

**TOWNSHIP OF DENNIS  
ZONING BOARD OF ADJUSTMENT**

**571 Petersburg Road  
Dennisville, NJ 08214  
(609) 861-9705**

**DECEMBER 21, 2011**

**MINUTES**

This meeting was published in accordance with the "Open Public Meetings Act". Notice of this meeting was published in an annual meeting notice in the Cape May County Herald and posted in Township Hall.

The meeting was called to order by Chairman Sorenson. The following members were present: Mr. Sorenson; Ms. Mascia, Mr. Jones, Mr. Penrose; Mr. Baldwin; and Mr. Robertson. Also present were Tony Harvatt, Board Solicitor; Vincent Orlando, Board Engineer and Mr. Kline.

**R.E. PIERSON CONSTRUCTION, INC. - Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04:**

Located on Woodbine-Ocean View road in Ocean View in both the B (Business) and C (Conservation) Districts. Applicant seeking a use variance to construct and operate a ready mix concrete plant and a Class B. recycling facility in addition to the existing mining operation. Applicant also requesting a height variance where 35 feet is permitted and 82 feet is proposed.

Mr. Sorenson advised that the Board has 6 members present, 1 is absent and 3 have recused themselves. Mr. Harvatt indicated that Mr. Haig had indicated that he would be here when he last spoke with him. Mr. Pickering advised that the applicant will proceed with the members present since Mr. Haig was not present at the last meeting and he was not sure if he listened to the tape of that meeting. Mr. Harvatt indicated that when he spoke with Haig, it was his intention to do so.

Mr. Pickering indicated that at the last hearing they had concluded with their traffic expert, Mr. Horner and Mr. Horner is here tonight for cross-examination.

Mr. Harvatt asked Mr. Kline if he concluded his report. Mr. Kline advised that his report was completed, but he has several comments/questions. He then asked the applicant to comment on the addition of heavy vehicles.

David Horner , who continues to still be under oath, testified that he looked at and did an analysis factoring in types of vehicles, percentage of traffic that is heavy vehicles, and whether or not there are enough gaps for trucks to enter and exit safely, which he feels there are. He further

testified that he feels no turn lanes are needed for the vehicles and truck traffic is spread out during the day and the level of service does not create any significant impact.

Mr. Kline asked for comment on the increase of traffic and how it was calculated. Mr. Horner testified that he had indicated that he already provided testimony on vehicle traffic and that information is in their report. He commented on the average time for a vehicle to exit their driveway and believes that if the number of trucks increased, that time frame would not be affected that much. Mr. Kline asked if the County has seen anything regarding traffic. Mr. Horner advised that there was nothing from his office.

Mr. Kline said he had nothing further.

Mr. Sorenson then asked the Board for questions, of which there were none. Mr. Sorenson then opened the meeting to the public for comments.

Alma George was sworn in. She asked if the figures provided were just for Pierson, and where did those figures come from. Mr. Horner responded by saying that the figures came from a study as to what this site can do and it was his understanding that all truck activity, whether Piersons or other private hauler, was included. Ms. George also asked about the increase in tonnage of sand mining. Mr. Horner responded that they "grow" existing traffic and apply a growth factor from the DOT, which is 2% per year at present. He also indicated that traffic is not currently growing at that rate, but it has been factored in. He also indicated that they had factored off-season and peak season for growth rates, and he explained how this was done using DOT formula. Ms. George also wanted to know, with regard to wear and tear on public highways, if heavier trucks would be more detrimental than an empty truck. To which Mr. Horner responded yes.

Mr. Sorenson asked if there were any further questions from the public.

Donna Boyer was sworn in. She asked whether or not traffic was taken into consideration for both Corson Tavern Road and Route 550. Mr. Horner testified that the intersection of those roads was taken into consider on both sides.

Mr. Sorenson asked if there were any further questions from public. There were none.

Mr. Kline was then dismissed and permitted to leave at this time since there were no further questions for him.

William Walters was then sworn in and questioned by Mr. Pickering.

