

May 15, 2007

The regular meeting of the Andover Township Land Use Board was called to order at 7:30 p.m. on Tuesday, May 15, 2007 by the Chairman Stan Christodlous.

Present: Members      Gerald Huelbig, Class II  
                                 Gail Phoebus, Class III  
                                 Diana Boyce  
                                 Stan Christodlous  
                                 Michael Crane  
                                 Lois deVries  
                                 Suzanne Howell  
                                 Michael Lensak  
Attorney      Thomas J. Germinario, Esq.  
Engineer      William Moran, P.E.  
Planner      Russell Stern, P.P.  
Secretary      Mary Spector  
Absent:                      Thomas Walsh, Ron Raffino

**FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT**

**SALLY DOBSON** – Block 1, Lot 617, Forest Lake Drive, R-0.5 Zone, minor subdivision/lot line adjustment, carried from May 1, 2007. The Chairman read from the applicant’s letter requesting the Board to carry this application. The Board agreed to carry the Dobson hearing to the meeting of June 12, 2007 without further notice.

**OPEN TO THE PUBLIC** – The Chairman opened the meeting to the public for consideration of items not on the agenda. Carla Kostelnik stated a hydrogeological study was done in 1976 in preparation for the Master Plan. She stated it was based on studies done in the area for the Tocks Island dam project. At that time a number of wells in the Township were tested. Kostelnik explained how the maps were prepared by hand to show development limitations. She noted the zoning has changed since those days but the information in the studies is still a good planning reference. She distributed maps to Board members of development features taken from the 1976 Master Plan.

Fred Gillespie reported that he had received a letter concerning domestic well monitoring in the vicinity of the Ballantine Woods project. He stated 14 property owners were noticed. He asked about a paragraph in the letter that states the testing firm will not be held responsible if harm is done to an individual’s well. Germinario stated they should strike that paragraph, initial it and return it to the sender. Later he stated he would write to the applicant’s attorney noting the hold harmless clause should not be included in the letter. Christodlous stated this is an unacceptable practice because it discourages participation. Germinario agreed to talk to the Board’s hydrogeological consultant about the matter.

**MULFORD ROAD, LLC**- Bl. 72.03, Lot 1.02; Bl. 105, Lot 6.01, 12.02; Bl. 105.01, Lot 7; Bl. 105.02, Lot 12; Bl. 117, Lot 10.02; R-2.0 zone, final major subdivision. David Gherlone, Esq. and Robert Tessier, P.P. were present for the applicant. Tessier stated they are at the Board to explain the circumstances of the application to the current Board members who were not sitting at the time of the preliminary approval. He noted the applicant has a signed preliminary plat, a signed resolution and a signed Developers' Agreement (DA) and their stream encroachment permit application has been declared complete by the DEP. Tessier described the location of the project. He stated that by the end of the preliminary hearing the water in Howell's Pond had begun to rise due to the cessation of pumping at the Limecrest quarry. The pond is now full. Tessier explained they had to make some changes to the preliminary because of the rising water; however, the lot lines and layout remained the same. They lifted the grading on the road and changed the grading on some of the lots. Tessier further noted the Township at first was prepared to accept ownership of Howell's Pond but later they decided not to accept it and to have a homeowner's association take ownership. There was discussion about the open space on the site. Tessier indicated the location of the piece that the Township would like to acquire. He noted Sussex and Warren Holding Co. owns an adjoining lot that might provide a linkage to the school along the old Current Rd. right-of-way. He confirmed that the open space shown on the final plat is the same as was approved on the preliminary. It would be divided to dedicate some to the Township.

Tessier mentioned the four proposed COAH units. He gave some history on this topic. The County denied their original proposal which was for COAH units on the lot fronting on Limecrest Rd. A second proposed parcel was compromised by the rise in the water level. Now they propose four units on Block 117, Lot 22. They would have to come in with a site plan for these. Germinario noted they would also need a "d" variance if that lot is in the R-2 zone. Tessier stated the units could also go on Lot 33 which is in the SR zone with access from Mulford Rd. Phoebus asked if they could put in a group home. DeVries questioned how they would get sufficient depth for the foundations on Lot 33 if they couldn't get the four ft. they needed for the sewer plant disposal bed. Germinario stated they would have to notice for a hearing if they plan a significant change to the preliminary. He noted this aspect of the application should not be discussed at this time. DeVries stated she found the final plat confusing because the lot numbers had been changed from the preliminary so that lot numbers in the preliminary don't refer to those shown on the map. Stern suggested they put wording on the plan with a reference to the effect "formerly Lot \_\_\_\_." Tessier asked about the extent of an amendment to the preliminary. Germinario stated any aspect of the preliminary not being changed would not be affected.

