

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
JULY 13, 2006**

The regular meeting of the Upper Township Zoning Board of Adjustment was held at Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:00 p.m.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Elizabeth Bergus, Mary Jean Burgin, Ted Klepac, Jeffrey Pierson, Andrew Shawl, Matthew Unsworth, Lynn Petrozza, Paul Casaccio.

Absent: Stephen Ay

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

SWEARING IN OF BOARD PROFESSIONALS

Paul Dietrich and Shelley Lea were sworn in by Chairman Casaccio.

TABLED APPLICATIONS

1. DONALD HOLLINGSHEAD – BLOCK 650, LOT 37 – BA18-06

This application was tabled until August 10, 2006. There will be no further notice of this application. The applicant has agreed to waive the time in which the board has to act on the application.

APPROVAL OF THE JUNE 8, 2006 MEETING MINUTES

A motion to approve the minutes was made by Mrs. Burgin, seconded by Mr. Unsworth, and approved.

BILLS

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

RESOLUTIONS

1. SCARBOROUGH PROPERTIES – BLOCK 651, LOT 4 AND BLOCK 653.01, LOT 1 – BA14-06

A motion to approve the resolution was made by Mrs. Bergus, seconded by Mr. Pierson, and approved.

2. UMMAC CORP T/A OBADIAH'S RESTAURANT – BLOCK 735, LOTS 51 & 52 – BA13-06

A motion to approve the resolution was made by Mrs. Bergus, seconded by Mr. Klepac, and approved.

APPLICATIONS

1. THOMAS TOWER / ACTION SUPPLY, INC. – BLOCK 549, LOT 110 – BA09-06

Application is for an interpretation as to whether mining is a permitted use on an adjoining property zoned AR and a possible use variance and buffer variance to allow the expansion of an existing mining operation on Stagecoach Road in Seaville.

Julius N. Korschak, Esquire, represented the applicant. Vincent Orlando, Professional Engineer and Planner, Thomas Tower, Harbor Road, Beesleys Point and Stephen Martinelli, Professional Land Surveyor, were sworn in.

Mr. Korschak passed out copies of statute number 40:55D-68 Nonconforming Structures and Uses. He submitted two briefs and a documents going back 20 years. He stated that in 1986 the applicant operated a mining operation on Stagecoach Road in front of lot 110. When the applicant purchased the property it was split zoned located partially in the Mining zone. The Agreement of Sale and Deed are part of the application. Site plans were not required for mining at that time. An ordinance was passed in 1986 requiring site plan approval for mining operations.

Mr. Korschak stated that Lot 110 was used in conjunction with the mining operation. After purchasing the property from Mr. Donzanti a fence was constructed around the perimeter and a buffer was created. A Cease and Desist Order was issued by Edward Kenney, former zoning officer, on October 17, 1986. The order required that Mr. Tower obtain a mining permit per Ordinance No. 21-1986 before using the property for mining. This was marked as Exhibit A-12. The Planning Board included Lot 110 in the site plan approval in 1990, 1991 and 1992 and the mining license also included this lot. Lot 110 was not included in the site plan approval or license in other years but was still used as part of the mining operation. He stated that the applicant never abandoned the mining

UPPER TOWNSHIP ZONING BOARD

JULY 13, 2006

PAGE 3 OF 5

use on Lot 110. He believes the applicant established the use of a mining operation on this lot.

Mr. Tower testified that he is the owner of the subject lot and the surrounding mining lots. He has used this lot as part of his mining operation for 20 years.

The documents contained in Exhibit P-1 include a letter dated June 6, 2006 from Jules Korschak and other supporting documents. Exhibit A-4 is a Contract For Sale of Real Estate between Albert and Patricia Donzanti and Thomas Tower. The contract proves the applicant purchased the property for mining purposes. The deed requires that a 6 ft. fence be installed prior to any mining on the lot and a 50 ft. buffer be established from the Canterbury subdivision. The purchase of Lot 110 provided access to Lot 111. Exhibit A-5 is a Deed also showing the intent to mine on the property. The deed requires that Mr. Tower refrain from mining on the half of the property located closest to Canterbury Lane for one year after purchasing the property.

Mr. Korschak submitted a site plan dated 7/28/86 was Exhibit A-28. This is the same plan submitted to the Soil Conservation District in 1986. Exhibit A-13 is an Application For Soil Removal submitted to the Township Clerk dated December 5, 1986. This application includes Lot 110. A revised site plan dated 1/30/87 was marked as Exhibit A-29. A copy of a Planning Board Resolution PBS 20-89 dated January 18, 1990 was marked as Exhibit A-18. A copy of the mining license from 1990 and 1991 including Lot 110 was marked as Exhibit A-22. A copy of a re-licensing application that includes lot 110 was marked as Exhibit A-17. A copy of the mining license from 1991 and 92 including lot 110 was marked as Exhibit A-20. The applicant did not include Lot 110 in the applications from 1991 through 2006.

