

**UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
MARCH 15, 2007**

The regular meeting of the Upper Township Planning Board was held at the Township hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:30 p.m.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Daniel Bready, James Kelly, Curtis Corson, Gary Riordan, James Schroder, Donald Kissling, Renee Scrocca.

Absent: William Brown, Robert Caldwell, Richard Palombo.

Also present were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary.

APPROVAL OF THE FEBRUARY 15, 2007 MEETING MINUTES

A motion to approve the minutes was made by Mr. Schroder, seconded by Mr. Riordan, and approved.

SWEAR IN BOARD PROFESSIONAL – PAUL DIETRICH

APPLICATIONS

1. WILLIAM & CHERYL EISELE – BLOCK 476, LOTS 7 & 7.01 – SD02-07

Application is for preliminary approval of a 7 lot major subdivision at 280 Old Tuckahoe Road, Petersburg.

Julius N. Korschak, Esquire, represented the applicants.

Joseph Corson, Professional Engineer and William Eisele, Jr., 280 S. Old Tuckahoe Road, Petersburg, were sworn in.

Mr. Eisele testified that he is the owner of the property. He has raised Christmas trees on the property since 1972. He is an active tree farmer and honeybee keeper. He has made application

to the Cape May County Farmland Preservation Program and has been approved. The county is currently evaluating each of the properties.

Mr. Corson testified that no variances are required.

Mr. Korschak requested that the board waive the workshop for final approval. He agreed to post a performance bond if needed.

The meeting was open to the public. Hearing no response the meeting returned to the board for findings of fact.

MR. KELLY – Willam & Cheryl Eisele are the owners of 280 S. Old Tuckahoe Road in Petersburg. The property is also known as block 476, lots 7 & 7.01. The property is located in the Residential zone. Jules Korschak represented the applicants. Joseph Corson gave testimony as the applicant's engineer. The property has been accepted in the Farmland Preservation Program. The county is currently evaluating the property. There are no variances required. The applicant agrees to comply with the fire and recreation funds and performance bond if they are needed.

MR. BREADY – The subdivision meets the township requirements. The property has been farmed since 1972.

MR. CORSON – The applicant raises trees and bees on the property.

MR. RIORDAN – There was no public comment.

MR. SCHRODER – The County has accepted the application for farmland preservation.

MR. KISSLING – The applicant and his professionals have demonstrated that the proposed lots meet all the township requirements.

A motion was made by Mr. Corson and seconded by Mr. Bready, to grant preliminary major subdivision approval with the standard conditions. In favor: Bready, Kelly, Corson, Riordan, Schroder, Kissling, Scrocca.

2. KARL & JANET YUNGHANS – BLOCK 348, LOT 98.01 – SD03-07

Application is for preliminary approval of a 6 lot major subdivision at 1957 Tuckahoe Road, Petersburg.

Dorothy McCrosson, Esquire, represented the applicants.

Karl Yunghans, 1957 Tuckahoe Road, Petersburg, and Joseph Corson, Professional Engineer, were sworn in.

Mr. Yunghans testified that he is the owner of the property. He has grown Christmas trees on the property since 1990. He has also bailed hay and is currently growing beach plum. His property has qualified as a farm since 1998. The County has approved the preliminary and final application for farmland preservation.

Mr. Corson testified that no variances are requested. This is a conforming subdivision.

Mr. Dietrich testified that the subdivision meets the township standards.

The meeting was open to the public. Hearing no response the meeting returned to the board for findings of fact.

MR. CORSON – Karl & Janet Yunghans are the owners of 1957 Tuckahoe Road in Petersburg. The property is currently utilized for farming. Their application for farmland preservation has been accepted.

MR. BREADY – The property has been used as a tree farm since 1990. The applicant began selling Christmas trees in 1998.

MR. RIORDAN – Dorothy McCrosson, Esquire, represented the applicant. Joseph Corson, Professional Engineer, has testified that no variances are needed. The drainage will be further reviewed if it is needed.

MR. SCHRODER – The planning board approval is a vehicle used to maximize the value of the property.

A motion was made by Mr. Corson and seconded by Mr. Bready, to grant preliminary subdivision approval with the standard conditions. In favor: Bready, Kelly, Corson, Riordan, Schroder, Kissling, Scrocca.

