

December 4, 2007

The regular meeting of the Andover Township Land Use Board was called to order at 7:34 pm. on Tuesday, December 4, 2007 by the Chairman Stan Christodlous.

Present: Members	Diana Boyce
	Stan Christodlous
	Lois deVries
	Suzanne Howell
	Gerald Huelbig
	Michael Lensak
Attorney	Thomas J. Germinario, Esq.
Engineer	Joseph Golden, P.E.
Planner	Russell Stern, P.P.
Secretary	T. Linda Paolucci
Absent:	Thomas Walsh, Class I
	Michael Crane, Class II
	Gail Phoebus, Class III
	Ron Raffino, Alt. 1

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

HUDSON FARM WEST – Bl. 5, Lot 1, Variance Application, Roseville Road . The Chairman announced that this application is being carried to the January 15, 2008, meeting with no further notice.

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public. There were no comments from the public at this time.

RESOLUTION – CUMBERLAND FARMS – Bl. 105.05, Lot 2, CB Zone, Newton-Sparta Rd; request for extension of preliminary and final site plan for site modifications at gas station. A motion was made to memorialize the resolution of approval. In favor: Howell, Huelbig, deVries, Lensak, Boyce, Christodlous. Opposed: None. Motion carried.

Stern commented that after the Board’s hearing of the application he went out to the site to follow up on concerns about the appearance of the building, specifically the lattice placed on the windows of the three vacant tenant spaces and the three roof-top signs. Stern spoke with Mr. Babbitt, the owner of the property, who agreed to take down the three signs and clear up the roof line with the caveat that if for some reason they could not go ahead and finish the project and the approval was abandoned they would be able to put the signs back on. Mr. Babbitt said that he is also willing to have the school children in town paint the windows and to put together a group to select the winning artist in order to perhaps contribute the monies to the local PTA. Chairman Christodlous recommended that Stern be one of the group selected. Stern noted that Mr. Cutler, the Zoning Officer, would be working with Mr. Babbitt during this process.

RESOLUTION – BLACKBURN/ROBERTS – Bl. 38, Lot 5.03, R-0.5 Zone, Hemlock Avenue; “c” variance for steep slopes on lot for construction of single family residence. A motion was made to memorialize the resolution of approval. In favor: Howell, Huelbig, deVries, Lensak, Boyce, Christodlous. Opposed: None. Motion carried.

WELL TESTING ORDINANCE – Hydrogeologist Matt Mulhall of M² Associates, Hampton, NJ, was introduced and was asked by the Board members to give a summary of the proposed well testing ordinance.

Mulhall told the Board that the proposed ordinance as it is written applies to any new residential developments of two or more new lots and each town has to decide how it is to be applied. Smaller water supplies using less than 800 gallons p/d would not have to do aquifer water testing, but larger water supplies such as office buildings would be required to do the water testing. Christodlous asked what the average home would use. Mulhall replied that the average home uses approximately 300 – 400 gal./day.

Mulhall stated the goal of the ordinance is to show that there is adequate water supply to meet the demand without causing adverse impacts to either people or natural resources in the area. Some Board members questioned the number of lots that this would apply to. Germinario said that he would send comments to the Township Committee regarding this informal discussion. Christodlous then suggested that in the draft of the Ordinance regarding the Requirements Pertaining to the Testing of Wells, *Page 1, Paragraph “A”* and anywhere else it appears “Residential developments of two or more lots or dwelling units...” be changed to “Residential development of three or more lots” and asked if anyone on the Board had a comment before recommending that change to the Township Committee. There was discussion among Board members as to the necessity of testing in relation to the size of the lots and in correlation to the zone that they were in. Germinario and Mulhall discussed the possibility of the ordinance including a waiver provision to have some flexibility for these types of issues.

Joe Golden, P.E. commented that he understood the original intent of the ordinance was to be sure that there is adequate water capacity. He continued that open-ended testing of the type proposed for individual water could become very expensive. Mulhall answered that it could cost a little extra but it would be required if building a new house on the lot. Germinario questioned Mulhall if under the Private Well Testing Act the homeowner would have to test for all the EPA volatiles. Mulhall stated they would. Boyce questioned what impact the proposed ordinance would have on the production of wells on existing home lots if the ordinance states “three or more.”

Golden brought up that the testing reports might be expensive for a minor subdivision. Mulhall answered that it would depend on what type of monitoring would need to be done. Germinario stated the way the ordinance is now written in almost every case there would be the added cost of the homeowner's own hydrogeologist and Mulhall's fee. Germinario stated that he understands Golden's concerns with the cost for the homeowner. He suggested that there may be no reason for testing and questioned whether Mulhall could provide a preliminary stage of looking at the surrounding well data and the fracture patterns, etc. and decide whether the

pumping tests are actually needed. Mulhall stated the applicant's hydrogeologist is supposed to supply that data. It could show that there is no need for a test. If this analysis shows there is a need, then they follow up with quantifying.