Tessier referred to the review letter from Stern dated 5/14/07. He noted items #1 and 2 refer to the roadway grading change. Tessier confirmed the houses and septs can be built there under existing permit rules. He noted it is true, as Stern pointed out, that the improvements were affected by changing conditions but they will still meet requirements. The applicant will provide a narrative comparing the preliminary to the final. As to the COAH units, Tessier stated he will provide a site plan and a changed layout for discussion. He suggested meeting with the COAH subcommittee to review the options. Stern noted the Board should consider the implications if the units are located on Lot 32 because of the building design and at least four vehicles at the entrance to the subdivision. He noted the units might be more compatible on Lot 33. There was

discussion about the phasing plan for the COAH units. Tessier stated the phasing plan is discussed in the DA. Germinario read from the DA where it states the applicant can draw building permits for the residential units if they submit a Letter of Credit for \$50,000. Tessier noted that is what the applicant has agreed to. He stated the applicant is considering rental units and the possible use of a group called "Advanced Housing" who has agents to handle COAH rentals. Stern pointed out that COAH is discouraging the practice of the developer monitoring the COAH units. Tessier stated the COAH units would not be part of the homeowners association. There was discussion about the building permits. Lensak stated it would cost more than \$50,000 to build one of the COAH units. Germinario referred to the requirement to prepare a plan for improvements to Howells' Pond and post a bond for that. He noted according to the DA that should be done before final approval. Tessier agreed to do that. Discussion returned to the issue of bonding for permits. Tessier read from the DA noting a \$50,000 bond would be required for each unit. Lensak noted the DA should have stronger language to protect the Township if the developer does not build the COAH units. Stern suggested there are a variety of ways to control this matter. Typically, he stated, COAH units are constructed in conjunction with the market units. Germinario stated the applicant should present a phasing plan that shows the COAH units being built simultaneously with the other housing.

Tessier noted the open space portion of the development will be split with a section going to the Township. Gherlone stated a homeowner's association agreement has been submitted. There was discussion about the Township's portion of the open space. Tessier stated they will give the Township the piece that it needs to give access from the school. DeVries asked about the location of the bike path. She noted the remainder of Lot 23 is now wetlands. Tessier stated they don't plan to make physical changes to the site there. DeVries questioned how children would get from the school to the railway path. Phoebus noted the Recreation Commission has applied for a grant to design a trail to Kittatinny State Park from this location. Tessier discussed possible access points to Howell's Pond. He mentioned off of Mulford Rd. or Terrace Dr. or pedestrian access along the drainage easement. He stated he will look at other possibilities. DeVries noted there was a 7 ½ rise in Howell's Pond as of March 2006 according to the DEP. Tessier stated the fluctuation appears to be about 1 ft. to 1 ½ ft. now. He confirmed the homeowner's association will be responsible for the two 10,000 gal. tanks for water storage/fire prevention in the development. Stern noted the trees called for in the resolution are sparse. Tessier agreed they can add trees to the streets. They will consult with Stern on this matter. Phoebus asked about the recent flooding at the development across the street on Tanglewood Dr. Tessier stated there are no cross drains at this location so it shouldn't affect this development.

Tessier addressed items raised in the report of the Board Engineer dated 5/14/07. He indicated they will comply with the items raised in the plan review section. There was discussion about items #11-12, maintenance of the detention basins. It was noted the DA includes reference to a sinking fund for maintenance of the basins. Tessier stated they are willing to have the homeowner's association handle this aspect or to go with the sinking fund and Township maintenance. It was noted this item should be discussed with the Township Committee for clarification. Tessier stated they have submitted soil erosion and sediment control plans. He is not sure what happened to the plans. Germinario referred to the deeds. He stated that, subject to the Board Engineer's approval, there is only one change so that Schedule B which lists the

restrictions is mentioned in the main body of the conservation easement deeds. Moran noted they need to provide specific language for maintenance of the BMPs in the deeds. He stated the plan may have to be recorded with specific lots that have BMPs on them. Stern brought up about the sidewalks that had been discussed in an earlier engineering memo. Tessier explained the preliminary plan has sidewalk along Road #1 up to the split. Stern asked if it would be necessary to construct a path beyond the sidewalk. Tessier noted it would be nice to open that up a bit better. He stated it is possible to walk it.