3. CHERYL CANDERAN – BLOCK 453, LOT 307.11 – SD04-07

Application is for an extension of a previously approved minor subdivision at 26 Ashcroft Avenue, Seaville.

Cheryl and Christopher Canderan, 26 Ashcroft Avenue, Seaville, were sworn in.

Mrs. Canderan testified that the NJDEP has issues with the property that have prevented her from filing the plat that was approved by the board on February 19, 2004. The issues include the water table on the property and extension into the open space easement. They still need to file for a CAFRA permit.

Mr. Dietrich gave the board the history of the lot including the old CAFRA permit.

There was discussion concerning how long the extension should be in order to file the plans. The board determined that 190 days from the adoption of the resolution would be appropriate.

The meeting was open to the public. Hearing no response the meeting returned to the board for findings of fact.

MR. RIORDAN – Cheryl and Christopher Canderan, owners of 26 Ashcroft Avenue in Seaville, are requesting an extension of minor subdivision approval. The block is 453 and the lot is 307.11. There has been a delay in the NJDEP approval.

MR. CORSON – The board is considering a 190 day extension from the adoption of the resolution.

MRS. SCROCCA – She believes a 190 day extension is reasonable.

A motion was made by Mr. Corson and seconded by Mr. Bready, to grant a 190 day extension with the standard conditions. In favor: Bready, Kelly, Corson, Riordan, Schroder, Kissling, Scrocca.

4. JOHN JAMES GERMANIO – BLOCK 453, LOT 240.24 – SD05-07

Application is for classification of a proposed 17 lot major subdivision at Megan Lane, Seaville.

John James Germanio, P.O. Box 545, Woodbine, NJ, was sworn in. He testified that he is proposing to subdivide a portion of the lot into 17 additional building lots. A new road is proposed.

Mr. Dietrich stated that the application meets the criteria for a major subdivision since the applicant is proposing more than 3 lots and a new road.

The application was open to the public. Hearing no response the meeting returned to the board for findings of fact.

MR. BREADY – The applicant is proposing a 17 lot subdivision.

MR. KELLY – John James Germanio is the owner of block 453, lot 240.24. The applicant is proposing to create 17 building lots. A major subdivision is more than 3 lots. The property is located on Megan Lane. The property is located in the Residential and Agricultural zones. There are no variances needed.

MR. RIORDAN – The property is 71.673 acres. The applicant is donating 45.540 acres to the United States of America.

A motion was made by Mr. Kissling and seconded by Mr. Riordan, to classify the application as a major subdivision. In favor: Bready, Kelly, Corson, Riordan, Schroder, Kissling, Scrocca.

5. WILLIAM J. MC DANIELS – BLOCK 348, LOT 83.01 – SD06-07

Application is for classification of a proposed 5 lot major subdivision at 1611 Route 50, Tuckahoe.

Joseph Corson, Professional Engineer, was sworn in. He testified that the proposed subdivision is greater than 3 lots and that a new road is proposed.

The meeting was open to the public. Hearing no response the meeting returned to the board for findings of fact.

MR. KELLY – William McDaniels is the applicant. He is proposing to create a 5 lot subdivision. The proposed subdivision is more than 3 lots.

MR. RIORDAN – There was no public comment.

MRS. SCROCCA – The application meets the criteria for a major subdivision.

A motion was made by Mr. Kelly and seconded by Mr. Riordan, to classify the application as a major subdivision. In favor: Bready, Kelly, Corson, Riordan, Schroder, Kissling, Scrocca.

6. THOMAS TOWER / ACTION SUPPLY, INC. – BLOCK 549, LOT 110, 132 THROUGH 136 – PB03-07

Application is for site plan approval for a soil mining operation at 1413 Stagecoach Road, Seaville.

Julius N. Korschak, Esquire, represented the applicant.

Solicitor Marcolongo informed the board that he believes a variance is needed for the 100 ft. buffer that is proposed. He stated that the applicant has not noticed for this type of variance. Mr. Korschak supplied a copy of the notice that includes any buffer relief needed.

Mr. Korschak stated that the applicant is also requesting site plan approval needed every 5 years to renew their mining license. He submitted several exhibits.

Exhibit A-1: A copy of an 8 page site plan prepared by Engineering Design Associates, last revised 2/2/07.

Exhibits A-2: A copy of correspondence to the applicant from Cape Atlantic Conservation District, dated January 11, 2007 and an attached copy of the application by Mr. Tower for block 563.09 and 549, lots 54 and 132 through 136.

