

**TOWNSHIP OF DENNIS
CONSOLIDATED LAND USE BOARD**

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

JULY 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 Buto. The following members were present: Mr. Buto, Mr. Glembocki, Mr. Watson, Mr. Stafford and Mr. Daniels. Also present were Jon Batastini, Esquire, Board Solicitor; Carl Gaskill, Board Engineer; and Michael Fralinger, Jr., Assistant Board Engineer.

APPLICATIONS:

McNALLY, PATRICK C. - Block 67, Lots 46 and 49:

Located on Laurel Road in Dennisville in a Pinelands Village (PV) Zoning District. Applicant seeking minor subdivision approval, as well as variances for lot area, lot frontage and front yard setback. Applicant desires to gain access to the waterfront of Johnson's Mill Pond and has executed an Exchange Agreement (Land Swap) with the owners of neighboring lot. (**Continued to August 22, 2013.**)

Mr. Buto announced that there was a noticing issue with this application and the matter has been continued until August 22, 2013.

MORAN, PATRICIA E. - Block 96, Lot 36.01:

Located on Route 83 in South Dennis in a R-3 (Moderate Density Residential) Zoning District. Applicant seeking preliminary and final site plan approval, as well as a use variance to construct a therapeutic equine learning facility for autistic and special needs children.

James Pickering, Esquire, appearing as attorney for the applicant, indicated that he sees only 5 members present and would have to proceed with 4 members as the Mayor cannot participate in this application and the applicant, therefore, cannot proceed tonight.

Mr. Batastini added that the application requires at least 5 affirmative votes.

Mr. Pickering asked that the application be tabled until next meeting with no further notice being required.

Mr. Batastini announce that the Moran application will be continued to the August 22, 2013 meeting, and there will be no additional requirement for noticing.

Mr. Pickering said that he is not comfortable with waiving statutory requirements, as he is concerned that since January there has only been a quorum for 3 meetings and fears he may not get a hearing for another 3 months and, therefore, doesn't see need to waive the time requirements at this time.

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 final major subdivision approval.

Mr. Batastini advised the applicant that there were only 4 Board members present. Vincent Orlando, P.E., appearing on behalf of the applicant, said the application was for a subdivision and the application can proceed with 4 members.

Mr. Buto read the introduction to the application.

James Pickering, Esquire, appeared as attorney for the applicant. He indicated that the applicant appeared before the Board 2 or 3 months ago for a preliminary subdivision application, which was granted. He discussed the issue of which Board members would be voting on this application. He believes that the law does not allow the Mayor to sit; but since there are other 4 members present, he believes that the Board still has a quorum. He referred to Cox who says the Board is to be treated as a 7 member Board and that 4 is a quorum. He is ready to proceed. Applicant is seeking final major subdivision approval. He explained what a final major subdivision is and that Land Use Law doesn't even require them to be here.

Mr. Batastini administered the oath to Mr. Gaskill and Vince Orlando.

Mr. Pickering provided background of the application, and advised that the changes that were required to be made to the plan have been made.

Mr. Orlando referred to the plans (final versions) and reviewed the changes that have been made. Also, a wetlands permit has been received from the DEP asking for a 50 foot buffer, and no exception is taken to Mr. Gaskill's conditions.

Mr. Batastini asked the Board for any questions.

Mr. Gaskill reviewed his engineer's report (7/25/13).

Mr. Pickering indicated that the application has been submitted to the County, but the applicant has not received their approval yet.

Mr. Batastini had a discussion with Mr. Pickering regarding the Conservation Deed.

Mr. Pickering has no objection to including same as a separate condition.

Mr. Buto opened the meeting to the public. There being no public comment, the public portion was closed.

Mr. Batastini presented a form of motion for approval of the major final subdivision with conditions. A motion to approve was made by Mr. Stafford, seconded by Mr. Watson and carried by all members voting on same.

