

March 17, 2009

The regular meeting of the Andover Township Land Use Board was called to order at 7:30 p.m. on Tuesday, March 17, 2009 by the Chairman, Stan Christodlous.

Present: Members CeCe Pattison  
Suzanne Howell  
Michael Lensak  
Gail Phoebus, Class III  
Bob Smith, Class I  
Lois deVries, Class II  
Gerald Huelbig  
Diana Boyce  
Stan Christodlous

Secretary: T. Linda Paolucci  
: Attorney Thomas J. Germinario, Esq.  
Engineer Joseph Golden, P.E.  
Planner Russell Stern, P.P.

Absent: Ellsworth Bensley, Alternate

Early Departure: Bob Smith & Gail Phoebus

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

**OPEN TO THE PUBLIC** – The Chairman opened the meeting to the public. As no one from the public stepped forward Christodlous closed the public session.

**PICOLLO** – Block 158, Lot 14.06, Steep Slopes Variance. Kenneth C. Krause, Esq. of Hope, New Jersey stated that he represents the applicant. Kraus stated that after reviewing the reports of the township and applicant’s engineers, he would like to request to come back before the Board for completeness and final hearing next month. Christodlous questioned the reason for the request. Golden explained that the engineer for the applicant called and spoke to him about the misunderstanding of the slope ordinance and the revision that needs to be made is a simple revision. Christodlous asked Stern’s concerns with the request. Stern stated that there should be further revisions to the drawings that have been submitted.

The Board determined that the application is incomplete and a tentative date for the hearing of completeness was set for April 7, 2009.

**RESOLUTION - ROBERT SMITH** – Block 118, Lots 4 and 31, Minor Subdivision/Lot Line Adjustment Motion was made by Mike Lensak to approve the resolution, second by Howell. In favor: Pattison, Howell, Huelbig, Phoebus, Lensak, DeVries, Boyce, Christodlous. Opposed: None. Motion carried.

**RESOLUTION – NEWTON COUNTRY CLUB**, Block 111, Lot 6, Site Plan Waiver. Recues: Christodlous. Motion was made by DeVries to approve the resolution, second by Phoebus. In favor: Pattison, Howell, Huelbig, Phoebus, Smith, Lensak, DeVries, Boyce. Opposed: None. Motion carried.

**RESOLUTION - 280 MEDICAL ASSOCIATES** – Block 103, Lot 4.04, Site Plan Waiver. Motion was made by Pattison to approve the resolution, second by Phoebus. In favor: Pattison, Howell, Huelbig, Phoebus, Smith, Lensak, DeVries, Boyce, Christodlous. Opposed: None. Motion carried.

**GREGORY FISCHER**, Block 59, Lot 3.03, Steep Slopes Variance. Motion made by Howell to approve the resolution, second by Pattison. In favor: Pattison, Howell, Huelbig, Phoebus, Smith, Lensak, DeVries, Boyce, Christodlous. Opposed: None. Motion carried.

**RESOLUTION TO DETERMINE MASTER PLAN CONSISTENCY – ORDINANCE #2009-06 – CONSTRAINTS** – Huelbig had some concerns regarding the constraints ordinance. Stern and Germinario explained to Huelbig the provisions that show evidence that it is consistent with the present Master Plan. Huelbig stated that his concern is that although the constraint ordinance is consistent with the present Master Plan, when the new Master Plan is created it will be too confining on future development along with the present ordinances in place. Christodlous explained that the vote being taken this evening is to find the Ordinance consistent with the existing Master Plan. Smith wished to add clarification that the ordinance has been introduced on the Township Committee level and the next step in the process is for the Land Use Board to determine whether or not it is consistent with the Master Plan. He continued that the final step will be next Monday where there will be a workshop on the Open Public Hearing on the Ordinance itself, and then the Committee will vote to either accept or disapprove the Ordinance. Boyce asked if the workshop is open to both the Planning Board and Town Committee and Smith answered that it would be open to everybody. Boyce stated that she thought that there would be changes made in April and asked if this would still be consistent with the Master Plan. Christodlous answered that the Board can only judge on as it exists now. Germinario stated that there are no changes that will be made to Master Plan that will be made in April. Huelbig expressed further concerns. Motion to approve ordinance for consistency with the Master Plan made by DeVries, second by Howell. In favor: Pattison, Howell, Smith, Lensak, Vries, Boyce, Christodlous. Abstain: Huelbig and Phoebus. Opposed: None. Motion carried.

**RESOLUTION TO DETERMINE MASTER PLAN CONSISTENCY – ORDINANCE #2009-03 – LOT LINE ADJUSTMENT APPROVAL** – Howell made motion to approve, second by Phoebus. In favor: Pattison, Howell, Huelbig, Phoebus, Smith, Lensak, DeVries, Boyce, Christodlous. Opposed: None. Motion carried.

**CLOSED SESSION** – Board made a motion to go into closed session at 7:57 p.m. regarding WaWa Inc. – potential litigation. Board made a motion to go back into open public session at 8:22 p.m.

