

**TOWNSHIP OF DENNIS
CONSOLIDATED LAND USE BOARD**

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

MAY 23, 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 Buto. The following members were present: Mr. Buto, Mr. Watson, Ms. Baldwin, Mr. Glembocki, Mr. Pettit, Mr. Stafford, Mr. Cherry, Mr. Daniels and Mr. Germanio. Also present were Jon Batastini, Esquire, Board Solicitor ; and Carl Gaskill, Board Engineer.

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.

Mr. Batastini administered the oath to Mike Valentino, principal of applicant; and Vincent Orlando, P.E.

Mr. Pickering asked the Board to accept Mr. Orlando as an expert.

Mr. Batastini administered the oath to Mr. Gaskill, as Board Engineer.

Mr. Pickering explained the application. He said he wanted to start by advising the Board what could be done with a by-right subdivision and what is proposed. He then posed questions to Orlando. (Exhibits marked: A-1- plan by EDA, conceptual site plan for by-right subdivision; A-2 - aerial view with markings as to what applicant is seeking in lieu of by-right; A-3 - plan of what applicant is seeking in lieu of by-right subdivision)

In response to Mr. Pickering's questions, Mr. Orlando referred to A-2 and oriented the Board as to the location of the property. He described the location of the property and the surrounding area. There is frontage along Kings Highway and Dennisville Road. There are 3 lots involved. An Atlantic City Electric easements runs through the site with its own lot and block number. The property is in an R-3 Zone. He referred to the plan of by-right subdivision and described same - 2 lots on Kings Highway; and 7 lots off of Dennisville Road, all greater than 3 acres and would totally conform, and 9 lots of 3 plus acres, with a road dedicated to the municipality. Drainage would have to be developed. The site as it exists has a small house on Kings Highway, there was an existing structure on Dennisville Road and currently a garage on Dennisville Road lot. This would be a by-right subdivision as all lots would conform and no variances would be sought. Structures would be scattered over the proposed lots. He testified that the detriments to the by-right would be that a road would be developed and would increase costs and the Township would have to maintain the road. The lot is currently a field, as well as wooded, this subdivision would clear land and result in the site being mostly field. The applicant is proposing a cluster option.

Mr. Pickering then asked for the definition of clustering. Mr. Orlando advised that clustering is permitted by Ordinance. He read the definition of "clustering" from the Township's Ordinance. He explained the benefits with respect to this application. All lots in immediate area are 1 acre lots, with some being less than 1 acre. The applicant is proposing

to cluster lots with existing road frontage. They are proposing 6 lots on Kings Highway from 1.7 acres to 1.04 acres. All lots conform to R-3 Ordinance with clustering option. They are proposing 2 lots on Dennisville Road - one being 1.04 acres and the other 1.92 acres. The remaining parcel would be developed with 1 single family home and deed restriction on the 14+acre area.

Mr. Pickering advised that the clustering provision has several requirements

Mr. Orlando explain to the Board that there are several types of D or use variances. This case doesn't meet the conditions of the conditional use.

Mr. Pickering reviewed the conditions of clustering.

Mr. Orlando indicated that he- believes preservation of open space is advisable and he believes it meets the intent and purpose of the Ordinance. He sees no detriment to the public good, and at the end of the day, there could still be 9 lots developed on this parcel. He testified that there would be no detriment to the zone plan or Zoning Ordinance, and it will promote open space. He explained that if a roadway were created as in the by-right subdivision, the math would permit 10 lots instead of the 9 proposed.

Mr. Pickering indicated that the applicant is not proposing to dedicate any land to the municipality.

Mr. Orlando testified that it is his opinion that if this open space were dedicated to the Township, it would be a detriment to the Township, as it would have to be maintained and insured by the Township. He doesn't believe the size of the lot warrants such a dedication. He looked at various options and felt the best design was to put the open space on one lot and put a deed restriction on it to keep it open space and preserved in perpetuity. He

indicated that the impact of the development is minimal. He also said the applicant is proposing common driveways for the lots on Kings Highway.

Mr. Pickering said he believes that what is being proposed with respect to open space meets the spirit of the Ordinance.

Mr. Orlando then referred to the plan and showed the proposed open space line. He indicated that Mr. and Mrs. Tozer had a concern with houses being built in their back yard. The applicant has reached an agreement with the Tozers that the house on the single large lot will not be built behind their home and have made other adjustments with respect to buffers that they are agreeable with. The only construction that they can imagine in the open space would be a horse barn with fencing for the corrals. He advised that there are small areas of wetlands on property, which have been mapped, but all proposed development is well outside wetlands buffer. He reviewed the positive criteria and how the application meets same. He then reviewed the negative criteria and how this application meets same. There was discussion regarding the flag lot with a flag of 51 feet - it will be used only as a driveway and he believes a variance can be granted with respect to same as property is very unique shape and limited frontage. He advised that the public will not be impacted by the placement of driveways. The applicant is seeking preliminary major subdivision approval at this time. He added that this area of the Township is undergoing a zoning change and lots may be permitted to be smaller.