Exhibits A-3: A copy of planning board resolution PB15-02 in regards to site plan approval for block 549, lots 132, 133, 134, 135 & 136 and block 565.03, lot 54.

Exhibit A-4: A copy of planning board resolution PB27-98 in regards to site plan approval for block 565, lot 54 and block 549, 132 through 136.

Exhibit A-5: A copy of planning board resolution PB13A-96 in regards to block 565, lot 54 and block 549, lots 132 through 136.

Exhibit A-6: A copy of planning board resolution PBS18-93 in regards to block 549, lots 132 through 136.

Exhibit A-7: A copy of planning board resolution PBS16-91 in regards to block 565, lots 54 and block 549, lots 132 through 136.

Exhibit A-8: A copy of correspondence to the applicant from Cape Atlantic Conservation District dated June 6, 2006 and an attached copy of the application by Mr. Tower for block 549, lot 110.

Exhibit A-9: A copy of resolution BA09-06 in regards to block 549, lot 110.

Exhibit A-10: Soil mining plan by Altman, Thomas, Swiderski, dated July 28, 1986 in regards to block 549, lot 110 & 111. Page 2 contains a revision date of 1/30/87 and page 3 last revised 3/16/87.

Exhibit A-11: A copy of Township of Upper License 1990-91 for block 565, lot 54 and block 549, lots 110, 111 & 132.

Exhibit A-12: A copy of the Township of Upper License issued 1/30/91. This includes all lots.

Exhibits A-13: Contract for Sale of Real Estate between Albert and Patricia Donzanti and Thomas Tower.

Exhibit A-14: A copy of a deed between Albert Donzanti and Patricia Donzanti and Thomas Tower, for the purchase of block 549, lot 110. The deed is dated August 1, 1986.

Exhibit A-15: A copy of a letter from Killam Associates to Shelley Lea, Board Secretary, dated November 19, 1991. The letter references block 565, lot 54 and block 549, lot 110, 111 and 132.

Exhibit A-16: Final Judgment of law suite, Township of Upper vs. Thomas Tower, Action Supply, Inc., dated April 1, 1988.

Mr. Korschak stated approximately 17 acres of lot 110 is located in the AR zone. The rest of the property is located in the Mining zone. They recently received an interpretation from the Zoning Board of Adjustment that mining is a pre-existing non-conforming use established by Mr. Tower and not abandoned. They are now requesting site plan approval. They do not believe they require any other relief except for site plan approval.

Vincent Orlando, Professional Engineer and Planner and Registered Architect and Thomas Tower, 1413 Stagecoach Road, Seaville, were sworn in.

Mr. Tower testified that he owns all the blocks and lots before the board for site plan approval. He purchased lot 110 to access lot 111 which at the time was landlocked. When he purchased the lots they were both in the Mining zone. In 1986 when he purchased the property site plan approval was not required for mining operations. The Donzanti's required that he not install an access road while he was developing Cambridge Development. They also requested that he install a 100 ft. buffer with a stockade fence in the middle. In 1986 he paid \$213,600.00 for the lot. The deed restrictions agreed to are listed in the Deed submitted as exhibit A-14. Another restriction was that he not mine anymore than 50 percent of the property for a 2 year period.

Mr. Tower testified that the Swiderski plan shows that some mining was done on the lot. There are no plans that show a larger buffer than the existing 100 ft. buffer. He maintains the existing stockade fence and chain link. A fence company inspects the fence four times a year. The rest of the mining pit has a 30 ft. buffer.

Solicitor Marcolongo stated that the zoning board did not make a decision whether the operation was legal or licensing only that mining was an existing non-conforming use. Licensing went into effect one and a half months after the applicant purchased the property. The resolution, paragraph 20, states that lot 110 will be used in conjunction with the applicant's existing mining operation and is subject to site plan review under the current zoning ordinance.

Solicitor Marcolongo stated that on planning board resolution 87-9-4 dated 9/17/87 the planning board recommends that township committee approve the application for Action Supply with the condition the applicant meet the strict 500 ft. buffer requirement to the adjacent subdivision and the 200 ft. buffer requirements to all other lot lines. Mr. Korschak stated that the board made the recommendation however township committee did not require it.