DeVries stated Sheet #1 contains a note referring to "...no special water protection areas on this site." She noted Kymer's Brook flows out of Howell's Pond and has been nominated as a Category 1 stream. Tessier stated the first Letter of Interpretation (LOI) dealt with Howell's Pond as isolated open water. There was further discussion about the location of Kymer's Brook. Tessier stated they will defer to the DEP on that matter. Germinario asked if that note needs to be on the plans. Moran stated they would research it. Tessier stated they will remove that note if the DEP does not require it. He explained the note prohibiting further access to county roads was required by the County. Gherlone mentioned that a note to the effect that no further subdivision is permitted is included in the deeds. Tessier stated that note can be added to the final plat.

DeVries stated she walked this property in December 2004 and began to sink into the ground. When she checked with the DEP she was told the wetlands had expanded. She noted the DEP did a field walk at the site in February 2006. Her concern is that the wetlands buffer is under water and the transition boundary may or may not be correct. She stated the definition of where the water edge and the wetlands boundary are should be determined before final approval. Germinario explained the applicant can rely on the jurisdictional limits approved by the DEP for 5 years. The resources classification would have to change, but the applicant can rely on the limits approved by the DEP for 5 years. Tessier noted the changes have been sent to the DEP with the stream encroachment permit. They have stayed 150 ft. from the old wetlands line. There are no hydric soils around the edge of the pond now. They defer to the DEP on this matter. DeVries stated she is concerned about habitat and water in people's basements. Huelbig stated he thought the conservation easements address this issue. Phoebus noted if the railroad bed is accessible to the development one could go as far as Hillside Park by a safe access and eventually to the Goodale Rd. ball fields and Kittatinny State Park. Christodlous opened the discussion to the public. Vic Capo asked about the lot for COAH units that was previously discussed going toward O'Brien Rd. Tessier stated they will not be building COAH units with sewer capacity. That lot will not be used nor will the lot fronting on Limecrest Rd. Tessier confirmed they will return to the Board on June 26<sup>th</sup>.

The Chairman again opened the meeting to the public for discussion of items not on the agenda. Fred Gillespie returned to his earlier question about the testing of wells at Ballantine Woods. He asked what steps he should take in his reply. Germinario stated he will suggest to the applicant's attorney that they send out a revised letter.

**NEW BUSINESS** – Crane noted he had spoken with the owner of Diamond Auto Glass who asked if he should reapply to the Board for the gas station and convenience store application that was denied by the Zoning Board two years ago. Germinario pointed out that the legal

doctrine of res judicata prohibits rehearing the same application. He stated the applicant would have to make a significant change to the application that would have some bearing on the relief being sought. Christodlous noted the developer Rainmaker has expressed interest in purchasing that property.

Phoebus reviewed the items raised from the last meeting that she was to investigate. In reference to the hydrogeology report she stated the Township Attorney advised the Township does not have to do that project at this time. Phoebus further reported the Township will do an ordinance to allow for bonding for Regional Contribution Agreements (RCAs). Also, the Township CFO will do a study on using the \$850,000 for RCAs as opposed to providing for additional school children. She noted he will need some time to complete that study. Lastly, on the subject of the wastewater treatment area boundary Phoebus stated there was a consensus among Township professionals that it is not necessary to have an ordinance to control the boundary of the service area.

**MINUTES** - April 24, 2007. A motion was made by Crane, seconded by Lensak, to approve the minutes as distributed. All in favor. Motion carried.

**VOUCHERS** - See Schedule A. A motion was made by Howell, seconded by Phoebus, to approve the vouchers submitted. All in favor. Motion carried.

**MATERIAL RECEIVED, GENERAL INFORMATION** - See Schedule A.

**RESOLUTIONS** – Resolutions adopted during this meeting are made a part of these minutes by referral to the specific file.

**ADJOURNMENT** - Time 9:35 p.m. A motion was made by Lensak, seconded by Crane, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

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Stan Christodlous, Chairman

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Mary Spector, Secretary