

February 6, 2007

The regular meeting of the Andover Township Land Use Board was called to order at 7:34 p.m. on Tuesday, February 6, 2007 by the Chairman Stan Christodlous. The Environmental Commission was also in attendance at this meeting for the NRI presentation.

Present: Members Thomas Walsh, Class I
 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 Joseph Golden, P.E.
 Planner Russell Stern
 Secretary Mary Spector
Absent: Ron Raffino, Alt. 1

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

OPEN TO PUBLIC – Karen Davis of Wisteria Rd. raised a question about a possible subdivision application in her neighborhood and asked if the Board knew about it. Germinario stated it sounded as though her comments pertained to a potential future application and would not be appropriate at this time. Christodlous explained he has been negotiating with the purchaser of the lot behind his property to grant a driveway easement through his property for two houses. Germinario stated he would have to stop Davis from speaking further on this subject as it could prejudice the Board. Philip Boyce stated the public should be aware that the 57 acre vacant lot in their neighborhood is a concern. He advocates making any decisions about this property as open as possible so that the public is aware of the issues involved.

ENVIRONMENTAL COMMISSION ROLL CALL – Lois deVries, Chairman of the Environmental Commission, opened their meeting at this time. Harvey Hummel, Commission Secretary, called the roll. It was noted this is a joint meeting of the Commission with the Land Use Board for the presentation of the Natural Resources Inventory (NRI).

PRESENTATION OF NRI – DeVries thanked the Land Use Board and the Township Committee for their support in securing the grant from ANJEC and providing the matching funds to make it possible to revise and update the Township NRI. She introduced Joanna Slagle of Banisch Associates who helped with preparation of the document. Slagle presented a slide show that summarized many of the main features of the NRI. She explained the NRI is a technical document. Its purpose is to identify and describe natural resources in the Township and to be used as a foundation for planning. Slagle stated the NRI includes 27 maps from a variety of data

sources. She explained the GIS mapping data may not be accurate on a site by site basis. The information needs to be verified on location. Among the maps included in the NRI are land cover, geology, hydrology, septic suitability, depth to bedrock, known contaminated sites and critical habitats.

Slagle explained the NRI is an important first step in the planning process as it forms a scientific basis for policy decisions. It provides a valuable inventory so that planning policies can be based on underlying conditions. She stated it can be made part of the Master Plan as an appendix to the Conservation Plan Element. Following the slide presentation Slagle addressed questions on the NRI from the Board and the public.

EXECUTIVE SESSION – A motion was made by Walsh, seconded by Lensak, to go into closed session at 8:30 p.m. for discussion of litigation pertaining to the Ballantine Woods development. In favor: Crane, Lensak, Phoebus, Walsh, deVries, Huelbig, Christodlous. Opposed: None. Howell and Boyce recused themselves at this time. Motion carried. The Board came out of executive session at 9:05 p.m.

RAY KEENAN – Bl. 5, Lot 79.02, R-3.0, Andover-Mohawk Rd., minor subdivision, request for extension. A motion was made by Howell, seconded by Phoebus, to adopt the resolution memorializing the approval of this application. In favor: Howell, Lensak, Phoebus, Walsh, Christodlous. Opposed: None. Motion carried.

CHELBUS – Bl. 106, Lot 20, CB zone, Newton-Sparta Rd., site plan waiver. A motion was made by Phoebus, seconded by Howell, to adopt the resolution memorializing the approval of this application. In favor: Crane, Howell, Lensak, Phoebus, Walsh, deVries, Huelbig, Boyce, Christodlous. Opposed: None. Motion carried.

THE MEWS - Bl. 108, Lots 1.01 and 1.02, SR zone, Mulford Rd., extension of amended use variance. The Class I and Class III Board members recused themselves from this hearing as it concerns a “d” variance. Germinario pointed out this application is for an extension of the use variance which was reaffirmed in August 2004 for a period of two years. That extension lapsed in August 2006. He noted the project was first approved in 1991 as a congregate care center. The last resolution, in 2004, extended the use variance and approved a modification for an age-restricted residential development.

Germinario asked the Board to focus on whether this application is still appropriate for a “d” variance and whether the factors supporting the earlier decision still hold. He noted there are two aspects to consider: changes in the project itself and changes in circumstances. He stated professional reports point to changed circumstances, for example, they note the DEP action of 4/29/06 denying approval of the sewage treatment plant while the 2004 resolution refers to available sewer and water as making this site particularly suitable. Another issue mentioned in the Engineer’s review is the rising water on site because of the cessation of pumping at the quarry. A third issue is the proposal to put the sewage disposal bed and wells on Bl. 109, Lot 6. This would probably require a “d” variance and was not a part of the original application.

Germinario summarized these are three principal issues raised by Board professionals and the Environmental Commission that the Board should focus on.