Mr. Pickering then addressed the applicant, who confirmed that he is in agreement with everything said by Mr. Orlando.

Mr. Buto then asked the Board for questions from the Board.

Mr. Germanio said that if a horse farm can be placed on open space, it will not remain

open space. Mr. Pickering advised that a horse farm could be put in open space as a permitted use for open space.

Mr. Buto asked about the common driveways. Mr. Orlando advised that it was not his idea, that the County is requiring same as it's a County road. Mr. Pickering indicated that there are already shared driveways in the area.

Mr. Buto asked if there were any other questions from Board members. There being none at this time, Mr. Buto asked for the Engineer's report.

Mr. Gaskill presented the Engineer's report. He requested testimony as to an environmental impact study and endangered species or vegetation.

Mr. Pickering questioned Mr. Orlando regarding same.

Mr. Orlando testified that he prepared environmental impact study and had walked the entire site. He described what he found. He testified that he found no endangered species or trees or other vegetation on the site; that there is no open waters on site; and he believes there would be a higher impact if the site were to be developed under a by-right subdivision.

Mr. Pickering discussed the set backs of existing conditions.

Mr. Orlando indicated that existing conditions are usually dealt with as a pre-existing, non-conforming condition (the house already exists). He then discussed the waivers being requested.

Mr. Gaskill referred to his comments on page 4 of his report and discussed. He then continued with his report and comments.

Mr. Orlando, at the request of Mr. Gaskill, discussed proposed drainage and grading plans. He indicated that they cannot be exact, because they do not know the exact location or size of any home to be built. He also said it is a good idea that plans be provided to the Township when some one comes in with plans to build a house.

Mr. Batastini, with respect to Lot 15 (open space), who will own it. Mr. Pickering advised that it will be owned by the same person owning the large single family lot.

Mr. Orlando added that the 21 acre parcel will occur with 7 acres for development and the other 15 acres open space. This lot will be deed restricted as such. Mr. Pickering advised that deed restrictions are rather routine

Mr. Germanio wanted to know if it can be developed with a horse farm. Mr. Pickering advised that yes it could.

Mr. Germanio also wanted to know if the existing house was abandoned. Mr. Pickering advised him that it was not and that some one lives there.

Mr. Buto asked if there were any further questions from the Board. There being none at this time, the meeting was opened to the public.

Mr. Batastini administered the oath to Debbie and Bill Gannon.

Mr. Pickering referred to the plan and indicated where the Gannon property is located.

Debbie Gannon testified they have only lived here a few years, and they purchased the property with the understanding that there was only one other house. They are trying to get

away from the city, and believe that 3 acre lots are better than 1 acre. She really doesn't want homes built on this property and is asking the Board not to approve.

Bill Gannon advised that he is also asking for the Board's consideration.

Mr. Germanio asked Mr. Gannon to show the Board exactly where his house is on proposed plan. Mr. Gannon showed the location.

Mrs. Gannon indicated that there are people who are not here who are also neighbors. Mr. Buto advised that they were at the last meeting. Mr. Pickering added that the matter was not heard at the last meeting, but he met with those interested and discussed what was being proposed.

Mr. Batastini asked Mrs. Gannon for any suggestions that would make her less concerned. Mrs. Gannon's response was to keep the people away.

Mr. Pickering explained that some one could build near their home under either the applicant's proposal or the by-right subdivision. This application meets the clustering requirements in the 3 acre zone. He asked Mr. Orlando if there is anything that could alleviate the Gannon's concerns.

Mr. Orlando said that they could probably increase the set back on their side to 50 feet. Mr. Pickering advised that the R-3 zone allows 35 feet side yards. Mr. Orlando said that they could probably also increase the set back. Mr. Pickering suggesting making the 30 foot setback a 50 foot set back. Mr. Orlando indicated that a 50 foot wide house could still be put on that lot, but agreed that increasing set back would be better for neighbors.

Mr. Buto asked the Gannons if an increased set back addresses their concerns. Mr.

Gannon indicated that it did not, but what could they do. Mr. Germanio asked how far they are off their line. Mr. Gannon advised they were 45 feet off the line, and had placed their house in the rear portion of the lot so it couldn't be seen, but this application opens it all up.

Mr. Buto asked if there was any other public comment. There being none, the public portion was closed.

Mr. Batastini asked Mr. Pickering for a summary and to reiterate the positive and negative criteria.

