

UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
SEPTEMBER 17, 2009

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

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Daniel Bready, Gary Riordan, James Schroder, Donald Kissling, Janet McCrosson, Vice Chair James Kelly.

Absent: William Brown, Curtis Corson, Susan Ragan and Renee Scrocca.

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

APPROVAL OF THE AUGUST 20, 2009 MEETING MINUTES

A motion to approve the minutes was made by Mr. Schroder and seconded by Mr. Riordan. In favor: Riordan, Schroder, Kissling, McCrosson. Abstain: Kelly.

NEW BUSINESS

1. THOMAS TOWER / ACTION SUPPLY INC. – BLOCK 549, LOT 110 – PB05-09

Applicant is seeking review of buffer conditions requiring the construction of a berm imposed by the Upper Township Planning Board on July 19, 2007 in Resolution PB03-07A, with respect to the grant of preliminary and final site plan approval and variances for applicants soil mining operation in Seaville.

Solicitor Marcolongo gave a brief history of the applications heard by both the Zoning Board and the Planning Board. The court remanded this matter back to the Planning Board to establish an adequate record regarding the appropriate height and width of the earthen berm.

Paul Dietrich, Township Engineer, was sworn.

Julius N. Korschak, Esquire, represented the applicant. Mr. Korschak stated that no where in the ordinance is a berm mentioned or required. The other 7 licensed mining operations within the Township were never required to build a berm. The applicant was

required to construct a 12 ft. high berm with a 6 ft. high stockade fence and vegetation. The cost of materials and construction to create the berm amounts to \$285,000.00. He stated that the largest buffer in the Township is 200 ft.

Mr. Korschak stated that Lot 110 is part of a 57-acre mining operation. He discussed the monitoring done by EDA. The existing buffer is densely wooded with trees over 40 ft. tall. Fifty feet from the property line there is a 6 ft. high stockade fence. They believe this buffer is more than efficient

Vincent Orlando, Professional Engineer and Planner, with the firm of EDA, was present. He testified that he took the 6 photographs of the subject property in Exhibit A-1 were taken today. The photos show the buffer from both sides of the fence. He referred to a plan by EDA dated 1-09-07 sheet 2 of 8 to show the location of the existing fence in the buffer. The plan was marked as Exhibit A-2. He testified the buffer is very dense and the trees average between 30 and 50 ft. tall.

Mr. Orlando stated they recorded the sound levels on 4 separate days, July 28, 29, 30 and 31 of this year. On 2 days the mining pit was operating with the dredge and the separator being used. The other 2 days they recorded the normal operations of the mining pit without the dredge or separator functioning. July 28 and July 30 were the days that the dredge was not functioning.

Mr. Orlando testified that Cyrus Environmental Consultants were hired to perform a dust study on the same dates. The 4 days in which the test was performed were dry and hot with no precipitation and winds ranging from 5 to 25 mph.

Mr. Orlando testified using a report by EDA dated 9/17/09. The report indicates that on July 28 there was a reading of 80 dba, the highest reading of all 4 days. This reading was caused by one of the neighbors mowing their lawn. The other 3 days the average dba was 50 at location D5. At D4, 100 ft. into the property, the average reading was less than 50. The recordings were taken for 2 ½ hours a day in intervals of 2 minutes.

Mr. Orlando testified that the analysis the recordings taken at several locations using various pieces of equipment he feels that no berm is necessary in order to generate decibels that meet the standards.

Mr. Orlando testified that Cyrus Environmental took the air samples and sent them to their laboratory. They collected 18 samples at 4 locations. Mr. Orlando read the conclusion from their report.

Mr. Orlando testified they did an engineers estimate that analyzed the quantity of the material and construction methodology and determined the cost of the berm would be approx 284,000.00. This includes 25,000 cubic yards of material to be put in place, evergreen trees and wood fence. He feels the berm would have some impact because of the mass but that it would not substantially reduce the level of sound.

