

**TOWNSHIP OF DENNIS  
CONSOLIDATED LAND USE BOARD  
571 Petersburg Road  
Dennisville, NJ 08214  
(609) 861-9705**

**APRIL 25, 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. Stafford; Mr. Watson; Mr. Teefy; Mr. Daniels; Mr. Glembocki and Mr. Daniels. Mr. Esposito was not present at roll call, but had been called and was on his way, having just arrived home from work. Mr. Esposito arrived at 8:40 p.m. Also present were Jon Batastini, Esquire, Board Solicitor ; Carl Gaskill, Board Engineer and Michael Fralinger, Jr.

**APPLICATIONS:**

**AMERICAN ILEX, LLC - Block 117, Lot 3 and Block 119, Lots 15 and 17:**

Located on both Kings Highway and Dennisville Road in South Seaville in an R-3 (Moderate Density Residential) Zoning District. Applicant seeking preliminary major subdivision approval, as well as a density and a conditional use variance to create 9 lots from 3 existing lots.

James Pickering, Esquire appeared as attorney for the applicant. He arrived during the Anderson application, at which time Mr. Batastini asked to interrupt that application for a minute. Mr. Batastini advised Mr. Pickering that the Board will only have 5 members for his application. Mr. Pickering then asked that this application be tabled until the May, 2013

meeting of the Board Mr. Batastini explained to the Board what Mr. Pickering was requesting and that Mr. Pickering is waiving time restraints; and that his applicant has a right to have all 7 members present. It was announced that this application will be continued to the May 23, 2013 meeting, with no further notice being required. Mr. Pickering said that if any one is present who would like to see the plans, he will have them available down the hall.

The Anderson applicant then continued.

**ANDERSON, ESTATE OF JAMES B. - Block 251, Lot 101:**

Located on Main Street in Ocean View in an R-3 (Moderate Density Residential) Zone. Applicant seeking minor subdivision approval, as well as variances for lot area, lot width and lot frontage to create 2 separate lots from the existing 33.28 acre lot.

Ray Went, Esquire appeared as attorney for the applicant. He provided background as to how the applicant got here. A dispute arose as to the land and how the heirs (Waltz family and Strassenberg family) would divide up the property. The matter ended up in litigation and a decision was reached. He referred to the plan and showed how the property is proposed to be divided. Lot 104 is owned by a Trust and is essentially landlocked, having no frontage on any street. They want to make Lot 104 more conforming by merging it with another lot, resulting in frontage on the street. They are also asking for waiver of DEP requirements. No development is proposed whatsoever with respect to Lot 104. He provided notice of mailings and an Affidavit of Publication for the file. He also marked as A-1 a tax list because wants to show that everyone is on notice.

Mr. Batastini swore in Mr. Transue and Ms. Dix.

Mr. Transue stated his qualifications as a land surveyor since 1969 (he was accepted by the Board as an expert in land surveying). He then responded to questions by Mr. Went

(A-2 - plan of survey).

Mr. Batastini asked Mr. Transue to briefly run through what is being proposed. Mr. Transue referred to the plan and explained the application.

In response to Mr. Watson, Mr. Transue testified that it was 25 feet out to the road (flag lot width). Mr. Went added that they did not want to make it overly wide because of the lot size, and that they just want to be able to have foot traffic, no road.

Mr. Batastini then swore in Alma George.

Ms. George testified that it is a wooded area for the most part, a creek runs through it, for tax purposes it is rated as R3, there is really nothing going on there, the property has been used by the Boy Scouts as a camp, used mainly for hunting, walking through nature and that sort of thing. Some areas are brushy and gets marshy toward the back where Mill Creek merges with Magnolia Lake. Mill Creek runs through Magnolia Lake, under Route 9, across the other property and out to the sea. Her understanding is that the access of 25 feet was for foot access only.

Mr. Batastini asked if there were any discussions as to deed restrictions Ms. George advised that Lot 104 is in a Trust. Mr. Went advised that there had been no discussion about deed restrictions.

John Crammer, Esquire, who represents the Strasenbergs, indicated that if any development were contemplated, the owners would have to come before the Board.

Mr. Went indicated that nothing is changing and if changes are contemplated, they would have to come before the Board and get approvals.

Mr. Batastini indicated that he had concerns with Lot 104 owners coming back at some time and saying they have a hardship if the subdivision is granted. It could probably be argued that such a hardship was self-inflicted, but he just wants to make the Board aware.

Mr. Watson wanted to know what would the hardship be. Mr. Batastini said that they have an undersized lot. Mr. Went acknowledged that it would be a self-created hardship and that it is very hard to overcome that. He added further that because of the terms of the settlement, the applicant is walking in here creating a hardship and is well aware of that. He is willing to put in this in the Resolution.