Mr. Korschak stated that the applicant was not ready to do intensive digging on lot 110 after he received the order from the court to be licensed and received licenses from the township. Although the applicant was using it in conjunction with his mine as far as going across it and stockpiling and moving dirt he was not ready to do intensive digging. He felt that he was protected as a pre-existing non-conforming use and that he did not need to keep licensing each year. The zoning board agreed. The applicant removed approximately 6 loads of dirt a year because he felt this protected his pre-existing rights.

Vincent Orlando's firm prepared the plan that has been marked as Exhibit A-1. He began preparing the site plans for the mining operation in the early 1990's. He worked in concert with Mr. Swiderski and his plans during the first couple of licenses. His firm took over the applications in 1991. He presented testimony at the zoning board hearings in regards to the pre-existing nature of lot 110 and the abandonment issues. In 1986 & 1987 William Swiderski prepared a plan that showed a 30 ft. buffer on block 549, lots 132 – 136 and block 565.03, lot 54. The 30 ft. buffer has been consistent for the last 30 years. The only reason the buffer on lot 110 is larger is because of the deed restriction by Mr. Donzanti. The installation of a 500 ft. buffer would totally wipe out the ability to mine lot 110. He believes that the 100 ft. buffer is grandfathered as part of the application since the applicant cleared up to the buffer, maintained the buffer and stockpiled for years. It was always his impression that the applicant intended to mine on the property at a future time. It is clear that the buffer is a pre-existing condition.

Mr. Dietrich stated that the plan submitted by the applicant matches the plan for the mining license which is kept on file in the township clerk's office.

Mr. Tower testified that the clearing of lot 110 has been done over the years since 1986. He allows his employees to cut trees on the property to heat their homes. Mr. Dietrich disagreed. He believes that most of the clearing on lot 110 except for a small corner was cleared within the last 3 years.

Mr. Schroder stated that he has heard nothing that makes him believe a larger buffer is necessary. Solicitor Marcolongo commented that in 1987 the planning board ruled that a 500 ft. and 200 ft. buffers would be required for mining pits. He further stated that Mr. Tower purchased the property on August 1, 1986 and by September 26, 1986 the ordinance changed to require 500 ft and 200 ft. buffers. There is case law that addresses the fact that even though there is a pre-existing non-conforming use and you are protected in regards to the use, you are not necessarily protected as to reasonable police power restrictions or requirements. Vacant land does not receive the same type of treatment as buildings. He believes that the changes in the zoning ordinance a month and a half after Mr. Tower purchased the property are applicable in terms of the buffer for this lot. He believes the applicant requires a variance to allow the 100 ft. buffer.

Mr. Korschak submitted Resolution PBS20-89 as Exhibit A-17. He stated that the ordinance has not changed since 1987. A copy of the Soil and Soil Removal Ordinance was marked as Exhibit A-18.

The meeting was open to the public.

James Ferrier, 13 Canterbury Avenue, Seaville, was sworn in. He stated that he is not able to open his windows because of the noise from the pit. He wants a larger buffer.

Thomas Zyckowski, 18 Canterbury Lane, Seaville, was sworn in. He objects to the application. He lives less than 200 ft. from the site. The 100 ft. buffer is not enough to handle the noise, trucks, dust, and equipment. He believes the 100 ft. buffer is unreasonable. He is in favor of a berm to help absorb the noise.

Lou Angelino, 15 Cambridge Drive, was sworn in. He testified that he purchased the property on March 31, 2006. Prior to purchasing the home they were told lot 110 was zoned residential agriculture. They had no idea there would be mining activity on the lot or they would not have purchased the property. He opposes any mining activity on the property. Mr. Tower stopped at their house to explain his plans to them. He is concerned about water contamination. He feels hours of operation should be changed to 8 a.m. until 5 p.m. and no weekends. He expects silencers to be placed on the machinery.

Mr. Dietrich stated that the applicant has retail, landscaping and masonry supply and concrete business that are not regulated the same as the pits in regards to the hours of operation.

Sandy Angelino, 15 Cambridge Drive, was sworn in. She is concerned about the storage behind her home. She would like a berm installed.

Mr. Korschak stated that equipment storage is not proposed on the lot 110.

Curtis Dull, 11 Cambridge Drive, was sworn in. His main concern is the noise. He believes the noise interferes with the quality of life in his neighborhood.

