

**TOWNSHIP OF DENNIS  
CONSOLIDATED LAND USE BOARD**

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

**FEBRUARY 28, 2013**

**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 Butto. The following members were present: Mr. Butto; Mr. Watson, Mr. Daniels; Mr. Pettit and Mr. Germanio. Also present were Jon Batastini, Esquire, Board Solicitor ; Carl Gaskill, Board Engineer; Michael Fralinger, Jr., Assistant Board Engineer; and Jack Gibson, P.E., Township Engineer.

**APPLICATIONS:**

**OCEAN FOOD AND FUELS, LLC - Block 64, Lots 20 and 21.01:**

Located in a Historic Commercial (HC) Zone on Route 47 in Dennisville. Applicant seeking amended site plan approval, as well as a use variance, to convert an existing 1,378 square foot Unit C from a previously approved office use to a take-out ice cream parlor with parking in front of the building.

Mr. Batastini announced that the Ocean Foods and Fuel application is being continued to the March 28, 2013 at the request of the applicant. No new notice is required by the applicant.

Mr. Batastini then advised that the next application is Winifred Joan Daley. He spoke

with Mr. Pickering, the attorney for the applicant, earlier who indicated that he was going to try to be here on time, but wasn't sure. Mr. Batastini advised Mark Gibson that the application will require 5 affirmative votes, and that the applicant is entitled to a full Board of 7 members., and it was his advice to consider whether to proceed this evening or not. While waiting for Mr. Pickering's arrival, the next application was begun.

#### **HANSON AGGREGATES - BMC - Block 120, Lots 63-67, 74, 75 and 79:**

Located on Route 83 in South Dennis within the B (Business), R-3 (Moderate Density Residential) and R-10 (Low Density Residential) Zoning Districts. Applicant seeking preliminary and final site plan approval for the renewal of a Resource Extraction Permit.

Mr. Batastini advised that the next matter is Hanson. He advised that the Board may request a short recess during this application to ask Mr. Pickering his decision on the Daley application when he arrives.

Mr. Tedesco, appeared as attorney for the applicant. The application is for the renewal of an existing mining permit, which has been in existence since the 1950's. Hance Landgraf will provide testimony that there are no real changes since the last renewal. He advised that the only real change is with respect to the 24/7 security guard and fencing.

Mr. Batastini administered the oath to Lance Landgraf.

Mr. Landgraf stated his qualifications, and responded to Mr. Tedesco. He advised that he has been appearing for many years on the mining permit renewals for this site.

Mr. Batastini suggested to the Board that they accept Landgraf as an expert.

Mr. Tedesco then proceeded to ask questions of Mr. Landgraf.

In response to Mr. Tedesco, Mr. Landgraf testified that there were very minor changes to the plans (Mr. Tedesco passed out packet of 8 sheets, which were marked as A-1). He confirmed that A-1 is a plan as previously submitted to the Board with changes. He also confirmed that he has discussed same with Mr. Gibson and they are acceptable to Mr. Gibson. He went through a brief history of the property and its various owners. Hanson has owned since 2003. He has been involved with this site since approximately 1997. He then referred to the Existing Conditions Plan and described same. The site contains 2 ponds. The latest mining has occurred at the small pond, but nothing has occurred there for several years. He referred to Sheet 4, a colorized version of the plan. He described phase locations (5 areas). Area 1 is the subject of this application. He described access to the property - off of Route 83, with gate and scale house. Plant is still in same location as it has been. Only condition which applicant is seeking to change is the requirement for a security guard 24/7. Existing fencing - described how it runs along property. Entire north side of property is wetlands and could not be fenced and still cannot put fencing on land in that area - have checked with DEP. Letter to this effect was received from DEP and is in Township's files. Discussed other options with DEP - can put fencing just inside pond in a very shallow area. The lack of fencing in this area at prior renewal application was the reason for the condition of 24/7 security guard on the premises. All existing ponds and currently active mining operations will now be fenced in per this application. In doing research, have found nothing to support the need for a 24/7 security; have also research fencing requirements. That research determined that only access points need to be fenced. Applicant has built berms and done plantings in areas of access pursuant to previous renewal applications. Read from Township Ordinance with respect to areas where fencing is required. Fencing also required in areas of residences and along street. Believes existing fencing exceeds what Ordinance

requires.

Mr. Batastini then asked Mr. Gibson for his report.

