

7:11:47 PM - - DENNIS TOWNSHIP CONSOLIDATED LAND USE BOARD  
Regular Meeting - November 17, 2022 - 7:00 p.m.

Attendance: Turner, McEvoy, Watson, Martucci, VanArtsdalen,  
Penrose, Cowan, Chambers, Walsh, Batastini, Fralinger

Applications:

MOOERS, JAMES AND DEBBIE - Block 67, Lot 31: Located on Fidler Road in a Pinelands Village (PV) district. Applicants seeking variance to build a pole barn in the front yard.

PIERSON-PLEASANTVILLE, LLC - Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04: Located on Woodbine-Ocean View Road in a Business District (B). Applicant seeking preliminary and final site plan approval, a use variance, bulk variances, waivers from subdivision and/or site plan standards and any and all waivers and/or approvals necessary to add ready mix concrete as an additional use associated with an existing gravel pit. (Continued from September 22, 2022.)

Other Business:

Correspondence.

Resolutions:

- Klebaur
- The Richard A. Hocker Revocable Trust and the Marcia A. Hocker Revocable Trust
- Ocean View Petroleum, LLC

Minutes: October 27, 2022

Bills:

Adjourn.

- 7:11:47 PM - - Start Recording
- 7:11:48 PM - - Walsh -call meeting to order
- 7:12:46 PM - - Walsh - first application James and Debbie Mooers
- 7:13:22 PM - - Walsh
- 7:13:26 PM - - Batastini -administer oath to Debbie and James Mooers, Jack Gibson and Michael Fralinger
- 7:14:01 PM - - Batastini - ask Mr. Mooers if anyone is there on their behalf
- 7:14:25 PM - - Mr. Mooer - no. Looking to retire, children are grown and wants place to hang-out, fix bikes and place to be. The fencing is to keep dog inside yard because he likes to run. Wants to put pole barn in front yard because no room in rear of property to put it. Front yard has about 600 feet of land between front of house and road and only about 100 feet in the rear. House can't be seen from road; pole barn wouldn't be directly in front of house, but off to side and probably about 300 feet from road; wouldn't be very visible from road.
- 7:17:57 PM - - Turner - offer to show survey on screen
- 7:18:10 PM - - Mr. Mooer - asked for survey to be shown.
- 7:18:27 PM - - Walsh - why not behind house
- 7:18:36 PM - - Mr. Mooers - not enough room

7:19:02 PM - - Batastini - would it be disturbing neighbors  
7:19:23 PM - - Mr. Mooers - no problem for neighbors and they are in support of it; there is a 110 service existing and would run that to the pole barn. Will just be a place to hang out.  
7:20:25 PM - - Batastini - what will be in barn  
7:20:33 PM - - Mr. Mooers - own a marina that is for sale and will have to transition some items from the marina; also place for grandchildren.  
7:21:16 PM - - Batastini - ask for questions from the Board  
7:21:30 PM - - Penrose - ask for description  
7:21:38 PM - - Mr. Mooers - has looked at other pole barns in the area and spoke with owners, one on Petersburg Road is about 30' X 40' and using that as a reference because they like it.  
7:22:47 PM - - Batastini - size?  
7:22:53 PM - - Mooers - 36' X 24' would be sufficient, but if can be a bit larger that would be ok  
7:23:34 PM - - Penrose - siding and roof  
7:23:40 PM - - Mooers - ceiling height 14 feet; will be able to see from street; would like to put a garden in as well as some plantings  
7:25:04 PM - - Turner - use variance is checked on the application, but wants to confirm that it is not  
7:25:31 PM - - Batastini -  
7:25:36 PM - - Fralinger - no use variance is required, but 2 others are  
7:26:04 PM - - Turner -  
7:26:08 PM - - Batastini - ask Board for further questions, none, ask Fralinger for his report  
7:26:27 PM - - Fralinger - engineer's report  
7:27:27 PM - - Batastini - ask for questions from the public - none - close to public; present form of motion approving application  
7:29:13 PM - - Mooers - confirm that height to peak of roof probably 19 feet with cupola on top; will be less than 25 feet, probably about 20 feet; cupola will be about 3 feet by 3 feet  
7:30:33 PM - - Batastini - re-start form of motion approving application - 36 X 24 pole barn with 2 overhangs each 12 feet; will be serviced by electric; reasons for being in front yard, etc.  
7:32:23 PM - - Turner - motion to approve  
7:32:29 PM - - Cowan - second  
7:32:33 PM - - Roll call - all voting members in favor - motion passes.  
7:34:30 PM - - Walsh - next application - Pierson-Pleasantville, LLC  
7:35:15 PM - - Kevin Balistreri -  
7:35:28 PM - - Batastini - believed that Balistreri had finished at last meeting  
7:35:49 PM - - Balistreri - confirmed that he had finished at last meeting  
7:36:04 PM - - Baldini - ask for certain exhibits to be entered into evidence  
7:36:35 PM - - Balistreri - no objection  
7:36:41 PM - - Batastini - will enter said exhibits; administered oath to Ms. Morrissey  
7:37:23 PM - - Baldini - ask Morrissey to state her credentials as a planner  
7:37:47 PM - - Morrissey - licensed professional planner in the State of New Jersey; state her other credentials  
7:38:38 PM - - Batastini - is familiar with Ms. Morrissey  
7:38:52 PM - - Walsh - expert Morrissey as an expert  
7:39:03 PM - - Baldini - questions to Morrissey  
7:39:12 PM - - Morrissey - visited property and surrounding area, as well as documents submitted, Master Plan. This use would be in the Business District (B). Reviewed variances being requested and believes it can be considered as a conditional use. Referred back to testimony. Addressed purposes of zoning for this project and how this site complies. Described how she believes this use is an accessory use; and mentioned other such similar businesses in the State. Cited cases that were similar to this and how the Court decided in their favor. Explained how this site currently operates with respect to this site and how they