Mr. Pickering indicated that 2 D variances were being requested; he explained what they are; and reviewed the positive and negative criteria. Applicant is also asking for a variance as to street frontage for a portion of the flag - reviewed positive and negative criteria for same. They are also seeking a front yard variance for the existing home as a C-1 as it would be a hardship to move the building; it's an existing structure. The question is whether the Board thinks the proposed application is better than the by-right subdivision.

Ms. Baldwin asked what are the detriments to the by-right subdivision.

Mr. Pickering advised that all of the land would be used, no open space, no preservation of space; a road of approximately 1600 feet to be maintained by the Township; drainage could become a public responsibility. There are substantial detriments to the municipality. End up with 9 lots, density stays roughly the same, will probably end up with larger homes. Proposed subdivision has no road to be dedicated to the municipality and, therefore, no cost to the tax payers for maintenance; open space can provide habitat to all sorts of animals; open space is encouraged; open space is valuable and would be permanently maintained as open space; probably be smaller homes.

Mr. Orlando - added that the applicant is willing to deed restrict a 50 foot area to

remain wooded, contains some very large trees, and would probably make the neighbors happier.

Mr. Pickering said he is asking the Board to weigh the options.

Mr. Batastini then asked the Board for final comments.

Mr. Germanio asked if open space on either plan is about the same.

Mr. Orlando indicated that a by-right subdivision would have less open space due to clearing for roadway, various driveways, drainage basin areas. By-right would have substantially less open space and if some one wanted to clear their entire lot, there is nothing to prevent them from doing so. Smart growth encourages clustering and open space.

Mr. Buto then called for a 5 minute break.

Mr. Buto called the meeting back to order.

Mr. Buto asked for discussions and comments regarding each Board members reason for they way they are voting and then to vote yes or no.

Mr. Pickering indicated that during the break, his client spoke with Mr. and Mrs. Gannon - and believes that if applicant added additional trees and 50 feet deed restricted buffer between proposed dwellings in the subdivision and the Gannon's property, it may be more acceptable to the Gannons.

Mr. Gaskill said he believes the application should first be deemed complete and then deal with the waivers.

Mr. Batastini reviewed the waivers as set forth in engineer's report.

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

Mr. Batastini presented a form of motion, with explanation, with respect to waivers from conditional use standards - variances seeking requirements of 50 acres; requirement that property not contiguous and ACE right-of-way separates parcels; density calculation permits 8.9 lots and 9 lots requested; and variance from in lieu of Township taking control of open space that same be part of 21 acre parcel to be deed restricted for open space.

Mr. Daniels had a question about dedication of open space to Township. Mr. Batastini indicated that the Board has to presume that the Ordinance is constitutional.

A motion to approve was made by Mr. Stafford , seconded by Mr. Germanio and carried by all members voting on same. The roll call included discussion by each member as to their reasons for their vote.

Mr. Batastini presented a form of motion as to the lot frontage for 20 acre lot. A motion to approve was made by Mr. Pettit, seconded by Mr. Germanio and carried by all members voting on same.

Mr. Batastini presented a form of motion regarding the pre-existing structure's set back to be 18 feet as to 75 feet. A motion to approve was made by Mr. Watson, seconded by Ms. Baldwin and carried by all members voting on same.

Mr. Batastini discussed the conditions with respect to variances and an increased buffer to the Gannon property.

Mr. Batastini then presented a form of motion for preliminary major subdivision approval. A motion to approve was made by Mr. Stafford, seconded by Mr. Pettit and carried by all members voting on same.

Mr. Pickering thanked the Board for their time and attention.

Other Business:

Correspondence:

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

Mr. Batastini advised that he has looked into a significant number of other Counties and what they have done with respect to ATV usage.

Mr. Buto advised Mr. Noll that his correspondence was about to be addressed.

Mr. Batastini said they Board has been requested by the Township Committee to look into curtailing ATV use on private properties. He has contacted other municipalities and the only type of zoning he has found so far deals with storage of ATVs; he hasn't found anything in the New Jersey Statutes, Ordinances, etc. restricting use and what type of properties ATVs can be used on. There are certain cases in PA where ATV use can be curtailed on certain types of properties. Still no identification of whether or not there can be restrictions on a particular type of property and the use of ATVs. There are concerns in other municipalities as

well. From a land use prospective, the directive is whether or not buffers can be set up. In order to set up a buffer, it has to be determined what an appropriate buffer would be. ATVs are noisy and create dust. Can't be arbitrary in picking a number for a buffer. Need to make considerations as to general welfare of neighbors and whether residential or commercial properties are involved. From research he has done, he has not found any guidelines. There is a noise ordinance in the County which prohibits noise during certain hours, but this is not a zoning issue. He has found nothing to prohibit the use of an ATV on private property.

Mr. Watson asked what if a charge was being made for use of property for ATVs. Mr. Batastini said he was not sure whether a charge makes a difference. Many places are struggling with the same issue. Believes there are other avenues, such as a noise ordinance, but that is not a zoning issue and is a police issue. He also indicated that the County has a person who is trained in noise violations and has the equipment to measure the noise level.