Christodlous suggested the Board continue to listen to Mulhall's presentation of the ordinance before getting involved with questions. Mulhall referred to page 8, applicability, and to item b on page 9 about agricultural applicability. He stated this is an item for the attorneys to decide. He noted for large applications with usage of over 100,000 gal/day the applicant must go to the DEP for a water allocation permit. The purpose of the ordinance is to determine there is sufficient water to meet the needs of the the proposed development without negative impact on other wells in the area and/or wetlands. And the testing will show the potability of the proposed water resources.

First the applicant's hydrogeologist will do a preliminary examination of well records, etc. which will be part of an aquifer test plan. This is done prior to an application being submitted, either as a fee or covered by an escrow payment. The Township's consultant reviews the aquifer test plan to see if it satisfies the requirements of the ordinance and prepares a review report. The hydrogeological data has to be submitted before the application can be deemed complete. The drilling is done already. There are three phases to the testing: background, pumping, and recovery phase. Each has a specific requirement. The background test checks natural trends in the water and whether there is other pumping in the area that could have an effect. The pumping test is done so that the data can be analyzed using standard procedures. For the recovery phase the pump is turned off to see that the water comes back. Mulhall noted this phase is the most important part as you want to be sure that the water will come back.

Mulhall stated if the land is underlain by two different geological units, there is a test for each unit. For example, if there was a carbonate rock and a crystalline rock a test would be done for each. Germinario stated it is not clear how the ordinance defines "the lot in question." For example, would a ten lot subdivision have to do a test on every lot? Germinario suggested that the definition of "lot in question" be further clarified and changed if necessary. Mulhall agreed. He noted after all the testing is done the hydrogeological report is submitted. This is the second report to be submitted and it goes to the Board to determine the viability of the application. The pumping phase has to be done so that the pumping is peak day demand for the application. Wells on-site and at least 3 wells off-site have to be monitored and also any wells that are less than 100 ft. in the vicinity. The ordinance appendices include the aquifer test procedures. Mulhall noted there is a letter approved by the Board that is submitted to the homeowners whose wells could be tested. Christodlous noted the letter in the appendix does not state anything about liability. Mulhall stated that is something the attorneys will have to address. Germinario noted there is not hold harmless provision in the letter on either side. He pointed out with this letter there would be the opportunity for compensation for negligence. Germinario stated the ordinance does ask the applicant to submit a certificate of insurance.

Christodlous opened the discussion to questions from the Board. DeVries noted there are varying geological conditions in the Township and the depth of wells varies. She noted this is an issue for small applications and small lots. Each situation can be unique. She asked if the

smaller applications could be balanced by gallonage. Mulhall stated a waiver provision should be included for these situations. For example, he noted, a three lot subdivision on three acres could ask for a waiver. Christodlous thought that if a waiver is provided it is not so serious a concern for the smaller applications.

Huelbig mentioned the problem for affordable housing. With these requirements imposed on the builder, they go for large houses. He noted he lives in a neighborhood with half-acre zoning. He's never heard of someone not having water. He thinks it's important to have balance. Mulhall stated with a waiver provision the Land Use Board is provided the appropriate information upfront in order to make an informed decision. Huelbig asked that they be sure to make the waiver provision clear in the ordinance. Germinario stated his understanding is that this waiver could apply to larger subdivisions as well as long as they show with the paper data that there is sufficient water. He thinks they can come up with the appropriate language for that. Stern noted if the applicant proposes larger lots than the zoning calls for they might also qualify for a waiver of the testing and this might encourage larger lots. Christodlous asked for a consensus on the Board that Germinario work with Mulhall and the Township Attorney to develop a waiver provision and keep the requirement at two lots. Board members agreed.

DeVries continued. She referred to page 11, letter I. She didn't think this language adequately covered disposal beds of a sewage plants. Mulhall noted this refers to individual septs and also community systems. He stated the goal of this paragraph is to make the applicant aware there could be a problem and he noted usually these issues are resolved before they get to the Board. There was a discussion between Golden and Mulhall about the necessity for this paragraph. Mulhall stated a well located near a fracture can create problems and today they try not to do that. They can't always tell where the fractures are and they look at patterns. He notes this is a way to avoid problems with wells in the future. DeVries asked if Mulhall thought the language in this paragraph adequately addresses situations in the Limestone Valley where there are two aquifers, one above the other. Mulhall stated he thinks it does. They can't eliminate the potential for problems, only minimize it. Boyce asked about expenses.