would do same on this site without the need to transport product to another site and back to this site again. Described other uses in the area - masonry business; construction, welding facility; Cape May County Public Works; and contractor storage area. One business also deals with concrete production. This property has an existing non-conforming use on it and the principle is to bring a non-conforming use into a more conforming use. Described the Diminishing Asset with respect to this property. Discussed why this proposed use on this site is appropriate and will not create additional impact. Proposed use is consistent with current use of property; provides business service to area; there is sufficient space; zone is intentioned for business use; not in a conservation zone; among others. Her professional opinion is that this project is an efficient use of the land and particularly suited to the property; is an accessory use and a use related to the surrounding land uses among other reasons and the positive criteria is satisfied. Discussed negative criteria - referred to 2012 Master Plan and proposed businesses permitted in the Business zone, as well as it's goals and objectives. Discuss why use variance is being requested, as well as other variances. Feels that the largest impact this project would have on site is the height, but it would not be the highest structure in the area and would not substantially impact as it could only be seen briefly in passing. Discussed traffic impact and that there would be no substantial impact from this facility. Noise studies were done and it was determined that there would be noise, but only for about 3 minutes when the material is being dumped into the trucks; would not be a continuous noise and would only be during daylight hours and not create any substantial impact. State reasons and benefits why this project should be permitted.

- 8:12:21 PM - - Baldini - cited cases that had been referred to in testimony
- 8:13:47 PM - - Batastini - ask Baldini to follow up by email to him and Mr. Balistreri with that information
- 8:14:23 PM - - Batastini - had some technical difficulty during Ms. Morrissey's testimony and a portion of her testimony was not recorded, confirmed that her testimony was being recorded through the Township's system. Since it was being recorded on Township's system, should be all right.
- 8:16:44 PM - - Batastini - ask Board for questions of Morrissey - none. Ask Mr. Balistreri for cross-examination.
- 8:17:21 PM - - Balistreri - questions to Morrissey
- 8:17:42 PM - - Morrissey - respond to Balistreri regarding height; that prior applications included a recycling facility; good civic design and arrangement and creative development techniques apply here; public benefit - helps with local businesses and able to serve more people due to the shelf-life of the product and time it takes to bring in from their other sites; agrees that there are other concrete plants in the area, but this project would provide competition and pricing; confirm that there is a difference between storing and using construction equipment.
- 8:27:34 PM - - Balistreri - screen shared - asked questions to Morrissey
- 8:28:12 PM - - Morrissey - responses to Balistreri questions - believes this site is well-suited to uses existing and proposed; discussed Centers uses; referred to goals and uses section of 2012 Master Plan - this site is in Business zone and doesn't intrude into any Residential zone; confirmed that a portion of the site is in an R-3 zone but the area being referred to for this project is in the middle of the Business zone. This is not a traditional use in the Diminishing Asset Theory. Confirm that application was presented with a D-1 variance request.
- 8:34:19 PM - - Balistreri - no further questions.

