

**UPPER TOWNSHIP PLANNING BOARD
MEETING MINUTES
FEBRUARY 19, 2009**

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.

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: William Brown, Daniel Bready, James Kelly, Curtis Corson, Gary Riordan, James Schroder, Donald Kissling, Duane Terwilliger, Susan Ragan, Mayor Richard Palombo, Chair Renee Scrocca.

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

APPROVAL OF THE JANUARY 15, 2009 MEETING MINUTES

A motion to approve the minutes was made by Mr. Kelly, seconded by Mr. Brown, and approved.

APPLICATIONS

1. RC CAPE HOLDINGS LLC – BLOCK 479, LOTS 74, 76, 76.01 – PB01-09

Application is for preliminary and final site plan approval to install a flue gas system at BL England Generating Station, 900 N. Shore Road, Beesleys Point.

Arthur T. Ford, III, Esquire, represented the applicants.

Steve McKissack, Emissions Project Manager, 602 Route 50, Corbin City, NJ, was sworn. He testified that he has been an employee of the applicant since October of 2008. He explained the 2-step process involved in the proposed new system. He stated that there is no odor from the ammonia that is used. The system is designed to bring unit #2 into compliance with the federal standards in regards to omissions by May 2010.

Mr. McKissack testified that the ammonia is trucked into the plant. The ammonia is in liquid form. The contents of the storage tanks will be marked and labeled with the hazmat diamond. All the precautions will be in place not just for the tanks but also at the unloading station.

Mr. McKissack agreed to the request by Mayor Palombo to have a training operation worked out with the Marmora Fire Company due to the type of material.

Mr. Ford stated that the applicant has received a permit from the DEP dated November 14, 2008. In a letter to Mr. Dietrich dated February 3, 2008, Andrew Shawl, Environmental Manager, stated that pursuant to DEP regulations ammonia at this concentration is not considered a hazardous substance.

Mr. Ford agreed to a condition that the applicant would meet with the fire company to address any issues that they may have.

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

MR. BROWN – The application is for preliminary and final site plan approval to install a flue gas system at BL England Generating Station at 900 N. Shore Road in Beesleys Point. The plant is owned by RC Cape Holdings, LLC and is located in Block 479, Lots 74, 76, 76.01.

MR. KELLY – Arthur Ford, III, represented RC Cape Holdings. There was testimony from Steve McKissack, Omissions Control Manager. Unit #2 is operating as the main unit. Unit #1 is an auxiliary unit between June and September and #3 is an oil-fired burner. A permit from DEP was issued November 2008. There are no variances being requested. There was no public comment. They have agreed to have a detailed training operation to include the fire company.

MR. RIORDAN – the applicant has stated there would be a significant reduction of noxious gases.

MR. CORSON – This is being done to comply with the May 2010 mandate to meet federal standards.

A motion was made by Mr. Corson and seconded by Mr. Riordan to grant preliminary and final site plan approval with the standard conditions and the condition agreed upon for training of the local fire fighters. In favor: Brown, Bready, Kelly, Schroder, Ragan, Terwilliger, Kissling, Riordan, Corson, Palombo, Scrocca.

2. PAUL DIETRICH - SMART GROWTH GRANT

Mr. Dietrich announced there would be a Smart Growth Planning Workshop on March 7, 2009 from 10 a.m. until 3 p.m. at the Middle School Cafeteria. Discussion will include potential retail and commercial type uses within the town centers specifically Marmora and Seaville. The Township has received a \$50,000.00 grant from the Office of Smart Growth to do a detailed study for the redevelopment of the car dealerships and Bauer Pond along with other properties. This is a unique opportunity to help provide a preliminary layout for the potential developers. The workshop will allow the residents to

have input on what types of retail uses they would like to encourage and how they would look.

BILLS

A motion to approve the submitted bills was made by Mr. Corson, seconded by Mr. Kelly, and approved.