Germinario noted on page 7, applicability - "and all applications for nonresidential uses involving either the creation of a new water use or a total projected water use..." He stated he was confused about the category of a new water use. Mulhall stated it probably should simply read "nonresidential uses of 800 gallons per day or greater." Germinario stated that would clarify the statement. Board members agreed to that change. Germinario also asked about a substantive issue on page 15, "Other Requirements for Major Subdivisions" where it states 25 % of proposed wells shall have been constructed as a condition of preliminary approval. He questioned whether this was a little too stringent. Mulhall stated he doesn't think this requirement is necessary. Germinario noted if the applicant has already proved the availability of water the Board may not be able to hold up final approval. DeVries stated if the requirement would have the effect of removing parcels from farmland assessment, it could be a good thing. Germinario didn't think it would have an effect in that instance as wells can be built for agricultural purposes. DeVries also stated installing 25% of the wells would at least assure that that many lots would have water. Mulhall stated the testing required by the ordinance prior to preliminary approval will prove the adequacy of the water supply.

Stern referred to the pumping phase on pg. 12 in the first paragraph where it states that “If the ...peak-day demand cannot be pumped within a 24 hour period, the aquifer beneath the Lot in Question may be deemed insufficient...” Stern suggested this should read “shall be deemed insufficient...” and noted a lot reduction could possibly be call for in this situation. Mulhall agreed with that change. Lensak asked whether on page 7, the ordinance was protecting against the pizza place that gets changed over to a car wash. Stern asked whether a change of use that requires a zoning permit would trigger these requirements. Germinario stated the question is what if there is a change of use that doesn't require a site plan but it is increasing the water use from 100 gal./day to 900 gal./day. He noted it's hard to imagine a change of use of that degree that would not require Board approval. He suggested adding “zoning permit” to the “application for development” definition which would apply to uses of 800 gal./day or more.

Golden had a question on the fees section on page 14 where it mentions fees shall be as covered by the requirements set forth at Article XV. Mulhall thought this might be something inserted by Semrau. Golden noted the fee structure is presently being worked on. He pointed out Mulhall is estimating it is about \$3,000 for his review. He noted on a minor subdivision the total escrow might not amount to that much. Mulhall noted his fee for minor subdivisions would be less than that. He can provide the fee ordinance from other Townships. Germinario noted they will clear up the reference and add the necessary fees. Golden asked whether it would be a separate account or part of the same applicant's account. Stern noted the account would be set up before the applicant is submitted. Mulhall noted it is handled as a fixed fee for review in other towns. Christodlous noted it can be set up as an escrow account prior to the application coming in. There was further discussion about escrow accounts.

The Chairman took comments and questions from the public. Carla Kostelnik stated it might be easier to start from the consideration of the Master Plan. She suggests they look at the whole picture instead of looking at this ordinance in isolation. Revisiting the size of the lots could solve a lot of the problems. Also, she noted there are a few small lots left that are not developed. Perhaps the size of the houses should be limited on these lots. She recommends they talk about the constraints ordinance first, before this one. Also, she noted if the developer builds a house and there is no water, he is not going to be able to sell that house. That is his problem.

Fred Gillespie asked about the three required test wells and noted that number appears to be standard, regardless of the number of wells in the vicinity. He asked why that number and how are those wells selected. Mulhall referred to the Table of Observation Wells required on page 18. He stated in addition to these there are also off-site wells. They are usually chosen to be along the most likely fracture orientations because they will show the most influence. They use the number three because more than that is not necessary. The three observation wells on the site will provide the most useful information. That selection is based on three factors: the orientation of fractures in the area, which homes have agreed to be monitored and are closest to the property, and any well that is less than 100 ft deep is monitored. He noted the shallow wells are the ones most likely to be affected.

Vic Capo noted there are good safeguards for protecting the wells and aquifers in this ordinance. He asked about the design and placement of a major wastewater treatment facility

and the effect of effluent on existing or new wells in the area and he wondered if this is the place to address that question. Golden noted they will be redoing the 208 Plan which considers the water supply and geology. Kostelnik asked for a clarification pertaining to farms. She stated farmers are required to report extensively on the use of farm wells and she noted the DEP is involved in the testing and monitoring of farm wells. Christodoulos called for a motion to send this ordinance to the Township Committee with the changes as summarized by the Board Attorney. Germinario stated he will include some housekeeping additions in order for the ordinance to fit in to the Code Book and send it along with the changes discussed here tonight. A motion was made by deVries, seconded by Howell, to recommend the well testing ordinance to the Township Committee for adoption. All in favor. Motion carried.

RECESS – The Chairman called a recess from 9:33 pm to 9:42 pm.

BOARD MEMBERSHIP – Germinario announced that Gerald Huelbig is now a Class IV member and Michael Crane is the Class II member as enacted by the Mayor with the consent of the Township Committee.