Mr. Crammer indicated that he doesn't know if it's a self-created hardship or not at this time.

Mr. Butto wanted to know how many people were involved in the Trust. Mr. Crammer indicated that there were two, both being Strasenbergs.

Ms. Went said it is the desire between the parties to part ways, both personally and legally. They want to sever the relationship entirely and by doing the subdivision in this way this is accomplished cleanly.

Ms. George added that they can trace ownership back about 11 generations, since 1830.

Mr. Batastini then swore in James Waltz.

James Waltz testified that he has lived on the Anderson estate since 1963.

Mr. Gaskill indicated that he wants to clarify certain items. The applicant is requesting reconfiguration of Lot 101 to make it an acre smaller by taking out a 25 foot strip to merge with Lot 104 and make a flag lot. They are not proposing to develop at this time, but looking to have foot access for recreational uses. The applicant is not offering to self-restrict to that use, but believe uses stated will be what it is used for. They are not creating any new lots, starting with 2 lots, keeping 2 lots, but making one more conforming. Lot 104 will have to be surveyed and a deed prepared.

There followed a discussion regarding size of lots involved.

Mr. Gaskill indicated that a Deed will need to be prepared in any event..

Mr. Batastini advised that it is difficult to grant a subdivision without knowing the size of the lots. He advised the Board that they can grant it on what is presented.

Mr. Went said he believes they are talking about 4 or 5 acres. He also indicated that Lot 104 is not part of the Estate and they just decided to merge it with the adjoining lot.

Mr. Daniels asked about the lots around Lot 104. Ms. George described the surrounding lots. Lot 101 is the Anderson Estate parcel. She indicated that Strassenberg proposed creating an easement, but that was not acceptable to the other heirs. Mr. Went interjected that Pine Haven Campground sort of wraps around some of the property. Ms. George said that Lot 102 is in the name of the Estate of Strassenberg, and access to that land is up to the Strassenbergs (it is also a landlocked lot).

Mr. Gaskill asked to discuss access to Lot 102. Mr. Waltz advised that they cannot speak about the other lots owned by Strassenberg.

Mr. Went advised that the Estate owns Lot 101 in its entirety with 5 heirs as tenants in

common - Strassenberg (Ada and her son James) and the Waltz family.

Mr. Gaskill indicated that they would have to look for access by other means; and will have to have a survey of Lot 104 to know exactly what is going on. Technically, he has no problem with what is being proposed. As to DEP, this Board has no control over that. Any action taken by Board would have to be conditioned on obtaining DEP approval. He added that at some point they will have to produce a survey so that we know what we are dealing with. What is being proposed simplifies the application and is a practical solution, but will have to make a decision based on the applicant's representations.

Mr. Batastini indicated that with respect to subdivision and merger, he doesn't think the Board has jurisdiction to make a decision, he believes the Board could grant a subdivision as applied for with the requirement. Mr. Went advised that they are proposing to subdivide property and then merge a portion with Lot 104, and are doing so in a 2 step process. Mr. Gaskill added that they are starting with 2 lots, and are ending up with 2 lots. Mr. Went further indicated that every one surrounding Lot 104 has also been notified of the application. Mr. Teefy advised that he agrees with the merging.

Mr. Batastini asked if there would there be consideration for 101 to extend the 25 foot width subdivision through lot 104 to Lot 102. Mr. Went advised that the Board should probably hear from Ms. Dix; and that a bridge would have to be built if anything on wheels were to go through there.

Ms. George advised that the Boy Scouts have used the property for many years and put logs across to be able to cross over. Along the one side, Pine Haven Campground is encroaching on many portions of the adjoining lots and that is currently a civil matter.

Mr. Batastini asked the Board and Mr. Gaskill if they have any questions.

A period of general discussion followed.

Mr. Went called Ms. Dix.

Judana Dix, who is a professional wetlands scientist, stated her qualifications and education, and was accepted as expert. She testified that she field delineated the wetlands on the property and flagged same. She referred to the plan and described same. The majority of property is wetlands. North is wetlands, south portion has some uplands. She described and showed the areas of wetlands and uplands on the plan. She described DEP buffers and their minimums and maximums. She added that you don't know the buffer amount until you apply to the DEP and they make their determinations. She believes the DEP would require a 150 foot buffer for this property. Rather than go through the process, which is very expensive, they have assumed the worst case scenario.

Mr. Went confirmed with Ms. Dix that they just can't go in there and pave, or build a bridge, etc. Ms. Dix agreed with Mr. Went, and added that it's a big deal, and permits would be required.

Mr. Batastini said he is not aware of why a wetlands delineation would be required. Mr. Gaskill said it is being discussed only because of local language. Ms. Dix added that it is all fresh water and regulated under Freshwater Wetlands.