Mr. Walters testified that he is the owner of a nearby property. He referred to an aerial photo and showed the location of his property and described the use of each surrounding lot. He further testified that his business (marine construction) has been located at this location for 12 years. He testified that he has several cranes on his property, one of which is 120 feet. He advised that he also lives in the area on Old Goshen Road and is in the process of building a home in the area as well.

He understands what the applicant is asking for in its application. He advised that he has seen a concrete crusher work and knows the amount of noise they make and he is not concerned at all with this application being built and has no problem with the application being approved.

Mr. Sandman objected to Mr. Walters giving his opinion. Mr. Harvatt indicated that Mr. Walters is only giving his opinion.

Mr. Walters continued by saying that the applicant is a good neighbor. In response to a question from Ms. Mascia, Mr. Walters said that he is building house at the end of Bayview and that his plans would not change and he is about a mile from this site. In response to a question from Mr. Penrose, Mr. Walters said that he feels this is the perfect location for this type of business, which is only his opinion.

Scott Boyer was sworn in and asked Mr. Walters about property values. Mr. Walters said that he doesn't think it will affect the values. He further indicated that he has been around concrete plants before and the dust is controlled at many plants by water hoses. He said he doesn't know if it will be done here, but that is how it is generally done.

Mr. Sandman asked Mr. Walters what his business was. Mr. Walters responded that his business was heavy construction. In response to further questions by Mr. Sandman, Mr. Walters testified that his cranes are not fixed structures and move in and out of the property. He further advised that he hears the back-up alarms and has heard the trucks dumping materials, and that he is familiar with concrete crushers due to his business.

Alma George asked if heavy equipment was operated on his property. Mr. Walters advised that his business is a yard and equipment is always moving around.

Mr. Pickering then called John Helbig (planner) to testify.

John Helbig was sworn in and stated his qualifications as a planner and was accepted by the Board as an expert in his field. Mr. Sandman said he would like to question Mr. Helbig as to his credentials. Mr. Helbig advised that he was not a traffic or noise expert. In response to questions from Mr. Pickering, Mr. Helbig confirmed the variances being requested by the applicant. He testified that with respect to the Class B recycling facility, if the applicant was only seeking this, the applicant would not need to be here and they would be dealing with the State., and the only reason the applicant is here is because they are combining the recycling facility with the concrete plant. He testified that the applicant is here for a use variance and must meet certain proofs to promote zoning. He further indicated that this is not an inherently beneficial use and the applicant must show that purposes of zoning are promoted. He reviewed the proofs - promotes general welfare; maximum recovery of recyclable materials; promotes conservation of open space; provides space for a number of uses; carries out a State policy; site suitability - in business zone and propose to use 15 acres for this project, site is large enough; no need for additional accessory development - already constructed; direct access to a County highway which is designated as a truck route. He also indicated that there will be no disturbance of trees. (A-8 - graphic of Township zoning map

prepared by Maser Consultants with respect to draft Master Plan). He referred to A-8 and showed the area where this site is located and explained the zoning in said area and surrounding area. He contends that based on zoning, this is the most suitable site in the Township for this type of project. He testified that the zoning in this area is not changed from the current to the draft Master Plan. (A-9 - graphic showing other ready mix concrete plants in area.) He referred to A-9 and showed where other ready mix concrete plants in Cape May, Atlantic and Cumberland Counties were located. He said the applicant has looked at the area and feels this site is the best location for such operation and suits the regional need. He testified that he has looked at the site from local and regional aspects. He said the site is already being used for an industrial type use and proposed uses are complimentary to its current use. He testified that the space available will accommodate the proposed uses. Also, that it is an economic benefit to the applicant to run the businesses together. He referred to a conceptual site plan prepared by Gibson Associates (A-10) (page 4 of set of plans previously submitted to Board) and described same. He referred to the current zoning map dated 2010 (A-2) and described the surrounding commercial uses, of which there are many, and no residential uses. He also showed the location of a campground to the north of the applicant's site. He testified that the site is most suitable for the proposed uses. He said that Route 550 is already a designated truck route. He described the wetlands in the area by referring to a map, as well as those deemed "intermediate wetlands." He then addressed the negative criteria. He feels any detriments can be minimized as it is about 650 feet off of Woodbine-Ocean View Road; and about 1500 feet from the campground. The applicant is proposing a 15 foot high berm behind the recycling facility to shield its view and noise impact. He said that the applicant proposes to minimize noise by not operating all facilities at the same time. He further indicated that the applicant has to have a Pollution Protection Plan, which is annually certified by Cape-Atlantic Soil Conservation; there is a constant review by the Cape May County Health Department, and that the site is overseen by many agencies. He then continued with a list of others concerning water quality, air quality, etc. and how the applicant proposes to comply. He discussed water quality regarding this site. He referred to A-11 (Pierson's Logan Township property - aerial view). He described the Logan Township site and what the applicant has done for the last 10 years to maintain water quality and tests that are performed with regard to same. He testified that in those 10 years, there has never been a problem and Pierson runs a clean operation. He said the applicant is proposing a substantial buffer on the subject property and to fill in gaps in the existing tree line. He testified that both the design and mitigative strategies will minimize any impact on surrounding properties. He discussed how this application will not have a negative impact on the purpose and intent of the Zoning Ordinance. He read list of permitted uses from the Zoning Ordinance and compared uses that are similar to what is proposed. He referred to the 1994 Master Plan and referred to a section saying that transportation should be promoted; and that in mining areas, efforts should be made to promote the use of said areas.