8:34:36 PM - - Baldini - says he is in compliance with the Court Rule  
 8:35:19 PM - - Balistreri -  
 8:35:26 PM - - Morrissey -  
 8:35:32 PM - - Batastini - ask Baldini if the has any other expert  
 8:35:45 PM - - Baldini - no, that is his case  
 8:35:54 PM - - Batastini - at this point coming back to Board; as Mr. Gibson  
 to present the engineer's report  
 8:36:47 PM - - Gibson - engineer's report  
 8:41:16 PM - - Batastini - ask Board for questions of Gibson - none.  
 8:42:00 PM - - Batastini - ask Baldini if he is willing to agree to positions  
 of Gibson  
 8:42:26 PM - - Baldini - will to agree to Gibson's recommendations  
 8:42:51 PM - - Batastini - open to public; ask Balistreri if he wants to take  
 a break or jump in with any opposition  
 8:43:54 PM - - Balistreri - whatever the Board wants to do, but if there are  
 any other members of the public he would let them go first;  
 renewed his request regarding res judicata - doesn't believe  
 criteria met and would like to have addressed  
 8:45:46 PM - - Batastini - ask Balilstreri if he thinks it makes more sense to  
 bring this up after all testimony is completed  
 8:46:44 PM - - Balistreri - thought it may save some time to do it now, but  
 will do whatever the Board wishes  
 8:47:39 PM - - Batastini - believes it's best to make that decision after all  
 testimony finished - poll Board as to their thoughts; also  
 advise Balistreri that there may be some Board members who have  
 not heard all of the testimony regarding this application and  
 may have to listen to what missed.  
 8:50:06 PM - - Batastini - explain the meaning of res judicata - has  
 application been substantially changed from previous  
 application to overcome the res judicata rule or is it similar  
 to previous application; doesn't think appropriate to address  
 now  
 8:54:42 PM - - Balistreri - willing to wait and also willing to submit a brief  
 if requested  
 8:55:14 PM - - Batastini - doesn't want to deny his request, but he can  
 withdraw request  
 8:55:45 PM - - Watson - do it at end  
 8:55:56 PM - - Walsh - do it at end  
 8:56:06 PM - - Balistreri - will withdraw request  
 8:56:24 PM - - Batastini - ask it want to take short break or continue - take  
 10 minute break - come back at 9:05 p.m.  
 8:57:09 PM - -  
 8:57:15 PM - - Pause  
 9:09:25 PM - - Resume  
 9:09:53 PM - - Roll call - all back  
 9:10:03 PM - - Batastini - back on the record - open to public - none.  
 9:10:43 PM - - Balistreri - Stoney 9 LLC is his client. There are tenants in  
 the property that are not his clients, but are opposed. Stoney  
 9 - Deborah Carr and Robert Carr are 50/50 owners of the LLC -  
 call his first  
 9:13:11 PM - - Paul Kerlinger - resident of Cape May, NJ -  
 9:13:45 PM - - Baldini - wants to make sure that anyone in favor will have an  
 opportunity to speak  
 9:14:16 PM - - Batastini - anyone in favor will have an opportunity to speak  
 9:14:34 PM - - Batastini - ask if anyone in the public  
 9:14:56 PM - - Batastini - administered oath to Dr. Kerlinger  
 9:15:18 PM - - Balistreri - questions to Dr. Kerlinger  
 9:15:37 PM - - Kerlinger - state his education, credentials and professional  
 background. Primarily studies birds and their habitat and  
 economics of birding; has testified for the State; has  
 published papers, books, articles, economic tourism regarding  
 same. Has done work for U.S. Fish and Wildlife Service and  
 received recognition for his work; among other work and rewards



throughout his career - described several. Has also done work in Cape May County for eco-tourism, horseshoe crabs and red knots.