Mr. Batastini asked if there were any more questions for Ms. Dix. There were none.

Mr. Butto then opened the meeting to the public.

Charles Bandy was sworn in. He advised that he is the owner of Lot 107. He wants

to let the Board know that Lot 108 has recently changed hands and that the new owner could not be here tonight. He also said that the paperwork doesn't mention Lot 104 and wanted to know when was this decided. Mr. Went advised that it was discussed at the work session. To explain, he added that the applicants could have applied for the subdivision. Lot 104 is owned by the applicants and could end up with the same result. Mr. Bandy asked why it can't be deed restricted that a road will not be built. Mr. Went advised him that if the applicants wanted to do this, they would have to get approvals and permits. Mr. Batastini also advised that they won't get a guarantee from this Board that development will never happen. Mr. Gaskill added that it can't be done without other approvals.

Paul Williams was sworn in. He advised that he owns Lot 109. He said he concurs with Mr. Bandy's assessment and hopes the Board gives consideration to this matter. He also advised that he doesn't currently live at his property.

Mr. Teefy indicated that nothing is changing, even if the subdivision is not granted, they can still access the property by foot. Mr. Batastini added that the only change is that instead of 5 people being allowed to walk across the property it will only be 2 people. Other people walking across property are trespassers.

Ms. George indicated that they have more problem with people from Pine Haven trespassing on the property than other people. She also indicated that she doesn't know of any bonfires on property as it is very wet. She said they have had evidence of drinking and hunting and would ask neighbors that if they see such activity, to call the police.

Mr. Butto wanted to confirm that only 2 people will have legal access to this property if subdivision granted. Mr. Glembocki reiterated that only 2 people have legal access.

Mr. Bandy indicated that the map doesn't show his and Mr. Williams' buildings.

Their being no further public comment, the public port was then closed and the matter brought back to the Board.

There was a discussion regarding a survey of the property. Mr. Gaskill believes that a new survey may have to be prepared pursuant to new regulations.

Mr. Batastini indicated their will need to be a motion to approve the subdivision and granting a variance for lot frontage, lot area and lot width. It is a C variance which will require both positive and negative criteria to approve. Will start with waiver of wetlands delineation first.

A motion to approve a waiver of the wetlands delineation was made by Mr. Teefy, seconded by Mr. Stafford and carried by all members voting on same.

Mr. Batastini then presented a form of motion to approve variances for lot area and lot width. A motion to approve was made by Mr. Teefy, seconded by Mr. Stafford and carried by all members voting on same.

Mr. Batastini then presented a form of motion to approve the subdivision, with conditions of merger and other governmental approvals that are required in addition to self-inflicted hardship not being a consideration. A motion to approve was made by Mr. Teefy, seconded by Mr. Stafford and carried by all members voting on same.

**Other Business:**

**Correspondence:**

Walter J. Noll - Referral from Township Committee regarding ATV Usage.

Ordinance No. 2013-13 - Referral from Township Committee regarding Zoning Changes.

Mr. Batastini asked the Board to review the packet received from the Township Committee for suggested Ordinance changes and same will be reviewed at the next meeting.

Mr. Batastini also advised that there will not be a work session next week. There will be a meeting next month to consider the application not heard this evening. He also referred to a letter from Mr. Donohue as to use of ATVs on private property, and asked the Board to look at that letter and consider possible recommendations.

**Resolutions:**

**OCEAN FOOD AND FUELS, LLC - Block 64, Lots 20 and 21.10:**

A motion to approve was made by Mr. Daniels, seconded by Mr. Stafford and carried by those members voting on same.

**WALTERS, WILLIAM AND RONALD - Block 224, Lot 74.03:**

A motion to approve was made by Mr. Watson, seconded by Mr. Daniels and carried by those members voting on same.

BONJORNO, JOSEPH, JR. - Block 237, Lot 20:

A motion to approve was made by Mr. Stafford, seconded by Mr. Watson and carried by those members voting on same.

**Minutes:** March 28, 2013.

A motion to approve the minutes of the March 28, 2013 meeting was made by Mr. Stafford, seconded by Mr. Watson and carried by those members voting on same.

Mr. Batastini indicated that the Board can vote on minutes with the Chairman asking if there are any changes or corrections.

**Bills:**

Mr. Butto read the list of bills to be approved. Mr. Batastini apologized to the Board for a mistake that was made on one of his bills and thanked Eileen for catching the mistake. A motion to approve and pay said bills made by Mr. Teefy, seconded by Mr. Watson 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 at 8:52 p.m.

Carla A. Coffey

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Carla A. Coffey, Secretary

Dennis Township Consolidated Land Use Board

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