Mr. Pickering referred to a map and described other sites in area that contain more than 1 use on them and what those uses are.

Mr. Helbig further testified that the area has many heavy industrial/commercial uses, many of which have a large visual impact. He said that multiple uses on sites in the area are common, and he contends that this site is extremely suitable for the uses proposed and that the requested use

variance can be granted.

Mr. Pickering then questioned Mr. Helbig regarding the requested height variance. Mr. Helbig referred to graphic (A-12) prepared by Helbig and described same. He testified that the permitted maximum height is 35 feet, and the applicant is proposing 82 feet for the recycling structure. The applicant is proposing to place said structure 650 feet off of Woodbine Ocean View Road, which he calculates to be the best position for this structure to be the least visible. The structure would be 3000 feet from Corson Tavern Road and with the tree line will be virtually invisible from Corson Tavern Road. Also, due to trees along Woodbine Ocean View Road it will not be visible until maybe Pierson's first driveway and at that point you would have to be looking directly into the site and there would be little to no visibility of the structure even then. He referred to a graphic and indicated other high structures in the area and their heights - transmission towers, cell towers, etc. He testified that he took photographs from the campground property line looking in and prepared a visual impact analysis (A-13). He described A-13, which attempts to show distances from various viewing points surrounding the site to the proposed structure and compares them to existing height structures. He contends that the proposed structure would not have a visual impact on the campground or other surrounding areas.

Mr. Pickering referred to photographs provided in the application packet, specifically photos #4, #5, #20, #21, #22, and asked Mr. Helbig to describe what each photo shows, the location from which the photo was taken and its relationship to the subject property. Mr. Helbig testified as to the structures shown in the photos and said that all are more visible than what the proposed structure will be. He testified that the site is suitable overall and that the height variance will not have as much of an impact as other structures in the area and it is well mitigated and will not cause a substantial detriment or impact and can be granted.

Mr. Sorenson asked the Board for questions they may have.

Mr. Penrose asked if there were any other areas presently approved within the region in which such a facility could be approved. Mr. Helbig indicated that he is not aware of any similar type. Mr. Penrose said he was thinking of Penn Jersey or Cape, also sites in Cape May and Burleigh, and doesn't know if the sites are suitable.

Mr. Sorenson asked for any further questions from the Board, there being none, he then opened the meeting to the public for questions of Mr. Helbig.

James Owen, Sr. on behalf of Outdoor World Campground, was sworn in. He asked Mr. Helbig to show on map where the proposed plant was to be placed. Mr. Helbig referred to the map and indicated where the plant is proposed on site and the area it will cover. He also described how truck traffic will move on site. Mr. Owen was concerned with the impact on the project would have on surrounding residences and the many residents of the campgrounds. Mr. Helbig said he feels that the distances involved will not impact on campgrounds. Mr. Owen asked if all operations would be running at the same time. Mr. Pickering explained what operations would run and not run with the other operations. In response to another question by Mr. Owen, Mr. Helbig explained

where the berm would be located and the height of same and why the structure would not be visible from the campground.