- 9:22:31 PM - - Baldini - submit that Kerlinger may be an expert in his area, but that expertise doesn't apply to this project.
- 9:23:20 PM - - Balistreri - disagrees with Baldini
- 9:23:40 PM - - Baldini - property has only a very small portion that is conservation and that area isn't relevant to this application
- 9:24:53 PM - - Balistreri - Dennis Township has a long history of protecting wildlife and habitats, believes entire property and all 3 zones on it must be considered
- 9:26:04 PM - - Baldini - this is a land use application and not a mining operation and should be brought up at that time
- 9:27:15 PM - - Balistreri -
- 9:27:58 PM - - Baldini -
- 9:28:05 PM - - Balistreri - testimony intends to show conservation impact on both the land use and the mining
- 9:29:00 PM - - Batastini - needs time to digest what both Baldini and Balistreri have said and decide who is right. Can take a break to allow him to do that, which will take probably at least a half hour or continue
- 9:30:10 PM - - Balistreri - would like Kerlinger qualified as an expert
- 9:30:36 PM - - Baldini - believes that Balistreri is trying to get Kerlinger qualified as an expert to add weight, but doesn't understand how Kerlinger's testimony applies and if he was a planner, he would understand.
- 9:32:43 PM - - Balistreri - respond to Baldini - doesn't understand how Kerlinger's testimony isn't relevant
- 9:33:16 PM - - Baldini and Balistreri - back and forth on Kerlinger's qualification as expert and purpose of his testimony
- 9:34:13 PM - - Batastini - ask Balistreri if his client is within 200 feet
- 9:35:01 PM - - Balistreri - not sure, right across the street, can check on. Also apologize for not providing a CV for Dr. Kerlinger
- 9:35:44 PM - - Batastini -
- 9:35:59 PM - - Baldini - in response to 200 foot question - they do not show up on the list
- 9:36:23 PM - - Batastini - it is now 9:36 - can't possible answer question without looking at some case law.
- 9:36:45 PM - - Balistreri - has no objection to continuing until the next meeting
- 9:37:12 PM - - Batastini - trying to make determination as to whether to continue now or not
- 9:37:35 PM - - Balistreri - not trying to be difficult, but Kerlinger has significant credentials and expertise
- 9:38:24 PM - - Batastini - Board can make its determination as to relevance
- 9:38:40 PM - - Balistreri - doesn't want to hold up, but thinks decision as to be made prior to his testimony; also has other experts he wants to call
- 9:39:42 PM - - Batastini - has to look into the matter - call for another 5 minute recess and may be a bit longer or it may be held over to the next meeting.
- 9:40:35 PM - - Baldini - suggest proceeding with the objector's next witness
- 9:40:52 PM - - Balistreri - ususally the planner does clean-up and the only other expert he has available at this time is a planner
- 9:41:39 PM - - Batastini - will look into and get back
- 9:41:57 PM - -
- 9:42:03 PM - - Pause
- 9:48:59 PM - - Resume
- 9:49:00 PM - - Batastini - Board will determine if Kerlinger qualifies as an expert
- 9:50:01 PM - - Roll call - all present
- 9:50:14 PM - - Batastini - Board will determine if Kerlinger qualifies as an expert