Mr. Germanio asked what Pennsylvania had decided. Mr. Batastini said that they decided ATVs could not be ridden on a commercial track.

Mr. Germanio indicated that he is not familiar with what is going on, and asked if some one want to open a track.

Mr. Batastini administered the oath to Walter Noll.

Mr. Noll testified that he has provided the Township with numerous ordinances which refute what Mr. Batastini has said tonight. Mr. Batastini then asked to be supplied with that information.

Mr. Buto asked Mr. Noll to describe what his issues are.

Mr. Noll said that ATVs are being driven at high speeds; concerns for safety of residents and children. Very dangerous situation. Township Clerk has been supplied with quite a compilation of information. Upper Township has a Noise Ordinance that doesn't require County involvement. Dennis Township shares a Court system with Upper Township. Have been attempting to deal with this situation since 2009. Mr. Corrado wrote an opinion letter, and he assumes that this Board/Committee hasn't been provided with that letter. He also testified that there are many tracks in the area, both on private property and on commercial property.

Mr. Buto indicated that the commercial property being referred to is owned by Thomas Barry on the corner of Route 83 and Dennisville Road.

Mr. Batastini asked Mr. Noll to provide him with any information he wishes him to review. Mr. Noll said he will provide same.

Mr. Batastini said that Mr. Noll's information will be helpful and he will review what is sent.

Mr. Noll said he feels as if he is essentially starting over. Also, he is not sure if all of the issues in Mr. Donohue's letter have been addressed. They have done a lot of research.

Mr. Batastini advised that it will take him time to get up to speed, and he will also address issues in Donohue's letter.

Mr. Stafford indicated that he has an ATV. He suggests that parents be more responsible and also make sure that mufflers are installed. He also suggests speaking with parents of the ATV riders, and that children need to be educated and to have respect for others.

Mr. Noll said they keep going over and over the same information; and that there is a Dennis Township ATV sub-committee.

Mr. Batastini said he has only been here since January, and is just asking that he be given time and he will do everything he can to expedite the matter.

Mr. Buto said that he has a small quad he uses to ride on his property, and understands the concerns. It is an issue and he takes it seriously.

Mr. Glembocki said he wants this Board to get a fresh opinion on this matter.

Mr. Germanio said that if the County has some one, have they been contacted? Mr. Noll indicated that the County's person has to be there at the time or they can't do anything. He also advised that Upper Township has found way around it with their Ordinance.

Mr. Buto indicated that those that ride in pits, etc. usually have some one as a look-out for police.

Mr. Germanio added that when you go with a noise ordinance, you have to consider what else in the Township makes noise - people hunt and that makes noise.

Mr. Noll advised that he took parts and pieces from other Ordinances and has developed a draft ordinance. He also had members of the ATV community and the general community sit together.

Mr. Germanio added that ATVs are not permitted on farmland.

Unidentified Woman in audience indicated that she wants some one to go to the

property to see how many ATVs are riding there.

Mr. Buto assured those present that the issue will not be ignored, and they have the Board's attention and it will be looked into.

Mr. Noll advised that he would like Mr. Donohue's letter addressed issue by issue.

Mr. Batastini assured Mr. Noll that the issue will be looked into.

Ordinance No. 2013-03 - Referral from Township Committee regarding Zoning Changes:

Mr. Batastini advised that given the volume of the material, he is asking the Board to sit tight and he will review same for discussion at June's meeting as there are no applications.

Mr. Watson advised that he has some comments regarding the Ordinance. He has a list that he will provide to Mr. Batastini. One comment regards front yard set backs listed as 0 to 8 feet. The other thing is wastewater treatment facilities - which is not defined or described anywhere, but plenty of information regarding windmills. These are the things that stick out to him. He suggests that everyone read the entire Ordinance. He also advised that the Planning Board was dealing with the Master Plan.

Resolutions:

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

Mr. Batastini advised that Mr. Crammer has asked for a 30 day extension to review the Resolution and, therefore, no vote will be conducted this evening and will be scheduled for the Board's next regular meeting.

Minutes: April 25, 2013.

Mr. Batastini asked if there were any changes to the minutes, there being none, the minutes were deemed approved.

Bills:

Mr. Buto read the list of bills to be approved. A motion to approve and pay the Fralinger bills was made by Mr. Germanio, seconded by Mr. Pettit and carried by all members voting on same. A motion to approve and pay Mr. Batastini's bills was made by Ms. Baldwin, seconded by Mr. Germanio and carried by all members voting on same.

Mr. Buto 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 9:55 p.m.

Carla A. Coffey _____

Carla A. Coffey, Secretary

Dennis Township Consolidated Land Use Board

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