Jack Gibson reviewed the engineer's report. He recommends that all previous conditions continue, except what is being requested by applicant with respect to security guard.

Mr. Tedesco responded to Mr. Gibson's report.

Mr. Butto asked for questions from the Board

Mr. Watson said that on the back of the 16 acre pond, he recalls a problem with the slope.

Mr. Landgraf said that the problem was actually on the front and they have worked on that and are maintaining same, and that it is a gentle slope and the slope is very shallow.

Mr. Tedesco advised that a periodic fence inspection is done weekly. The security guard service will remain in place until fence is installed. Advised that prior to entering into a new area, the applicant will be required to notify the municipality.

Mr. Butto asked if the area is all wooded or can access be gained by quads, etc. (A-2 marked - Google Earth blow up of the area). He was advised that access from the north is very difficult due to wetlands. There is some access from the residential areas, which are blocked by berms. Each area that they will be entering will be fenced as they move around the property. Applicant also owns quite a bit of land surrounding the actual mining pit.

Mr. Butto said he is worried about the quad issue and people getting in to ride.

Mr. Landgraf said that the site is difficult to access. Will also be fenced along the railroad track. Quads tried to access in an area along the railway, but could only get in about 20 feet before they hit wetlands. Everything they touch to mine or store materials will be fenced.

Mr. Butto then asked if there were any other questions, then opened this portion of the meeting to the public, there being nothing from the public, the public portion was closed.

Mr. Batastini indicated that the applicant is finished with its case, and the Board needs to make findings of fact with respect to the relief being requested by applicant.

Mr. Watson said that the fence answers the need for the guard. If fenced in, he doesn't see need for guard. He has no problem with that.

Mr. Batastini had a question regarding the maintenance of fence - what is procedure and what are they looking for when they do a maintenance check.

Mr. Landgraf advised that the fence that is in the water will be checked for erosion. All other fencing is away from pond edge. Will look for problems at bottom of fence. Fence will be about 2 feet from the edge of the pond and will be installed to the pond bottom. In response to a question from Mr. Butto, he said that the applicant may end up driving posts 4 feet into ground if it is not an area that concrete can be used. Inspection is done weekly and provided to the Township every year. (A-3 - four photos showing pond, signs, etc.

Mr. Batastini asked if the applicant will provide SOP and maintenance schedule to Mr. Gibson for his review and approval. Mr. Tedesco said that there would be no problem with that.

Mr. Landgraf provided additional photos at this time which were marked into evidence.  
(A-4 - four additional photos)

In response to Mr. Watson, Mr. Landgraf said that the woods range from 100 feet to 200 feet into the marsh. Other area is part of the Great Cedar Swamp.

In response to Mr. Batastini, Mr. Landgraf testified that there is no evidence of ATV activity on property.

Mr. Batastini then advised the Board as to what needs to be determined - (1) guard required (2) mining permit.

Mr. Watson added that, technically, the Board is recommending to the Township Committee the approval of the permit.

Mr. Pettit made a motion to permit applicant to construct fence in accordance with plan and in lieu of such construction, that a 24/7 guard not be required.

Mr. Butto said that if there is a fence, he doesn't see a need for the added expense of security

Mr. Daniels feels that the fence meets requirement of Ordinance - yes

Mr. Germanio said that he believes the applicant meets requirements.

Mr. Pettit said that he doesn't feel a guard is required after the fence is complete.

Mr. Watson said that if the fence is installed and maintained, he has no problem - yes.

Mr. Batastini presented a form of motion to recommend to the Township Committee that they grant mining permit with conditions.

Motion made by Mr. Pettit, seconded by Mr. Germanio and carried by all voting members, who voted with the following comments:

Mr. Butto - yes - have been mining for years.

Mr. Daniels - operation has been there number of years and successful - yes.

Mr. Germanio - yes - have met criteria and willing to work with Township.

Mr. Pettit - been there long time and meet requirements - yes.

Mr. Watson - basically same application as prior renewal - yes.

**DALEY, WINIFRED JOAN - Block 246, Lot 4:**

Located on Main Street in South Seaville in a Village Residential (VR) Zoning District. Applicant seeking a use variance to construct a separate single family dwelling to be used as a mother-in-law residence on the same lot as an existing single family dwelling.

James Pickering, Esquire appeared as attorney for the applicant, and apologized for being late.