Mr. Orlando testified that he reviewed the site plans of the other licensed mining pits in the Township. The largest buffer that he found was 200 ft. None of the other mining pits were required to build a berm. The smallest buffer he found was 25 ft. and adjacent to a residential zone.

Solicitor Marcolongo marked a copy of the report prepared by Vincent Orlando, dated September 17, 2009 as Exhibit A-3.

Thomas Tower, 121 Harbor Road, Beesleys Point, was sworn. He testified that he is the owner of Action Supply and has operated several licensed mining operations since 1984. He purchased the subject property in 1986. He had a license to mine this property in 1991 and 1992. The property includes a deed restriction that a 100 ft. buffer must be maintained along with a 6 ft. high wood fence and 6 ft. high chain link fence. He stated that the construction of the berm would be a huge undertaking and a burden that would be of no additional benefit. He is requesting the Board waive the condition that a berm be required.

Mr. Dietrich referred to a report by the US Department of Agriculture from September 2008 called Conservation Buffers. He stated that the readings by Mr. Orlando are in compliance with the findings in Section 6.4 Buffers and noise control. He discussed the readings found in Mr. Orlando's report.

Mr. Tower testified the hours of operation for the mining operation are 8:00 a.m. until 4:30 p.m. The dredge operates from approximately 8:00 a.m. and shuts down by 5:00 p.m. The plant is open from 6:00 a.m. until 6:00 p.m.

Mr. Tower testified there is very little vegetation in the second 100 ft. of the buffer. Mr. Dietrich stated that the maximum noise levels would be reduced when the vegetation that was cleared in the second half of the buffer grows back. He believes the dredge would be within the State standards for a residential area. The hauling trucks had a higher reading than the loader. In his opinion the 200 ft. buffer would be acceptable to reduce the noise from the trucks, however you will still be able to hear the spikes at different times. He stated that with half of the buffer cleared the readings meet the normal noise standards and are close to the maximum. He believes that when the second half of the buffer is revegetated it will help reduce the maximum decibel reading, however at this time there is no requirement to revegetate the second half of the buffer. It doesn't appear that the berm is necessary to reduce the sound levels to meet the average noise level and still meet the standards.

There was a short recess at this time. Upon returning to the record the meeting was open to the public.

Thomas Zyckowski, 18 Canterbury Lane, was sworn. He testified the mining operation is loud and annoying.

David Ferrier, 13 Cambridge Drive, was sworn. He testified the noise is heard all day long inside of his home.

Joseph Schwab, 17 Canterbury Lane, was sworn. Mr. Schwab testified that the applicant does not maintain the stockade fence. There has been a hole in the chain link fence where people have been going in and out of the property. He believes that a sound barrier like the walls on the turnpike would help to eliminate some of the noise from the pit. He stated that the vegetation would be gone soon when the leaves fall from the trees. He feels the direction of the wind had something to do with the testing results. He is concerned about the quality of the life style that he and his family will be faced with if mining takes place with no regard to the surrounding environment. He stated that \$280,000 to complete the berm is not realistic since the applicant could use the dirt that will be taken out for wet mining to construct the berm.

Mr. Schwab believes the applicant should have to maintain a 500 ft. buffer as required in the ordinance. He does not believe the buffer should be grand fathered and permitted to be only 200 ft. He has seen mufflers and other things that would mitigate some of the noise from the mining equipment.

Claudine Schwab, 17 Canterbury Lane, was sworn. She is concerned about the machinery so close to her home.

Sandra Angelino, 15 Cambridge Drive was sworn. She stated that as the dredge moves closer to the property line the noise would get louder and the test results would not be the same once this happens.

Mary Gentilini, Cambridge Drive, was sworn. She agrees with her neighbors that the noise is constant and continuous. She asked the dates and times of the testing.

Roberta Townsend, Chestnut Avenue, was sworn. Her house backs up to Stagecoach Road and she deals with the Action Supply trucks all day long. She feels the stipulations of the applicant's approvals should be followed.