Leo Previti, 16 Canterbury Lane, was sworn in. He opposes mining on lot 110. A request from a previous owner to change the zoning to residential was approved prior to Mr. Tower purchasing the property. This is a residential neighborhood. The township licenses contained conditions that were never satisfied. For this reason he believes the licenses were never effective. In 1987 the planning board found the property not pre-existing non-conforming use and granted no relief in regards to the buffer. He stated that the 100 ft. buffer being requested are not the correct buffers. The ordinance indicates 200 ft. and 500 ft. buffers are needed. Lot 110 was not licensed in 1986 and therefore should not be granted a variance to allow a 100 ft. buffer. The applicant did not clear the property until just the last year or two. A Soil Conservation permit was not issued because they wanted a 30 ft. buffer. The applicant does not meet the requirements in the zoning ordinance. He wants a 200 ft. or 500 ft. buffer. He also wants a berm behind the buffer and no storage or stockpiling activities should occur on lot 110. He recommends that mining only be allowed during the hours of 7 a.m. to 6 p.m. Monday through Friday and no activity on lot 110 on Saturday, Sunday or holidays. He also requested that trees be planted and maintained in the buffer. He purchased his property in 1991.

Michele Previti, 16 Canterbury Lane, was sworn in. She stated that there were zoning laws back in 1986 that say that a 100 ft. buffer area shall be created around the perimeter of each mining parcel and maintained in a natural vegetated state. Shortly after the applicant purchased the property new laws went into effect requiring soil removal licensing. She feels they are not very conducive to being in a residential area. She referred to Ordinance 87-94. She believes that it needs to be clarified whether Judge Callihan's order directed the township to license lot 110. This has not been proven to her satisfaction.

William Hallsworth, 10 Cambridge Drive, was sworn in. He is concerned with the fact that Mr. Tower testified that he has done mining on the lot since 1986 without a permit. He stated that the noise in the morning from the pit is unbearable. He has lived at this address since 1986.

Elizabeth Blank, 9 Canterbury Lane, was sworn in. She purchased her house in 2000. She agrees with her neighbors. She hears the machinery in the morning. She is concerned about additional noise. She never thought the mining operation would come this close to her property. She feels this is a beautiful neighborhood and she doesn't want it to get ruined. She is also concerned about property values. She would to see the proper buffers put in place and a berm to help the noise and dust.

Robert Mastantumo, 9 Cambridge Drive, was sworn in. He is in agreement with his neighbors about the noise. He has been woken up on many times on Sundays.

Grace Swain, 8 Canterbury Lane, was sworn in. She agrees with her neighbors. She believes that a 100 ft. buffer is ridiculous.

Tracie Zuschnitt, 10 MGM Way, was sworn in. She wanted clarification as to how the application would affect her family. She is a new resident. She moved here believing it would be a peaceful environment. She wants the applicant to put up something that will contain the

noise and dust. She wants the hours of operation changed. They have already changed their windows and use sound machines inside her house.

Mr. Orlando testified there are no changes proposed to that side of the pit. The buffer will remain the same. The lake Mrs. Zuschnitt's referred to is currently licensed for mining.

Solicitor Marcolongo read Exhibit A-18 Chapter XV Soil and Soil Removal 15-1.9.

The public portion of the meeting was closed.

Mr. Korschak agreed to table the application until April 19, 2007 to give the board the opportunity to review the exhibits that were submitted.

POSSIBLE LAND USE CHANGES

Mr. Dietrich stated that NJDEP has until May 23, 2007 to approve the township's CAFRA centers. As part of this approval the township must update the land use changes and zoning changes. A preliminary draft was given out for the board to review.

RESOLUTIONS

1. WARREN S. GEORGETTI – BLOCK 453, LOT 274.04 – SD17-06

A motion to adopt the resolution was made by Mr. Schroder, seconded by Mr. Kelly, and approved.

2. McMAHON AGENCY – BLOCK 553, lot 7 – PB02-07

A motion to adopt the resolution was made by Mr. Schroder, seconded by Mr. Corson, and approved.

3. WILLIAM & CHERYL EISELE – BLOCK 476, LOTS 7 & 7.01 – SD01-07

A motion to adopt the resolution was made by Mr. Schroder, seconded by Mr. Riordan, and approved.

BILLS

A motion to approve the bills for payment was made by Mr. Schroder, seconded by Mr. Riordan, and approved.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Schroder, seconded by Mr. Corson, and approved. The meeting was adjourned at 10:40 p.m.