the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the "Board") by Aura Investors, LLC (the "Applicant") for an administrative change as to a previously approved preliminary and partial major subdivision known as Aura II , and

WHEREAS, the Applicant did appear at a meeting and public hearing held by the Board on the Application on February 21, 2018, at 7:30 PM, time prevailing, by way of the Applicant's attorney, Joan S. Adams, Esq., Adams & Adams, 1534 Kings Highway, Swedesboro, N.J. 08085;

NOW, THEREFORE, BE IT RESOLVED by the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

FINDINGS OF FACT

1. The Application was submitted by way of a Letter Application from the Applicant's attorney, dated January 4, 2018, and was complete and properly before the Board. As such, the Board had jurisdiction to act on the Application.

2. The Board's professional engineer, Stan Bitgood, P.E., C.M.E., Federici and Akin, P.A., and the Board's professional planner, Steven M. Bach, P.E., R.A., P.P., C.M.E., Bach Associates, PC, were both sworn as to any testimony that they might give on the Application on behalf of the Board.

3. The Applicant submitted, and the Board entered into the record, the following:

(A) January 4, 2018 letter from Ms. Adams on behalf of the Applicant.

(B) Application fee, Escrow fee, Escrow Agreement, and Tax Certification.

(C) Copies of Resolution # 2005-29, Resolution # 2014-09 (with exhibits), and Resolution # 2016-08.

4. Ms. Adam's letter, and by way of the representations made by Ms. Adams during the hearing on the Application, and her letter of January 4, 2018, set forth the following information:

(A) Aura Investors, LLC, is the developer of the community known as Aura II. This community consists of a total of 169 single-family building lots and was originally part of the larger Latham Park development. Included with the Preliminary Subdivision application for Aura II was a proposal, by the-then Applicant, that the homeowners' association for the adjacent community known as Aura I be expanded to include the properties within Aura II. The Board agreed with this approach and memorialized it in the approving resolutions for Aura II (#2014-09 for Preliminary and #2016-08 for Final). It is now the present Applicant's request to permit the creation of a separate Homeowners' Association (HOA) for Aura II since the project is being funded by a different entity than is currently developing Aura I. Accordingly, an Administrative Change to permit a separate HOA for the Aura II project is requested.

(B) By way of background, Aura II involves 81.242 acres identified as Block 29 Lots 28 and 29; Block 29.01 Lot 3; Block 31 Lots 2.02, 5.01, 7 and 22; Block 32 Lots 1-9 and Block 58 Lot 1 on the Township tax map. It was originally approved by the Board as part of the larger Latham Park General Development Plan. Over time this parcel was divided off of Latham Park and was presented to the Board as an individual subdivision consisting of 121 units.

(C) This project received Conditional Use approval and Use variance approval along with a GDP approval on December 18, 2003 (Resolution 2003-37); Preliminary Subdivision Approval on June 16, 2005 (Resolution 2005-29; the GDP was amended on May 19, 2005 (Resolution 2005-24); an Amended Preliminary subdivision approval on April 16, 2014 (Resolution 2014-09); Final Major Subdivision approval for 59.739 acres (Aura II), Sections 1A, 1B, 1C, 3A and 3B only, on December 16, 2015 (Resolution 2016-08); and a prior administrative clarification under Resolution 2014-09.

5. Considerable discussion took place by and between the Board and Ms. Adams. The Board noted that there had been concerns voiced by residents in Aura I about portions of their subdivision that have not been finalized as to construction , the fact that the developer still controlled the Homeowners Association ("HOA") that was supposed to serve both Aura I and Aura II but was now being requested to be bifurcated into two HOA's – one for Aura I and one for Aura II; the recreation area (still not built) in Aura I that was supposed to serve the residents of both Aura I and Aura II; how the overall development of Aura I and Aura II would be affected by having separate HOAs; the common entrance to both developments via Aura I; stormwater basin responsibilities as the basins in Aura I and Aura II were connected via an underground pipe; etc.

6. Ms. Adams represented that having separate HOAs for both Aura I and Aura II would be more efficient, cost effective, and grant more control to the residents in each development as

opposed to one HOA serving both developments, as each development will have over 100 homes upon completion. Ms. Adams again pointed out that Aura I was under development by an entity that was originally supposed to develop both Aura I and Aura II, but that Aura II was now under the control of a separate legal entity for development purposes. As such, it would be very difficult to have one HOA effectively govern two developments that are being developed under separate entities, over separate time-frames. Where common areas exist in one development, that would serve both developments (such as a common access and egress, and recreation area), these issues can be handled by cross easements and covenants and restrictions within the HOAs established for each development, as well as other recorded documents, as necessary.