Myra Allen, 14 Canterbury Lane, Seaville, was sworn. She is a realtor and knows how the mining will affect the property values in the neighborhood. The birds singing are replaced by truck traffic by 6 a.m.

Geraldine Dull, 11 Cambridge Drive, Seaville, was sworn. She testified the 500 ft. buffer is required since the two uses don't mix. A berm, even if it doesn't meet their expectations, will at least be a separation between the applicant and the neighbors.

Grace Swain, 8 Canterbury Lane, was sworn. She testified the trucks early in the morning and throughout the day are annoying.

Michelle Previti, 16 Canterbury Lane, was sworn. She testified that it is very disingenuous to suggest that because neighbors are not calling and complaining about the noise coming out of Action Supply that the noise issue has been resolved. She stated that noise is a considerable issues to the neighborhood. The current buffer requirement has been in existence for 20

years. There is not a history of this board granting variances to other mining operations to operate inside their buffer. The neighbors are already dissatisfied with the current operation that is far away and now it is moving closer. She stated the variance granted before was with the expectation of a berm to protect the neighbors.

During questioning by Mrs. Previti, Mr. Orlando testified the measuring device was not calibrated during the testing. There was discussion concerning the State of New Jersey Noise Control Act. Mrs. Previti reviewed the results of the test and stated that out of 36 readings only 3 were below 65 decibels. He indicated that the property is located in a CAFRA zone.

William Hallsworth, 10 Cambridge Drive, was sworn. Mr. Hallsworth reviewed the numbers in the report by EDA. He feels the report is invalid since Mr. Orlando is not an expert witness.

Ms. Blank, 9 Canterbury Lane, was sworn. She compared the reported decibels to those of an RV trailer. She doesn't feel the \$284,000 needed to construct a berm is a lot considering how long the applicant will be able to mine in this location and how long the neighbors would have to deal with the noise.

Leo Previti, 16 Canterbury Lane, was sworn. He asked the Board to strike Mr. Orlando's testimony since he is not a sound expert. Mr. Dietrich testified that a 10-to 15-decibel reduction would occur because of the berm. Mr. Tower has indicated that he will be able to mine the area for 30 years. He believes that a 500 ft. buffer is reasonable but they gave in and agreed to a berm as a compromise. He asked the Board to reaffirm their entire findings and decision since there is expert testimony that the berm would reduce the noise by 10 to 15 decibels. If the berm is eliminated then the 500 ft. buffer should apply.

The meeting was closed to the public at this time.

Mr. Dietrich commented that the literature from the USDA indicates that a 100 ft. vegetated buffer provides 5 to 8 decibels of protection. The averages in Mr. Orlando's report with the existing buffer meet the state standards. The maximums from the 200 ft. buffer are slightly above the State standards. He believes it would be beneficial for the Board to duplicate the first half of the buffer and require vegetation be replanted. He stated that this would reduce the average to within acceptable levels but does not reduce the maximums such as the back up alarms. He stated that the literature he provided states that 100 ft. of vegetation is essentially the same as a 12 ft. high berm. A 100 ft. buffer and a 12 ft. high berm result in the same average reduction as a 200 ft. vegetated buffer. If the additional 100 ft. was vegetated we could see an additional reduction of 5 to 8 decibels. He stated that deciduous trees provide a better noise buffer than evergreens.

Mr. Dietrich suggested duplicating the tests that were done by Mr. Orlando by a certified lab to verify the noise recordings. Mr. Orlando testified that he would validate his results.

Mr. Korschak suggested the matter be continued to the next meeting scheduled for October 15, 2009. The Board determined that the applicant must have additional testing done by a certified lab. The Board voted to wait until the new report is complete to decide if the Board needs to hire its own expert.

BILLS

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

ADJOURNMENT

The meeting was adjourned at 10:43 p.m.

Submitted by,

Shelley Lea