Mr. Batastini advised Mr. Pickering that he had previously indicated that only 5 members of the Board are present, and the applicant is entitled to a full Board and must have 5 affirmative votes to grant application.

Mr. Pickering said that he has discussed this with his clients and they are prepared to proceed. He then confirmed this statement with his clients. The property is in the heart of South Seaville. Home is on Master Plan as a historic home and the applicant wants to preserve same. They want to provide a safe home for Mrs. Daley, but also want to preserve a historic structure.

Mr. Batastini administered the oath to Anthony Daley, Winifred Joan Daley and Mark Gibson.

Mr. Pickering then directed questions to Anthony Daley.

Mr. Daley testified that he has lived here since 1969; he is the son of Mrs. Daley and is one of her 13 children; home has continuously been used by the family since that time. Described home, colonial type house; needs insulation and windows and other work. 6 bedrooms, kitchen, living room, dining room, full basement. Desires to buy property from his siblings, restore property and live there when he retires. He has 5 children himself. Wants to bring house up to code and add a number of features such a air conditioning, new heating, etc. Mother lives there now on the first floor; and lives in house by herself. Wants to provide mother with a safer home; she is currently active; he wants to provide a 1 story home for her next to the existing house. Lot has frontage on Main Street and Corson Tavern Road with a driveway with access to each roadway.

Mr. Pickering then directed questions to Mark Gibson.

Mark Gibson testified that he is very familiar with te property, he prepared the survey of

the property; lot exceeds requirements of VR Zone. Existing house and proposed residence would both meet all requirements. If lot was a bit larger, it would be large enough to subdivide; it is one of the larger lots in the area. He referred to the plan and blown up enlargement of tax map (A-1) of area and described same. Lot is shown as 1.25 acres, but as surveyed is closer to 1.3 acres. Most lots in area are 20,000 square feet or under. Approximately 100 lots in the area are less than 1 acre. This lot is unique in that it is a large lot, close to Town Center, has access on 2 roads and surrounded by many small lots. Proposed mother-in-law structure is placed to maintain open space, be consistent with other structures in area, and also to accommodate the septic system and its approval to use 1 system for the 2 dwellings. The property meets standards as to parking and other conditions for both existing residence and smaller proposed structure as well. They are asking for a use variance - provided positive and negative criteria as required. Sufficient light, air and open space are being provided; lot coverage will only be 6%. Will allow Mrs. Daley to remain there in a safe environment. No public detriment, and maintains the spirit of the Code.

Mr. Pickering directed additional questions to A. Daley.

Mr. Daley testified that the proposed home is basically a one story rancher, handicapped enabled, with ramp.

Mark Gibson added that he would like the ability to add an ADA approved ramp on the plan so its there and doesn't have to be added in the future.

Mr. Daley indicated that he intends to own the larger home, make it look nice, and also intends to keep it in the family and for family use only. He is willing to file Deed restriction and understands what is involved and may be involved in the future. Willing to have easement prepared with respect to shared driveway with neighbor.

Mark Gibson advised that the engineer requested grading plan; and they will be submitted for review.

Mr. Pickering then asked Mrs. Daley to make a statement.

Mrs. Daley indicated that she agrees with the statements made by her son, Anthony and Mark Gibson. She said she is 82 and wants to remain independent as long as possible with her family close by to help her. She wants to stay where she has been; her family loves the area; and she doesn't want to leave.

Mr. Batastini indicated that Mr. Gibson has appeared before this Board on many occasions, and recommends that he be accepted as an expert.

Mr. Batastini then administered the oath to Mr. Gaskill.

Mr. Gaskill reviewed his engineer's report and said that he listened carefully to the testimony and advises that applicant has dealt with any issues he has raised. He suggested that the proposed future ramp be shown on the plan now even if phased in later. Mr. Gibson discussed the proposed area for ramp. Mr. Gaskill then continued with engineer's comments.

Mr. Butto asked the Board for their comments.

Mr. Watson had a question with respect to Deed restrictions, and how that will that work at time of transfer of ownership in the future. Mr. Pickering advised that a family member will always have to reside in the house. He reviewed similar situations that he has brought before the Board in the past that have been approved. The approval runs with the land. He has done several where the approval ended with the death of the party. Residents of the 2 structures must be family members, can possibly be handed down to lineal

descendants/common ancestry. Mr. Watson said he doesn't want to get into a situation where it morphs into something that everyone else is going to want to do. Trying to put some controls on density. Mr. Pickering said that he understands the density, but this is a very unique property. From a visual standpoint, it won't look very different from the rest of the area. Additionally, family has been there for 44 years and has a substantial investment.