7. The hearing on the Application was opened to the public, at which time the following members of the public present were sworn and provided testimony on the Application:

(A) Jeff Laidlaw, 113 Cortland Blvd., testified that he lived in Aura I, and raised questions about the current HOA for Aura I, and the affordable housing that was planned for Aura I that was to meet the affordable housing needs for both Aura I and Aura II.

(B) Sarah Campbell, 118 Cortland Blvd., raised questions about a second HOA being created for Aura II, and how it might impact the residents of Aura I.

(C) Anthony Natale, 409 Crispin St., didn't want the development in Aura I, that was still not yet fully built, to fail. He was concerned that the HOA for Aura I would fail to operate or exist if Aura I was not completed.

(D) Aryanya Dickson, 114 Cortland Blvd., raised questions about the common entrance for Aura I and Aura II, and raised concerns about the current development of Aura I where sidewalks were still not built along Cortland Blvd.

There being no further members of the public wishing to testify on the Application, the public portion of the hearing was closed.

8. The Board noted that while it seemed reasonable for separate HOAs between Aura I and Aura II, since these developments were being developed by separate legal entities, there were serious concerns about how two separate HOAs would deal with the common links between the two developments. Accordingly, the Board required that, should the Application be approved, the Applicant must develop and submit all HOA documents proposed for Aura II, in addition to any and all cross easements, etc., to the Board's professionals (the Board's engineer, planner and attorney) for their review and report back to the Board, prior to said documents being filed with the N.J. Department of Community Affairs (DCA), or recording in the office of the County Clerk (as to any easements, separate covenants, and restrictions, etc.). In addition, the developers of Aura II must prepare for review by the Board's Planner, engineer and attorney, for report back to the Board, Point-of-Sale (POS) documents/disclosures to be given to each prospective purchaser of a home in Aura II (prior to the purchaser signing a sales contract) that

will fully disclose the relationship, rights, responsibilities, common areas, etc., as between Aura I and Aura II to said purchasers. The Applicant's attorney, on behalf of the Applicant, agreed to comply.

CONCLUSIONS

The Board concludes that the requested administrative change should be granted based on the representations made by the Applicant's attorney, and the concerns raised by the Board and the public. The Board concludes that the proposed administrative change can only be enacted upon a full due diligence being conducted by the Board's professionals on behalf of the Board, and a report back to the Board, as to safeguards that will be placed in the proposed HOA for Aura II, as well as any covenants and restrictions, cross easements, etc., created by Aura II for the benefit of the citizens of both Aura I and Aura II, and to address the common areas to be shared by both developments as to public rights, access, expenses, maintenance responsibilities, etc.

CONDITIONS

1. The approval granted herein is subject to the Applicant obtaining any and all necessary and required approvals, permits, inspections, etc., from the Township of Elk, the County of Gloucester, and any and all other agencies of government having jurisdiction therein.

2. All other conditions as were set forth under prior resolutions adopted by the Board regarding the development of Latham Park, especially Aura I, Aura II, and Aura III, not otherwise inconsistent with the approval granted herein, shall remain in full force and effect.

WHEREUPON, a motion was made by Board member Hughes, which was seconded by Board member Clark, to grant approval of the Applicant's Application for an Administrative Change, subject to the understandings, agreements, conditions and representations as are set forth above under Findings of Fact, with the following members voting in favor of the motion: Nicholson, Hughes, McKeever, Shoultz, White, Schmidt, Afflerbach, Clark and Poisker. Board member Goss (Alternate # 1) was absent. Board member Swanson (Alternate # 2), participated in the hearing on the Application but did not vote. There were no votes in the negative and no abstentions or recusals.

THE RESOLUTION WAS ADOPTED at a regularly scheduled meeting of the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, held on March 21, 2018 as a memorialization of the approval granted in the above referenced matter by the Board on February 21, 2018.

COMBINED PLANNING/ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK

By: Jeanne White
JEANNE WHITE, Chairperson

ATTEST:

By: Anna Foley
ANNA FOLEY, Secretary

CERTIFICATION

I hereby certify that the foregoing resolution is a true copy of a resolution adopted at a regularly scheduled meeting of the Elk Township Combined Planning/Zoning Board of Adjustment, County of Gloucester, State of New Jersey, held on the 21st day of March 2018 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:30 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on February 21, 2018, on the above cited Application.

Anna Foley
ANNA FOLEY, Secretary