Other Business:

Correspondence:

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

Mr. Batastini indicated that considering only 5 members present, he will make a quick review. He has had a chance to review correspondence and attachments from Mr. Noll, as well as correspondence which he read into the record from Eileen. He referred to letters from Michael Donohue and Frank Corrado. Mr. Corrado was previously asked to review this issue and his opinion went through several reviews. He has reviewed and researched and still cannot find anywhere in New Jersey where a Zoning or Planning Board has adopted anything with respect to ATV usage. Zoning Board does not regulate ATV's, which are motor vehicles.

Planning and Zoning generally regulate improvements as to what you can or cannot put on a property. The question becomes the moving of dirt to make a track and the violation of ordinance. The Board needs to make a determination as to whether it wants to regulate the use of a property for an ATV track, baseball field, hockey field, etc. He concurs, basically, with Mr. Corrado's letter. These are his basic findings at this point and no decision can be made tonight. If the Board wants to consider this matter, they will also have to make

definitions, such as what will a "racetrack" be defined as - use, location, size, dirt track, what is being used on it, etc.

Mr. Gaskill said his experience is that a list is created of what is permitted and what is not permitted; will a use variance be required; need concise definition to begin with; conditions of what is reasonable. The Board is acting in an advisory capacity as Township Committee has the policing powers.

Mr. Batastini used the example of a swimming pool - the pool is the issue and not everything that goes along with it - number of people using the pool, what activities are done with the pool; etc. As a recap, the zoning officer has already determined that what is going on is legal. Going forward, not sure if a zoning change is made that it wouldn't be considered as an existing non-conforming use for existing properties. The Committee is requesting Board to review, if Board doesn't feel the need, they can advise the Committee that the Board not interesting in reviewing.

In response to a question from Mr. Stafford, Mr. Batastini said that the Board regulates the property and has to decide if they want to regulate the type of activities on the property. The Board has no enforcement/police powers.

Mr. Daniels agrees. He said he doesn't feel this is something the Board should be involved in. Where does an "improvement" stop. What if there is a pile of dirt on a property, is it an improvement. What if kids create a football field in the yard and mark a 50 yard line.

Mr. Batastini continued with what if kids build a mound of dirt to jump over with their bicycles. If there were bicycles on the racetrack, it wouldn't be an issue.

Mr. Gaskill indicated that if noise is the issue, there are laws on the books as to

acceptable decibel levels. Make a complaint, have the noise level monitored at the property line.

Mr. Buto asked if there was any further comments on this - none from Board. He then opened the meeting to the public regarding this issue.

John Leith - 148 Kings Highway, Clermont - was sworn in. He wants to know how noise a ordinance can be enforced. What if your neighbor is making a noise. It's not just ATV's, it's a lot of stuff and has been going on for a long time. People just deal with it. Doesn't think we are up-to-date with our zoning.

Mr. Batastini suggested that if he has any issues or ideas, he should let the Township Committee know.

Mr. Leith said that some times you don't see a problem until you get into it. What isn't an issue now, may be an issue in the future.

Mr. Gaskill said that some times items re-occur and makes you stop and think that this is coming up quite often and maybe something should be done to take this item into consideration and make a change.

Mr. Leith said that some municipalities allow their zoning officers more latitude to make decisions.

Frank ____ was the next to speak and was administered the oath. He thinks Mr. Noll's and Mr. Gibson's main concern is dust and noise. He said that if you own a property and your neighbor is creating noise and dust and you have to keep your windows closed, that isn't fair either. He would be upset if this was happening next to him.

Mr. Batastini indicated that he doesn't believe it is under the jurisdiction of this Board and is not a zoning or planning issue.

Frank said he believes you should be able to sit outside and enjoy your property; something has to be done about enforcement; years ago, you could talk to the kid or parents and something would be done; it's a different world today and it's not the same.

Mr. Leith said he had one more issue for the Board. He wanted to know if there is a rule that a quorum be present, and it seems that this Board has quorum problems all of the time.

Bills:

Mr. Buto read the list of bills to be approved. A motion to pay the bills was made by Mr. Stafford, seconded by Mr. Daniels and carried by all members voting on same.

Mr. Buto asked if there was any public comment. There was no further 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 8:15 p.m.

Carla A. Coffey

Carla A. Coffey, Secretary

Dennis Township Consolidated Land Use Board

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