Walter Kaczor was sworn in. He had a question regarding truck traffic (to which Helbig had no answer); and concerns with the height of the structure and safety issues.

James Waltz was sworn in. In response to Mr. Waltz, Mr. Helbig said that the Logan Township does have a Class B recycling facility.

Alma George, who remains under oath, wanted to know if there have been any environmental impact studies been done by Mr. Helbig, to which he responded no. She also asked how the proposed use fit with vibrations and noise. Mr. Helbig said he attempted to provide testimony on types of uses in area; mitigative strategies; water quality; and traffic. He suspects that there are vibrations, but is not sure. Ms. George indicated that the Master Plan mentioned is a draft, with references to the Master Plan adopted in 1994. She wanted to know how the applicant's proposed uses fit into language stated in the Master Plan. Mr. Helbig said that this is step one of a long road, and there are many other agencies who will be involved such as CAFRA, DEP, etc. She then asked Mr. Helbig what the term "reclamation" means. Mr. Helbig said he believes it means taking a small portion of a site for a use and leaving the rest of the site as a mine which can be reclaimed at a later time. Ms. George also asked if Mr. Helbig spoke to Mr. Pierson about other types of business that could go on the site, to which Mr. Helbig responded no. Ms. George said that comparing this project with Atlantic Electric's property is like comparing apples with oranges, and we need what Atlantic Electric provides, electric for our homes. Mr. Helbig indicated that he was just trying to compare structures and their visibility. Ms. George said it keeps going back to public good and benefit and wanted to know how will the project impact ratables. She also referred to a graphic showing the location of concrete plants in Cape May, Cumberland and Atlantic Counties and wanted to know where there are concrete recycling facilities in same area. Mr. Helbig said he was not sure. In response to another question by Ms. George, Mr. indicated that the recycling facility is a complimentary operation; and that a recycling facility requires approvals from other agencies. He said he also suspects that at some time Mr. Pierson did a marketing study regarding the proposed project.

Mr. Sandman then directed questions to Mr. Helbig. In response, Mr. Helbig referred to a graphic of other high towers in the area, he indicated that the construction of a cell tower does not have to provide the same proofs as the applicant does in this application. He said the applicant is seeking a land use application that will generate traffic, but he is not a traffic expert. He agrees with the traffic engineer that traffic will increase. He confirmed that the site has been cleared of vegetation for a long time. He read from the Zoning Ordinance, per Mr. Sandman's request, as to permitted and prohibited uses, which states that one of the prohibited uses is sand mining in the current Ordinance. He indicated that the operation will create traffic, noise, dust, and vibrations. He referred to a graphic which shows paved area on site. He referred to a map showing surrounding properties and other multiple uses. He read from the Ordinance regarding multiple uses on property and the requirement that same be able to be subdivided. He indicated that he had been on the campground property while Pierson's operation was running and heard background noise, but did not

hear trucks in the distance or back-up alarms. He indicated that he was not aware of bald eagles on site. He said that if comparing what is on site now with what is being proposed, he agrees that the sound will be louder. He also agrees with Mr. Sandman that if some one makes a complaint about noise, that some one (Cape May County Health Department) would have to respond. In response to Mr. Sandman's questions regarding traffic, he indicated that he was not a traffic engineer and any reference made to same was dependent on the report of the traffic engineer. He agreed with Mr. Sandman that if the people in the campground were to hear grinding noises, that would be a detriment to them, however, it is his belief that with mitigative strategies they will not hear noise from the operation. He advised that based on his professional opinion, the project will not be a detriment. He discussed water on site and volatile compounds. Mr. Helbig then read a section from the land use book, per Mr. Sandman's request. Mr. Pickering objected, saying it had no relevance. Mr. Sandman said it was relevant.

Mr. Harvatt asked if questions regarding economic output were really relevant. He said that it is the applicant's money and if he wants to spend it, he can. Mr. Sandman countered by saying it was testified to that the project will be a ratable. Mr. Helbig responded that it would be as it has a foundation.