Joseph Daly, Esq. from Weiner Lesniak was present to represent the applicant. Daly began with the presentation of a list of exhibits which were marked A-1 through A-17. He stated he thinks the applicant has complied with the conditions of the prior resolutions. They will submit a document of compliance if the Board requires it. Daly presented the first witness, Dr. Andrew J. Higgins who was sworn in. Higgins stated he has two engineering degrees. He has been qualified before boards in Chester, Mt. Olive, Union Twp. and many others. He is licensed as a professional engineer in NJ since 1981. In his present occupation he is Chief Engineer at Applied Water Management. He oversees design concepts and the work of his staff. The Board accepted Higgins's qualifications to testify.

Higgins referred to a document labeled Figure 1 – Approved Sewer Service Areas. He stated this document was prepared in his office. It was marked Exhibit A-19 and copies were distributed to the Board members. Higgins pointed out the approved sewer services areas on the map. He stated construction of the sewer plant began in October 2004 and the water plant in October 2005. These were shown on a map labeled “Interim Topographic Wetland Location Survey” and marked Exhibit A-20. It was noted this map is similar to Sheet 5 of 6 of the Dykstra Engineering plans dated July 2006. DeVries objected to the use of this plan because it doesn't show the conservation easements. Germinario noted the applicant has the right to continue with his testimony at this time. Higgins identified the water treatment building and the water reclamation facility on the plan.

Higgins stated the water treatment plant is about 50% complete. The building and two wells are on site. Outstanding work includes piping connections, power to the building, installation of mechanical piping as well as grading round the building. The water treatment plant was constructed to treat well water which contains calcium. The water is also to be disinfected with sodium hydrochloride for health purposes. Higgins reported the wastewater treatment plant is 90% complete. He stated major equipment is on site or in storage. He noted the original DEP permit was for 60,000 gal. per day for Life Care Mews. He added it was thought at the time that this location would receive sewage from other sites in the future and it was designed with the potential for additional capacity, up to at least 163,000 gal. per day.

Higgins referred to a map entitled “Schedule ‘A’: Northeastern Andover Franchise Area” and marked as Exhibit A-21. The Township approved the franchise request by Ordinance 2004-15 dated October 18, 2004. Higgins stated they were granted a service area franchise from the Board of Public Utilities on November 14, 2005. This map includes an outline of the franchise area. In response to a question from DeVries on the difference between a recharge area as designated on the map and a discharge area Higgins stated area #8 on the map is for groundwater discharge. As to the difference between the franchise area and the service area, Higgins noted that within the franchise area they are permitted to charge rates as approved by the Board of Public Utilities. He explained the Township granted the right to Applied Water Management to charge users for services. The sewer service area was approved as a part of the County Wastewater Management Plan.

In further testimony Higgins stated an application for an amendment to the Wastewater Management Plan was filed with the DEP. The application was denied. They have appealed the denial. They have met with the DEP and they are addressing the issue of the high groundwater levels. The denial was based in part of the groundwater level rising because of the cessation of pumping at the quarry. Higgins referred to a map marked as A-22 and labeled "Proposed Sewer Service Area Additions." He noted the map includes the schools, the recharge lot and the proposed disposal beds in Block 109, Lot 6. Higgins explained the previously approved subsurface disposal bed area can't be used because of rising groundwater. They needed to find an alternate area which is why they are looking at Block 109, Lot 6. The function of the bed is to take treated effluent and apply it back into the groundwater aquifer system. It would be a flat, grassed area with inspection pipes cut to grade when finished.

DeVries questioned Higgins about the DEP permit for the plant which she had been told had expired. Higgins read from their Treatment Works Approval No. 03-0297A dated November 22, 2004, which states that the approval would expire in two years if construction had not yet begun. This document was marked Exhibit A-23. Crane asked whether this permit includes the disposal bed. Germinario questioned whether the applicant can keep the disposal bed in the location where it was originally designed to go based on this permit. Higgins replied that theoretically, yes, because they never received a revocation of this permit. However, practically speaking, they received a letter dated February 24, 2006 from the DEP Bureau of Nonpoint Pollution Control, Groundwater Permitting Unit, which asked them to voluntarily cease construction because of the "present conditions of high water." Higgins noted the DEP didn't revoke the permit but indicated that they would if the applicant didn't stop construction. This document was marked Exhibit A-24.

Golden asked about the appeal. Higgins explained they are appealing the denial of the application for expansion. Golden noted they are seeking approval to relocate the disposal beds. Germinario questioned whether that request is beyond the scope of this plan. Higgins stated the construction work on the treatment plant was stopped after they received a "Stop Construction" order signed by the Construction Subcode Official dated March 2, 2006. Higgins described the proposed disposal beds. He stated piping to the recharge area is generally 6 to 8 inches in diameter. The hydrologist will provide more detail. They anticipate having two acres available for the disposal beds. The beds are composed of a sand media and have hydraulic connectors. Proposed wells are shown on Bl. 109, Lot 6 for an additional potable water supply. Higgins stated Applied Water Management has spent \$930,000 to date on the water treatment plant and \$3,167,000 on the sewer plant. DeVries noted there was a comment at the Zoning Board meeting two years ago cautioning the applicant that they would proceed at their own risk if they began construction without full DEP approvals. Daly stated they will review the meeting transcript for that remark.