9:50:35 PM - - Walsh - how many times as he testified and recognized as an expert in New Jersey in court and other  
 9:51:06 PM - - Kerlinger - 90 times - 8 in New Jersey  
 9:51:30 PM - - Walsh - any questions from Board for Kerlinger  
 9:51:46 PM - - VanArtsdalen - his relevancy to the case  
 9:52:15 PM - - Batastini - only way to know if his testimony is relevant to the matter is to listen  
 9:52:45 PM - - Batastini - Kerlinger can continue  
 9:53:02 PM - - Balistreri - questions to Kerlinger  
 9:53:11 PM - - Kerlinger - respond to Balistreri - familiar with site; backs up to Great Cedar Swamp which is a unique site and recognized for its white cedar, birds, and is protected wetlands.  
 9:55:50 PM - - Balistreri - refer to screen share and refer to copy of 1994 Master Plan (Balistreri having technical difficulty with Zoom, logged off, waiting for him to log back on)  
 9:58:14 PM - - Turner -  
 9:58:27 PM - - Balistreri - back on - refer to excerpt from 1994 Dennis Township Master Plan - read portion that had been highlighted into the record. Asked for definition of "edge areas"  
 10:00:13 PM - - Kerlinger - basically it is a buffer area between roads and other types of habitat; advise that area in question on the subject site is an edge area; mentioned protected birds on the list shown that reside there. Confirm that birds on the list from 1994 are still using the Great Cedar Swamp as their habitat. He also advised that some numbers have declined, some have risen and others have been added, such as the bobcat. Also read an excerpt regarding bird life and fauna - agrees that area is unique and needs protection.  
 10:04:59 PM - - Balistreri - asked Kerlinger to read another excerpt regarding natural resources into the record, which he did. Referred to requirement contained in that Plan for an Environmental Impact Study.  
 10:06:40 PM - - Kerlinger - confirmed that he had not seen an Environmental Impact Study for this area.  
 10:07:06 PM - - Baldini - were all excerpts read from 1994  
 10:07:24 PM - - Balistreri - yes, all were from the 1994 Plan  
 10:07:39 PM - - Baldini - asked that they be entered as exhibits and that they be provided to him  
 10:08:08 PM - - Balistreri - thought that they had been, but would confirm and send again  
 10:08:36 PM - - Batastini - were they sent to the Board  
 10:08:51 PM - - Balistreri - yes, earlier today to the Secretary  
 10:09:22 PM - - Balistreri - refer to map showing area in question, including the Great Cedar Swamp - questions to Kerlinger  
 10:09:57 PM - - Kerlinger - respond to Balistreri  
 10:10:06 PM - - Baldini - objects - has not seen document  
 10:10:29 PM - - Balistreri - map and other documents were sent to the Secretary  
 10:11:03 PM - - Baldini - would prefer that Kerlinger tell what he know or doesn't know, feels that Balistreri is feeding him leading questions  
 10:11:43 PM - - Batastini - thinks this may be the appropriate time to pick this up in December since Baldini and the Board members haven't seen all of this information being referred to  
 10:12:30 PM - - Baldini - if Kerlinger almost done, may as well finish  
 10:12:51 PM - - Batastini - as Balistreri how much longer  
 10:13:08 PM - - Balistreri - thinks another 10 or 15 minutes - continue with questioning Kerlinger  
 10:13:36 PM - - Kerlinger - respond to Balistreri - refer to map shown and describe the Great Cedar Swamp area and location. Also, advised that if area is destroyed, it can be restored but it takes years. He believes if this application is approved, that the noise, ruckus and trucks will affect the animals living in the

area. He also advised that he knew of no ecological benefits to adding the concrete plant. He also testified as to eco-tourism and birding in Cape May County and Dennis Township and people don't go birding where there is dust, noise and trucks. Birding is year-round, but mostly in the Spring and Fall, which is the "shoulder" season for Cape May County.

- 10:22:07 PM - - Balistreri - read section from applicant's application regarding no impact on endangered and threatened species
- 10:23:11 PM - - Kerlinger - doesn't agree that there will be no impact or disturbance and that there will be significant disturbance
- 10:23:47 PM - - Batastini - ask Baldini for cross now or wait until next month
- 10:24:03 PM - - Baldini - will wait until December meeting
- 10:24:58 PM - - Batastini - matter will be continued to 12/22/22, no further notice necessary and will pick up with cross-examination
- 10:25:38 PM - - Walsh - next up Resolutions
- 10:25:50 PM - - Batastini - Klebaur Resolution
- 10:26:56 PM - - Watson - motion to approve
- 10:27:08 PM - - Penrose - second
- 10:27:18 PM - - Roll call - all in favor
- 10:28:06 PM - - Batastini - Hocker Resolution
- 10:28:55 PM - - Cowan - motion to approve
- 10:29:11 PM - - Martucci - second
- 10:29:18 PM - - Roll call - all in favor
- 10:30:04 PM - - Batastini - Ocean View Petroleum - Resolution
- 10:31:32 PM - - Walsh - motion to approve
- 10:31:41 PM - - Cowan - second
- 10:31:46 PM - - Roll call - all in favor
- 10:32:26 PM - - Walsh - 10/27/22 minutes
- 10:32:40 PM - - Voice vote - all in favor
- 10:32:48 PM - - Walsh - bills
- 10:33:45 PM - - Turner - motion to pay bills
- 10:33:53 PM - - McEvoy - second
- 10:33:59 PM - - Roll call - all in favor
- 10:34:41 PM - - Walsh - no further business, meeting adjourned.
- 10:34:56 PM - -
- 10:35:04 PM - - Stop Recording