**SUSSEX & WARREN HOLDING CORP.** – Block 105, Lots 6.01 & 12.02, Block 105.01, Lot 7, Block 105.02, Lot 12, Block 72.03, Lot 1.02, Block 117, Lot 10.02 – Amended Preliminary & Final Major Subdivision and Use Variance

Kevin Hahn, Esq. of Courter, Kobert & Cohen, of Hackettstown, NJ stated that he is representing the applicant. Robert Tessier of Dykstra Engineering of Andover, NJ was previously sworn in and stated that the preliminary plans have been revised in accordance with the reports of the township engineer and planner. He referred to *Sheet 3 of 16* of the preliminary subdivision plans that show the lot lay-outs and conceptual of the homes inside the building envelopes. He stated that they have taken the one lot which was four acres which showed the

proposed four units of COAH which now are showing it as two lots and pointed out that in the Township's Planner's report, the one lot will get access from Mulford Road with an easement and the applicant intends to give the easement to the Town and the applicant will take care of the COAH units, of which Donna Del Valle from S.E.E.D. Corp. is interested in working with the Township and the applicant for the completion of the COAH units. Germinario stated that there is a letter dated March 12<sup>th</sup> from the Township Attorney, Fred Semrau, Esq. indicating that the Township Committee is willing to accept the dedication. Golden stated that the lot can also be "open space". Tessier stated that the proposed lot number is No. 34 and is 2.608 acres and the other lot is No. 33 and it is proposed at 1.5 acres, which are the two lots that the use variance is required for.

Tessier continued that the additional changes as indicated in the open space lot is to the Homeowner's Association, the plans show the strip on the end where the sidewalk ends at the railroad right-of-way, and the strip along the property edge of the vacated roadway is 20 foot wide. He stated that it was noted by the Township's Engineer in his review that Lot 12.01, Block 105, which is contiguous, is basically a wetlands piece, has additional right of way, and although it is not part of the application he did talk to representative of the Estate, Howard Wachenfeld, and to give the Town this as a bike path would not be a problem.

Tessier stated that the other thing to note is that as part of the subdivision there is a vacated road, which continues all the way to Mulford Road, *which may have been called "Old Mulford Road vacation"*, and there is a driveway to the home which has a rock wall on the side of the applicant's property which does not really impact the applicant's subdivision. However, from the beginning of the application the applicant had intended to take the 15 foot strip that runs down the middle of the neighbor's driveway and dedicate that to them so, therefore, they are part of this application. He continued that at the outparcel along Mulford Road, Lot 9, there is a 35 foot conservation easement in the rear wherein the neighbor's house goes right up to the property line at big rock face and the neighbor has indicated that somewhere in the future they would like to come back before the Board for a lot line adjustment.

Tessier said that along with the summary of changes that were made the applicant would require a use variance and bulk variance for the creation of the lot with no road frontage. Hahn stated that the developer would grant the easement that is required for access to the driveway, which Tessier stated is noted on the plans. Tessier stated that he made changes to the plans in accordance with the Town Planner's suggestion to allow the Homeowner's Association access to Howell's Pond, which will be a passive recreation situation, and the applicant did allow for a 10 foot access easement in that area, which will be graded to get pedestrian access, which was provided in response to the request.

Tessier stated that other modifications that need to be made in accordance with the Engineer's report was: an amended developer's agreement; bond estimate prior to filing; determination to be made on the phasing of the four COAH units that the applicant is responsible for; the variance necessary as it does not have frontage for the eight units. Tessier stated that he will be re-doing a reconfiguration of the units in accordance with suggestion from the engineer, which will be shown on the amended site plan. Stern mentioned that in the site plan the parking situation will also need to be considered as part of the changes. Germinario suggested that if the application is approved tonight, then the condition would be that the final plat will not be filed until the Site Plan approval has been granted.

Tessier discussed the future trail for Lot 35 and what variances may be required for it. Stern stated that it may need a C1 or C2 variance, if appropriate. Tessier continued to go over some of the additional revisions that need to be made to the plans, such as parking, enhancing the architecture of the buildings (which Germinario stated will be part of the conditions of approval), Coah units site plan approval, etc. Golden referred to *Item No. 7* of his report and discussed the new DEP water quality regulations and the *grandfather clause*. Golden and applicant discussed

what type of approval is being sought this evening. Germinario stated that the resolution will contain many conditions that must be met before the filing of the final plat. He stated that the tying of the building permit to the first certificate of occupancy makes sense, as this is typically what happens when it comes to affordable housing is it is tied to conditions of certificates of occupancy. Golden and Germinario agreed that the developer will not be able to obtain a certificate of occupancy for the first unit until the COAH units have a building permit. Germinario stated that he will have the conditions to be met in the resolution for the application. There was further discussion as to the filing of the map, road dedication, open space, etc.

Tessier stated that the phasing and bonding shall be done in accordance with the report of the hydrologist. There was discussion regarding the two 10,000 gallon fire cisterns of which Golden stated that typically the Town will own the 10,000 fire cisterns as they will have to be inspected, etc., and usually the fire department does that. On the other hand, Golden stated, the infiltration stormwater is a separate issue. Tessier questioned if there is a maintenance procedure for that and Golden recommends that the Developer's Agreement contain this information.