Mr. Sorenson called for a 5 minute recess.

Mr. Sorenson called the meeting back to order.

Mr. Sandman continued with questions to Mr. Helbig regarding the negative criteria. He was that Information was given based on the 1994 Master Plan, which specifically prohibited such an operation. Mr. Helbig responded that he believes that no changes to the prohibitions were made, but exceptions were made for existing operations. Mr. Pickering objected to Mr. Sandman's line of questioning, saying that only the Planning Board deals with the Master Plan. Mr. Harvatt said that his objection was noted. Mr. Sandman said that from what was being said, it is the applicant's belief and that of Mr. Helbig, that if you can't see the structure, it's not a bad thing.

Mr. Pickering questioned Mr. Helbig about pre-existing non-conforming uses and whether or not this operation falls under that provision. Mr. Helbig agrees that it does.

In response to Mr. Orlando, Mr. Helbig said that it his understanding that if just a recycling center is sought, it isn't necessary, but recommended that municipal approval be sought. Mr. Pickering cited case law that says as a matter of law, it is pre-emptive.

Mr. Orlando asked Mr. Helbig if it was his opinion that no variance would be needed for a recycling facility. Mr. Helbig responded that it was.

Mr. Pickering advised that he would like to move into evidence Exhibits A-1 through A-13. He also advised that his application presentation is complete.

Mr. Harvatt said that procedure wise he thinks Mr. Sandman should be permitted to begin his

presentation and see how far we get tonight.

Mr. Sandman called James Owen. Mr. Owen is still under oath. In response to questions by Mr. Sandman, Mr. Owen advised that he is the manager at Outdoor World Campground; he has been there many years, year round. He testified that he can hear a lot of machinery, slamming tailgates, and beeping when trucks go in reverse. He said that the noise starts about 6:30 a.m.; campers complain about the noise and some have gone to other campgrounds because of the noise. Mr. Harvatt said that if he is testifying as to what some one else tells him, that person should be here to testify, however, he can provide a synopsis. Mr. Owen said that people have complained to him, and to security. He has heard the noises himself and some times can feel something like tremors. He said that the noise level that is there should not be allowed that early in the morning. He also said that the campground is trying to be a good neighbor and not complain.

Mr. Sorenson asked if there were any questions to Mr. Owen.

Ms. Mascia said that it was testified to previously that the loudness of the noise is equal to that of a normal speaking voice and wanted to know Mr. Owen's opinion. Mr. Owen said that what he hears is much louder than Ms. Mascia's voice.

Mr. Jones wanted to know whether or not a campground is generally noisy. Mr. Owen said people sit around and relax in the morning, there is some noise, but they have quiet hour after 10:00 p.m.

In response to Mr. Pickering, Mr. Owen said their business is rental driven, they have rental cabins, people pay to stay there and it is not their principal place of residence, but a seasonal place of residence for some, and they are in compliance with Township Ordinance as to open season.

Mr. Sandman then called Barbara Allen Woolley Dillon, who was sworn in and stated her qualifications and that she has been licensed as a professional planner since 1998. She was accepted as an expert by the Board.

In response to Mr. Sandman's questions, Ms. Woolley-Dillon advised what documents she has reviewed in preparation for testifying at this hearing. She discussed positive criteria requirements. She gave her opinion as to why the applicant has failed to establish the required positive criteria and special reasons. She advised that she respectfully disagrees with Mr. Helbig's opinion and pre-existing, non-conforming uses should be brought into compliance as soon as possible; not only is that not being done, but the applicant wants to add 2 additional heavy industrial uses. She testified that traffic will be significantly be increased and will impact greatly on the surrounding area. She feels what is being proposed will be environmentally detrimental to the site.

Mr. Pickering objected, saying that environmental issues are being discussed and the expert is a planner not an environmental expert. Mr. Sandman said that she is just giving her opinion. Mr. Pickering said he wants her to refrain from testifying outside her scope of expertise. Mr. Harvatt asked that she keep to facts.