DISCUSSION

Solicitor Marcolongo informed the Board that he had oral argument on the Tower / Action Supply appeal last week before the Appellate Division in Trenton. He hopes to have the courts answer in the near future.

Mr. Dietrich announced that COAH has deemed the petition complete and it will start its 45-day public review. The Township will maintain protection from the builders remedy suite.

3. STRATHMERE DEANNEXATION

Regarding the petition filed by the Citizens of Strathmere and Whale Beach to deannex a portion of Upper Township commonly known as Strathmere and Whale Beach from Upper Township and annex same to Sea Isle City, New Jersey.

Stuart Wisner continued his testimony on page 44 of the document that was previously submitted. In the General Impressions section Mr. Wisner lists the complaints made by the Citizens for Strathmere and Whale Beach during their testimony. Mr. Wisner includes that the residents admit that longstanding issues are now getting attention. He also lists some of the things that the residents have done in the past such as arrangements with the State Police, extending outfall pipes and installing stop signs.

Mr. Wisner states that accusations by the residents that there are too many excuses and finger pointing could be that the residents don't fully understand the State issues. He includes comments made in support of the Townships efforts to work with the State regulations.

Mr. Wisner comments that the residents of Strathmere and Whale Beach have indicated that the services provided by the Township do not match the services needed. His comment is that Strathmere is not the only town experiencing problems with the DEP. The pro-deannexation indicates that Sea Isle City has noise ordinance and a beach curfew. If the deannexation is approved the Sea Isle City ordinances would apply. He questions whether Strathmere would be any better off other than economically if they were to deannex. Those for anti deannexation spoke in favor of the free beaches and the fact that there are no parking meters in Strathmere. They felt that the problems should be worked out and that deannexation would ruin the community. They also commented that

there are certain inconveniences of living on a barrier island. The mainland does understand flood and water issues.

Mr. Wisner concludes this section with the comments by Mr. Dietrich that issues from previous years are being corrected and that the Township is more proactive than before. He questions how much weight should be given to events from previous years when earlier governing bodies were in charge.

The next portion of the report is titled "Analysis". This is guidance for the Planning Board from the Court decisions dealing with de-annexation. This portion also addresses economic impact that indicates that the average home in Upper Township is assessed at \$300,000.00. If deannexation were approved the residents would see an increase of \$700.00 in property taxes. The "Social Impact" section discusses the claims of cultural disconnect due to geographic disconnect. His opinion is that if both groups are accepting and open-minded they can learn from the other. He feels that a loss of such a very unique community would inflict a significant social injury on the Township.

Mr. Wisner suggests that deannexation would result in Upper Township losing control of the natural environment in Strathmere, including the free beach and free deep-water boat ramp. The loss of such amenities would inflict a significant injury on the Township. He goes on to discuss the Avalon Manor case where the planner did not classify Avalon Manor as unique given the development patterns of the community.

Mr. Wisner states that the availability of stores and amenities in Sea Isle City would remain the same regardless of deannexation. Most of the stores in Sea Isle City are largely seasonal and there are a greater variety of stores and shopping outside of Sea Isle City.

The final matter reviewed in the report is Mr. Wisner's Recommendation. This involves whether or not the petitioners have satisfied their burden of proof, via the preponderance of the credible evidence. Mr. Wisner has determined that a refusal of the Petition would not be arbitrary or unreasonable. He feels that refusal to consent to the deannexation would be detrimental to the economic well being of the Township but not the social well being of the Township. He feels that annexation would cause a significant injury to the well being of the Township.

At this time Ms. Bittner asked questions of Mr. Wisner.

In answering the questions Mr. Wisner testified that Mr. Marcolongo notified him in October 2007 of the proposed deannexation. He was retained to assist the Board in the deannexation hearings. He feels there would be a social and economic impact on Upper Township if deannexation were to occur. In regards to economics, a positive thing would be there would be \$400,000 the Township would not have to pay for Strathmere related services There however be an impact on the school board and the taxes would increase.