Mr. Watson asked whether or not there was additional land to purchase adjacent to the property or non-adjacent. Mr. Pickering advised that no contiguous land was available, and that only certain conditions permit non-contiguous (transfer development), but is very difficult to accomplish and get approval. Mr. Watson added that it may be something the Township should look into, just a way to keep the density the same.

Mr. Germanio said that he admires what the Daley's are trying to do, and doesn't think the Board can ask them to do more.

Mr. Butto indicated that he sees Mr. Watson's point as well. He is satisfied with the Deed restriction and the fact that the applicant got 13 people to agree on something.

Mr. Batastini asked for any further comments. There being none, Mr. Butto opened the meeting to the public.

Robert Flood - Main Street, South Seaville - described where he lives in relation to Mrs. Daley (next door neighbor on Main Street). Had house built in 2001 on small lot, both the Daleys and Carters (other neighbors) are wonderful families. Recommends to Board in the strongest possible tone that they approve the application of Mrs. Daley.

Allen Carter - shares the small section of pavement with Mrs. Daley; she is a great neighbor; would like to say he has no issues with what applicant requests. Has lived with his

mother-in-law and understands how Mrs. Daley feels and compliments her on her spirit to maintain her independence and hopes to keep her as a neighbor for many years. Has no problem with signing an easement with respect to the driveway.

Mr. Batastini asked if there was any other public comment, there being none, the public portion was closed and the matter brought back to the Board.

Mr. Butto indicated that he had reservations coming in this evening, but is good now.

Mr. Batastini presented a form of motion to grant a use variance, with conditions.

A motion to approved was made by Mr. Daniels, seconded by Mr. Pettit. Mr. Batastini explained vote and positive and negative criteria. The approval was granted, with comments being made by each member as to their vote.

**Other Business:**

**Correspondence:** None.

**Resolutions:**

**MESSIAH LUTHERAN CHURCH - Block 253.03, Lot 47.03:**

Before this Resolution was voted on, Mr. Butto said that he would like to work on something with regard to non-profits

Mr. Germanio added that he would also like time to discuss the Master Plan and the density issue, hopefully at the next meeting, as he thinks there are a few things that should be

addressed very quickly.

A motion to approve the Resolution for Messiah Lutheran Church was then made by Mr. Germanio, seconded by Mr. Pettit and carried by all members voting on same.

#### **PROFESSIONAL SERVICES CONTRACTS - BATASTINI AND FRALINGER:**

Mr. Butto indicated that the next matter before the Board was for a vote on the Professional Services contracts

A motion to approve said Contracts was made by Mr. Germanio, seconded by Mr. Pettit and carried by all members voting on same.

Mr. Batastini wanted to make sure that everyone understands what the bills cover - the break down - for example, a portion of his bill gets paid by the Township and certain items are paid for by the applicant as an escrow.

#### **ANNUAL REPORT - ZONING BOARD OF ADJUSTMENT:**

Mr. Batastini presented a form of motion with respect to the annual report. A motion to approve was made by Mr. Daniels, seconded by Mr. Butto, and carried by all members voting on same.

#### **Minutes:**

January 10, 2013

January 24, 2013

February 7, 2013 (Work Session Notes)

With respect to the minutes, Mr. Batastini advised the Board members that it is not true that you have to be at the meeting to vote on them. He advised that the adoption of the minutes can be done by the Chairman alone. He recommends that Roberts Rules be followed. He also advised that the Board can vote on all of the minutes with one motion and if there is a change or correction, those minutes can be adopted with the change or correction.

A motion to approve the minutes presented was made by Mr. Watson and seconded. Mr. Batastini indicated that no roll call vote is required. Minutes were adopted.

**Bills:**

A motion was made, seconded and unanimously carried to pay all outstanding bills.

Mr. Butto asked if there was any public comment. There was no public comment.

There being no further business to come before the Board, a motion to adjourn was made, seconded and unanimously carried to adjourn meeting.

Meeting adjourned.

Carla A. Coffey

Carla A. Coffey, Secretary

Dennis Township Consolidated Land Use Board

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