CONSTRAINTS ORDINANCE – Germinario referred to the two basic parts of this ordinance. Beginning on page 3, Section 2 (190-34) is the zoning section which defines the area and bulk requirements for each zone. This section sets up a set of calculations as outlined on the resource calculations form on page 5. You begin with a gross tract area, for example a 10 acre tract in the 2 acre zone and go through the form which spells out the limitations. The natural resources constraints have been reduced from earlier proposed ordinances to four: bodies of water, slopes, wetlands transition areas and areas of Category 1 buffers. These limitations are calculated and subtracted from the gross tract to determine the net square feet and the net lot yield, thus adjusting the original zoning. For nonresidential tracts the calculations are applied to the maximum impervious surface to come up with the new impervious coverage allowance.

Germinario further noted under this ordinance all major and minor subdivision and site plan applications would be required to file an Environmental Impact Statement (EIS) unless the Board specifically waives the requirement. It also requires that every residential subdivision show that there is a buildable area within each lot. That is spelled out on page 8, a lot suitability area. On page 10 it notes that in subdivisions in the R-1.0 and greater zones they are required to show a lot suitability area of 20,000 sq. ft. where all the permitted structures can be located. Residential lots in the R-0.5 zone shall have a lot suitability area of 10,000 sq. ft. The lot suitability area as defined on page 8 will be changed so that lots do not have to be strictly rectangular, as per Stern's suggestion to which Golden also agreed. Germinario recommends the following language for that section: "It shall be possible to inscribe within the boundaries of the lot suitability area a rectangle having the length and width ratio not exceeding 2:1 and encompassing an area not less than 60% of the lot suitability area."

DeVries asked if rock outcrops should be included in the calculations. Germinario noted rock outcrops are listed as part of what must be excluded from the lot suitability area as defined on page 8. He noted they decided not to include rock outcrops as part of the constraints calculations. Stern remarked the items listed in the constraints calculations have been tested as

to determining density. Golden noted it would be impractical to do the measurements on site for rock outcrops because they can be dispersed over a large area. He noted it is more important to have the lot suitability area be clear of large rock outcrops. Boyce asked for clarification on page 3, section B2, applicability. Germinario stated basically it means that those four categories – minor and major subdivisions, minor and major site plans – would have to submit the calculations. For concept plans, calculation are not required but are recommended. Germinario noted that this section should specify that these requirements are for preliminary applications, not for final.

Carla Kostelnik asked if all undeveloped land would now be zoned two acres. The Chairman stated this was not correct. She asked if this was the same constraints ordinance the Township had in place previous to the court decision denying use of constraints for density. Germinario noted the courts reversed themselves on that decision. Kostelnik referred to probable changes in the Master Plan concerning density. She noted the Planner will take into consideration these basic constraints when determining densities in different parts of town and this ordinance refines those considerations and makes the process more complicated. The Chairman asked her to give specifics as to how it is complicated. Kostelnik stated the ordinance sets out standards and sometimes it's better to look at the individual lot to determine what is appropriate. Stern noted it is not always so simple. He gave an example of how a lot can be crammed full of development if reasonable constraints regulations are not spelled out. Kostelnik stated the downside of the ordinance is that it may not contain everything that they want it to contain.

Vic Capo asked about including ridge lines in the calculations as a way of controlling development on ridge lines. Germinario noted it is not included in the ordinance because it is tough to define ridge lines in a way that is enforceable. The courts will knock down any ordinance with the least bit of ambiguity in it. Christodlous noted if they could come up with a workable definition he would like to see a ridge line constraint added. He called for a motion on this ordinance. A motion was made by Lensak, seconded by deVries, to recommend the environmental constraints ordinance to the Township Committee for adoption. All in favor. Motion carried.

COMPLETENESS REVIEW – Germinario stated the professionals are proposing that applicants will appear first before the Board for completeness only, to allow time for the professionals to write complete reports knowing which waiver requests were granted and which were not. Golden pointed out this procedure may apply mostly to the large applications. He noted the application has to be submitted 30 days prior to the meeting date. Christodlous stated the two most important items to him are the reports from Golden and Stern and he wants to be sure they have the necessary time to do those reports. Golden noted he may at times be able to recommend completeness within two weeks of a submission and then the hearing can be held two weeks later. That would give sufficient time on the smaller applications. He also noted the hearing date is at the discretion on the Board. There may be times when the application is complete except for minor technicalities and there is no reason it can't be heard at the next meeting. There was further discussion about the process of declaring an application complete. Golden stated it is advisable for the applicant to be present at the completeness hearing.

VOUCHERS - See Schedule A. A motion was made to approve the vouchers by Howell, seconded by Huelbig and approved by Howell, Huelbig, deVries, Lensak, Boyce and Christodlous. 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 10:35 pm. A motion was made by Lensak, seconded by Howell, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

T. Linda Paolucci, Secretary

Stan Christodlous, Chairman