Mr. Wisner testified that he has not had any discussions with the governing body or the municipal attorney. He did have conversations with the Township Engineer, Township Auditor and Tax Assessor. He was not aware there is a beach inspector on the Township payroll. He has visited Strathmere several times during the year, the last time being approximately 1 month ago.

Mr. Wisner listed his duties as an employee of North Wildwood. Ms. Bittner submitted a copy of the North Wildwood Master Plan Periodic Reexamination Report of March 2003, which was marked as Exhibit S-147. A copy of the North Wildwood Master Plan Reexamination of November 10, 1993 was marked S-148 and City of North Wildwood Master Plan dated 1979 was marked Exhibit S-149.

Ms. Bitter asked questions in regards to the school boundary and school taxes. There are currently 2 students from Strathmere that attend Ocean City High School.

There was a short recess at this time.

Mr. Wisner testified that he took into consideration the report by Mr. Garcia when formulating his opinion.

Mr. Wisner's opinion is that mainlanders value Strathmere for the environmental benefits that it provides. He feels that if there is a situation where the residents are not happy there are ways to address the situation short of deannexation. One option is an agreement could be reached for an interlocal agreement with the police department. Based on what he has heard his opinion is that the Township should have its own police department.

There was lengthy discussion regarding how far back was relevant to the Strathmere matter.

Chair Scrocca stated that findings of fact would take place at the next meeting scheduled for March 19, 2009 at 6 p.m.

4. NORTH BAYVIEW LLC – BLOCK 856, LOT 12 AND BLOCK 855, LOT 1 – SD09-09

Application is for a 2 lot minor subdivision with variances for lot depth, front yard setback, rear yard setback and height at 21 W. Winthrop Avenue, Strathmere.

Jon Batastini, Esquire, represented the applicant. Joseph Maffei, Professional Engineer, Jeffrey Stuart, 21 W. Winthrop Avenue, Strathmere, and Stephen Martinelli, Licensed Land Surveyor, were sworn.

Mr. Dietrich stated that both lots would be conforming. The existing structure currently does not meet the setback requirements. By relocating the building the setbacks will be made more conforming.

Mr. Maffei testified the house is accessed off of Winthrop Avenue. The applicants propose to reconfigure the lot line and move the house further to the north. The DEP will not allow the house to be moved any further north than what is shown on the plan. The house will be raised and parking will be provided underneath.

Solicitor Marcolongo confirmed that the applicant has been through the courts. There is a stipulation of settlement with the DEP, which requires the applicant to obtain approval from the Board.

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

MR. KELLY – North Bayview Avenue is the owner of the property. The property is known as Block 856, Lot 12 and Block 855, Lot 1. The original plans dated 5/5/08 were amended on 12/10/08 and 2/9/09. The application is for a minor subdivision to realign the lot lines. The property is located at 21 W. Winthrop Avenue in Strathmere. Jon Batastini represents the applicant. Joseph Maffei gave testimony in regards to the application. Variances are needed for front yard setback and height. The applicant agreed to limit the driveway to 12 ft. in width. The DEP approval is contingent upon the Board's approval.

MR. SCHRODER – The engineer has commented that the proposed plan is better than what Mr. Stuart proposed previously. He also commented that this would be a better scenario than what exists since the structure will be made more conforming.

MR. KISSLING – The structure will be more conforming than it is now. The plan has been approved by the DEP.

MR. CORSON – If the property were measured from Ocean Drive it would not require a height variance.

MRS. SCROCCA – The structure will be less non-conforming. It cannot be moved any further north due to DEP regulations. The application is a benefit for the environment therefore the benefits outweigh the detriments and the variances can be granted without impairing the intent of the zoning ordinance.

A motion was made by Mr. Schroder and seconded by Mr. Bready, to grant the application with the standard conditions and the conditions set forth on the record. In favor: Brown, Bready, Kelly, Schroder, Ragan, Terwilliger, Kissling, Riordan, Corson, Palombo, and Scrocca.

ADJOURNMENT

Submitted by,

Shelley Lea