There was further discussion with regard to Golden's March 17, 2009 Karst Phase II Evaluation report and also discussion regarding changes to the construction set of plans from the title of "Preliminary" to "Amended Preliminary and Final".

Golden stated that in his report he echoed some of the conditions that still must be met in the original approval of 2005 and these conditions should be stated in the Developer's Agreement.

There was discussion with regard to protocol of site inspections with some slight changes to be followed along with Golden's recommendations in his report of March 17, 2009, of which the applicant agreed to.

Del Valle from S.E.E.D Corp, previously sworn in at the last meeting, came forward to discuss issues of who will be developing all of the COAH units on the property and the opportunity of the municipality for obtaining the COAH credits.

The Chairman opened this portion of the application for public comments. Jeryl Turco Maglio of Wayne, New Jersey, came forward from the public to state that she wished to express again from her statement at last month's meeting, that the grandchildren have interest in any development going on in Andover, or any townships, in which the estate has plans for development. She continued that with regard to this particular development most of their issues are being addressed from the legal prospective and they are not here to interfere or to have any negative impact for potential development, however, she stated, they will continue to be representing the issue of the grandchildren. She stated that, if and when, they have serious concerns they will take every measure to protect the interest of the grandchildren and realizes some of the constraints with regard to the sewer and septic issues and, therefore, feels that while they would like to have input in the planning process, in this particular situation that they do have some concern also regarding some of the negative constraints that could result. She continued that they are not here to delay anything, but that they will continue to be involved and will continue to have legal recourse to protect the interest of the grandchildren.

Germinario stated that as he mentioned at the last meeting, any approval that comes out of this Board will be subject to conditions if a Court of Law finds that Mr. Wachenfeld acted without all proper authority then this approval may become null and void. Maglio wished to be on record that the family has had a very good relationship with Town and would like to proceed with having an amicable relationship with the Town, etc.

Joe Colonna of 50 Mulford Road, Andover, NJ, from the public stepped forward and stated that he shares a property line with the subject property and his concern regarding the applicant deeding back the property and the shared driveway being a problem. Colonna stated that he now has an existing situation of a shared driveway and has owned the property for the last

three years and he has been doing the maintenance on the property such as snow removal, etc. After this year, he stated, that roadways have gotten considerably worse with potholes, etc. He questioned whether or not there is any way of deeding the property at this time rather than waiting until the whole process goes through so that maintenance and such can be done to the property. Tessier stated that there is not the ability at this time to do so and it cannot be done until after the plat is filed. Golden asked if he had any rights to the property now. Tessier stated “no” there is no maintenance agreement, no easement and the applicant’s boundary line runs up the center of Colonna’s driveway, therefore, the applicant said that they will give him his part of the driveway when the plat is filed as they do not need that part for access. Colonna wished to know if this could be done sooner, but was told that it was not possible until the filing of the plat, at which time he will need to sign.

Tom Golembeski, 66 Mulford Road, Andover, NJ stated that he also spoke with the applicant and wanted to confirm with the Board that following any preliminary approval or final approval he will still have the right to apply for a lot line adjustment from a conservation easement to a lot line adjustment. Hahn stated that provided that the adoption of the ordinance goes through, but, if not, he can always apply for it. Germinario stated that if the lot line adjustment ordinance doesn’t pass, then he could apply for a minor subdivision application.

Christodlous asked Germinario to give summary of the motion to be made for approval from tonight’s meeting. Germinario stated that the motion to be made would be to approve the amended preliminary and final subdivision plan with the changes that have been made since the last meeting with the division of Lot 33 to now being known as separate lots, Lot 33 and Lot 34, and the other changes by Tessier and Stern’s memo update of March 3, 2009. Also to approve “D” variance of Lots 33 and 34 as multi-family residential use, more specifically affordable housing use, which is not a permitted use the S-R Zone.

Motion was made to approve the preliminary and final subdivision by Lensak, second by Howell. In favor: Howell, Huelbig, Lensak, DeVries, Boyce, Christodlous. Opposed: None Abstain: Pattison

**SUSSEX & WARREN (Mulford Road – COAH) Block 117, Lot 33, Preliminary Major Site Plan – Motion was made to carry the application to the April 22, 2009, with no further notice. All in favor: Aye Opposed: None. Motion carried.**

**MINUTES – February 3, 2009. Motion to approve made by Howell, second by Boyce. All in favor: Aye. Opposed: None. Motion carried.**

**VOUCHERS - See Schedule A. A motion was made by Pattison, second by Huelbig to approve the vouchers submitted. All in favor: Aye. Opposed: None. Motion carried.**

**OLD/NEW BUSINESS – Golden asked about the status of the Driveway Ordinance.**

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

**ADJOURNMENT – At 9:57 p.m. motion was made by Lensak, seconded by Howell, to adjourn. All in favor. Carried unanimously.**

Respectfully submitted,

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Stan Christodlous, Chairman

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T. Linda Paolucci, Board Secretary