Mr. Sandman asked Ms. Woolley-Dillon if she had any environmental experience. She advised that she had taken state courses taken with regard to environmental issues. Mr. Harvatt advised that the Board will only accept her testimony as planner

Mr. Sandman continued with questions to Woolley-Dillon. In response Ms. Woolley-Dillon compared the 1994 Master Plan requirements and those of the current draft Master Plan. She read from same regarding uses permitted and zoning in the area in question and the permitted uses of "light" industrial and indicated that it was never changed to allow "heavy" industrial uses. She continued to read regarding uses of mining areas and reclamation of those areas. She said the Master Plan and the re-examination do not contain anything about "heavy" industrial uses and to grant the variance would go against the grain. She continued to read regarding the promotion of such residential things as campgrounds. She does not believe that special reasons have been met. She continued to read from the Master Plan regarding habitat destruction and the avoidance of same. She said that the Township and the State have both documented information on the habitats and endangered species. She said that she does not agree with Mr. Helbig's opinion. She doesn't believe that he has addressed why the Board should grant the variance. She believes that Mr. Helbig is pushing site suitability for economic reasons, and she believes the site is not suitable.

Mr. Sandman asked Ms. Woolley-Dillon questions regarding traffic. Mr. Pickering stated his objection. Ms. Woolley-Dillon testified that there will be a substantial negative impact of truck traffic. She discussed the height variance, saying that it exceeds two times what is allowed by the Township; and that it has been ruled that cell towers are inherently beneficial uses and trees are cleared for reception purposes. She questions the impact of an 82 foot high structure. She reviewed negative impacts - increased truck traffic, noise, etc. Mr. Pickering stated his objection. Mr. Harvatt asked why Ms. Woolley-Dillon is saying what she does when an applicant comes before her Board and suggested taking the "I" out of her testimony. In further response to Mr. Sandman's questioning, Ms. Woolley-Dillon said that the preferred would be to allow the pre-existing, non-conforming use to continue and not to allow the new uses.

Mr. Waltz asked if adding more paved areas is beneficial. Ms. Woolley-Dillon said that adding paved areas to keep the dust down is helpful.

Mr. Pickering then directed questions to Ms. Woolley-Dillon. He asked if the very fact that applicant is before the Board says that the applicant doesn't meet the Ordinance. Ms. Woolley-Dillon said that that is correct. Mr. Pickering said that the applicant is asking for a separate height variance and one for multiple uses. Ms. Woolley-Dillon agreed with Mr. Pickering.

Mr. Pickering had a discussion with Ms. Woolley-Dillon regarding the comparisons in the 1994 Master Plan and the current draft with respect to the zoning area in question. They also discussed habitats and the Great Cedar Swamp, and reclamation. Mr. Pickering read from current case law regarding the proof of special reasons and ways to show same.

Mr. Sorenson advised that it is almost 11:00 p.m. and the Board has other business.

Mr. Harvatt asked if there were other people who may want to speak.

Mr. Pickering indicated that he is nearly done, and if can get a vote tonight, he will be done now.

Mr. Harvatt indicated that as a general rule, the Board ends its meetings at 11:00 p.m., but it was the Chairman's call. Mr. Sorenson polled the Board and it was decided to end the meeting at this time and this matter will continue on January 25, 2012 at 7:00 p.m.

### **RESOLUTIONS:**

#### **ERM DRIFTWOOD, LLC - Block 261, Lot 22:**

A motion to approve was made by Mr. Jones, seconded by Ms. Mascia and carried by all voting members.

#### **ARC OF CAPE MAY COUNTY - Block 79, Lots 6 and7:**

A motion to approve was made by Mr. Jones, seconded by Mr. Baldwin and carried by all voting members.

### **OTHER BUSINESS:**

Mr. Sorenson requested a motion to pay the bills. A motion to approve was made by Mr. Jones, seconded by Mr. Penrose and carried by all voting members.

There being no further comments or business to discuss, the regular meeting was adjourned at 11:03 p.m..

Carla A. Coffey \_\_\_\_\_

Carla A. Coffey, Secretary

Dennis Township Zoning Board of Adjustment

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