Stern asked whether the disposal beds and wells would encompass the whole of Block 109, Lot 6, which is a 65 acre lot. Higgins stated he didn't know what else would be proposed for that lot. Crane noted the wells are located in the wetlands buffer area. Daly stated the hydrogeologist would respond to these questions. There was further discussion about the

location of the test wells. DeVries asked about the wells being drilled by an unlicensed driller without a DEP permit. Higgins stated he did not have knowledge of that. DeVries asked about the status of the appeal and whether in fact the DEP had refused mediation and that the next step would be to go to the Office of Administrative Law. Daly affirmed that may be the current status. He stated he would update the Board at the next hearing on this matter.

Germinario asked about Exhibit A-22. Higgins explained Exhibit A-22 shows proposed sewer service area additions for discussion with the DEP. It has not been submitted to them yet. The previous amendment to the sewer service area, including the K-Hovnanian project and two schools as shown on Exhibit A-21, was denied. Higgins stated they need to do an amendment to the plan to get DEP approval for the subsurface disposal bed on Block 109, Lot 6. He noted it would either require a new application or be a modification to the existing application. The DEP has not clarified this matter yet. DeVries asked about the history of the amendment and she noted that as stated in the Township Committee minutes of December 8, 2004, the Township rescinded approval for the sewer service area. Responding to a question from Crane, Higgins stated the hydrogeologist will testify to the types of soil on the new lot.

The Chairman opened the meeting to the public. Carla Kostelnik asked who would own the utilities facilities. Higgins replied that Applied Water Management Inc. would be the owner. Kostelnik asked if the facility could accommodate more than the Mews. Higgins stated they can only provide services to those areas where the Township has provided them a franchise. Vic Capo asked about putting the piping in going to the new area. Higgins noted the utilities lot is a disturbed area. There is a railroad and wetlands on the property. Diana Gillespie called attention to the wetlands shown on Exhibit A-20 and asked how they can propose to disturb the conservation easements on this lot. Higgins stated they would have to run the water line and effluent line through there. The area would then be restored to its natural condition. He noted they would have to have access in case of emergencies. They would not need service on a regular basis.

Jeffrey Wolk asked if construction had started on the wastewater plant in July 2004. Higgins stated they started the treatment plant in October 2004. The engineering had been done prior to that. He stated the project is 90% complete; all the equipment has been ordered and most of it is in the building. The membranes are in a warehouse waiting to be installed. There was further discussion about the equipment and related matters. Wolk questioned why the DEP denied the amendment. Higgins stated the letter of denial cited the high groundwater conditions. It also cited the category 1 water body on site which need protection. Higgins read from the letter that stated any new submission would have to go to the County Freeholders for approval. They would have to comply with Executive Order 109 which lists a number of analyses required. The letter referred to two Natural Heritage sites on the property. DeVries stated they didn't comply with the requirement for analysis of threatened and endangered species. She had other questions. The Chairman suggested that she put her questions in writing to the applicant's attorney. There were additional questions about the proposed disposal bed. Higgins stated the hydrogeologist would address these questions. Peter Spinney asked if the Board would get their own expert. Germinario stated the Board retains that right. He stated it may not be necessary as the bar is set high right now to justify an extension of the approval. Germinario noted several

items should be marked as Board exhibits. The Township Committee minutes of December 8, 2004 were marked Exhibit B-1 and the DEP letter of April 29, 2006 was marked B-2. The application was carried to March 6, 2007 without further notice.

ANNUAL ZONING REPORT – Review of Zoning Board annual report for the year 2006. A motion was made by Howell, seconded by Lensak, to accept the Annual Report of the Zoning Board and recommend it to the Township Committee. In favor: Crane, Howell, Lensak, Phoebus, Walsh, deVries, Huelbig, Boyce, Christodlous. Opposed: None. Motion carried.

MINUTES - January 9, 2007. A motion was made by deVries, seconded by Lensak, to approve the minutes as amended. In favor: Crane, Howell, Lensak, Phoebus, Walsh, deVries, Huelbig, Boyce, Christodlous. Opposed: None. Motion carried.

Executive session, January 9, 2007. A motion was made by Lensak, seconded by Howell, to approve the minutes as distributed. In favor: Crane, Howell, Lensak, Phoebus, Walsh, deVries, Huelbig, Boyce, Christodlous. Opposed: None. Motion carried.

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

HOUSING PARTNERSHIP – DeVries reported on the COAH subcommittee meeting with Sue Zellman and Jim Benson of the Housing Partnership. She described the Partnership's program of 10 hours of consultation for a cost of \$500. DeVries and Christodlous, who was also at the subcommittee meeting, asked the Board to recommend to the Township Committee that they contract with the Housing Partnership for consulting work to help the Township meet its COAH obligation. A motion was made by Huelbig, seconded by Crane to recommend to the Township Committee that they contract with the Housing Partnership. In favor: Crane, Howell, Lensak, deVries, Huelbig, Boyce, Christodlous. Opposed: None. 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 11:40 p.m. A motion was made by Lensak, seconded by Boyce, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

Stan Christodlous, Chairman

Mary Spector, Secretary