Mr. Korschak stated that throughout the years Lot 110 has been utilized for parking of equipment, stockpiling and some mining. Lot 110 is the only access to Lot 111. The applicant maintains the road that runs from Lot 110 to Lot 111, the fence and buffer. Recently additional clearing has been done on Lot 110. A copy of the approval from Cape Atlantic Soil Conservation District includes Lot 110 and marked as Exhibit A-27.

Mr. Tower testified that when he purchased Lot 110 he was involved with a law suite with the Township regarding a project on the Longport Bridge. This was settled in 1998. He has always intended to use Lot 110 for mining and mining related uses. Not including Lot 110 in the mining permit was an oversight. At that time he was changing engineers and attorneys. He did not realize that he needed to renew his license to use the property since he wouldn't be dredging or increasing the scale of mining on the property.

Mr. Tower testified the rate of extraction is currently slowing down. They are avoiding the larger jobs so they don't burden the township with truck traffic. They intend to mine sand on Lot 110. They will not do any processing on the lot.

UPPER TOWNSHIP ZONING BOARD

JULY 13, 2006

PAGE 4 OF 5

Mr. Korschak stated the portion of the lot not zoned mining was not used for mining. A map used for the presentation was marked as Exhibit A-30. They have not fully mined Lots 111 through 136. A large aerial photo of the property was marked as Exhibit A-31. Exhibits A-32 and A-33 are smaller aerial photos showing the site. The applicant plans to start dry mining on Lot 110 and eventually use it for wet mining.

Mr. Tower testified that even after 1990 he continued to take a small amount of material from Lot 110 to maintain the non-conforming use. He has had discussions with adjoining property owners in regards to mining on this lot. He described the different types of sand most being sand for the concrete ready mix plant across the street. Extraction is slowing down since house building is slowing down. Utilizing Lot 110 will not increase the traffic on Stagecoach Road.

Mr. Tower further testified that he replaced the wood fence along the property line after a neighbor requested that he have it fixed. He has a maintenance agreement with the fence company and they visit the site 4 times a year to inspect and maintain the fence.

Vincent Orlando testified that in August 1986 Mr. Tower purchased Lot 110. He described the location of the mining zone at that time. At the time Mr. Tower purchased the property resource extraction, stockpiling and other mining related things were permitted. From 1976 until 1983 there were no buffer requirements. In June 1987 the zoning line was moved and the entire lot was rezoned AR.

Mr. Orlando further testified that his firm began representing Mr. Tower in the mid to late 1990's. He believes that constructing the fence and other improvements to the property established his rights as a pre-existing use. The Order from Mr. Kenney is evidence that mining activities were taking place on the lot. He feels that because Mr. Tower did not get a license does not mean he abandoned the mining use.

There was discussion in regards to abandonment including case law.

Stephen Martinelli testified that he began doing work for Mr. Tower in the mid 1990's. During that time he recalls seeing a road, fence, stockpiling and clearing and excavation on the corner of the property during his visits to the site. He stated that Mr. Tower has made improvements to the road over the years. The road is the only access to Lot 111. He reviewed a subdivision map from 1984 prepared by Gibson Associates. The map clearly shows the road from Lot 110 to Lot 111. The map was marked as Exhibit A-34.

Mr. Martinelli further testified that mining is his field of expertise. He does work for other mining operations in the area as well as for the applicant. He feels the applicant has not abandoned the use since the road and mining activities have been ongoing.

UPPER TOWNSHIP ZONING BOARD

JULY 13, 2006

PAGE 5 OF 5

Mr. Dietrich asked that the applicant supply better information since the map does not show any mining activity or the extent of mining except for some clearing on the lower corner of lot 110 and the woods road.

Mr. Korschak requested that all the exhibits contained in P1 and P2 be admitted into the record.

The meeting was open to the public.

David Ferrier, 13 Cambridge Drive, was sworn in. He objects to the application because of the noise.

Thomas Zyckowski, 18 Canterbury Lane, was sworn in. He has lived here for 19 years. He reviewed documents and read parts of previous resolutions. He feels the board should stand by the decision made by the Planning Board in 1987. He is opposed to the application.

Sandra Angelino, 15 Cambridge Drive, was sworn in. She just purchased the property 3 months ago. She would not have purchased the property if she had known they were planning to mine Lot 110. She was told the lots would remain wooded. She is concerned about her property value.

William Hallsworth, 10 Cambridge Drive, was sworn in. He discussed correspondence from Paul Dietrich dated December 2000 and February 2001. The letters refer to Mr. Towers' mining operation and state that the applicant is in violation of his current mining license since Lot 110 has no approvals for mining.

Leo Previti, 16 Canterbury Drive, was sworn in. He stated that the applicant does not have the permits necessary for mining. He believes that the applicant should not be able to gain property rights by illegal use. He stated that 16 years ago when he purchased his property there was no activity on Lot 110. There were no approvals to mine on the lot from the time it was purchased in 1989.

Chairman Casaccio announced there would be no further testimony at this time. The application will be continued on September 14, 2006 at 7:30 p.m.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Unsworth, seconded by Mr. Pierson, and approved. The meeting was adjourned at 11:00 p.m.

Submitted by,

Shelley Lea