

December 1, 2009

The regular meeting of the Andover Township Land Use Board was called to order at 7:30 p.m. on Tuesday, December 1, 2009 by the Chairman, Stan Christodlous.

Present: Members CeCe Pattison
 Suzanne Howell
 Gerald Huelbig
 Gail Phoebus, Class III
 Peter Spinney
 Ellsworth Bensley
 Paul Messerschmidt, Alt. No. 2
 Stan Christodlous

Acting Secretary: Maryanne Frodella

Professional: Thomas Germinario, Esq.
 Russell Stern, P.P.
 Joseph Golden, P.E.

Absent: Bob Smith, Class I
 Diana Boyce

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public and read the rules of the act. No one from the public stepped forward.

ROLL CALL

BALLANTINE WOODS – Block 6, Lot 3.02, Block 7, Lots 10, 10.02, 10.03 - Extension of Resolution.

Sue Howell requested to be recused. Joel Kobert, Esq. of Courter, Kobert, Hackettstown, New Jersey stated that he represents the applicant. Kobert explained that a resolution that was approved approximately one year ago stated that the applicant could come back for a one year extensions and that of the entire subdivision of twenty-four lots, five of them have been finals and is requesting an extension of resolution approval for the subsequent lots because of economic times.

Germinario stated that the Board should take into account economic circumstances but also the fact that there have been no change of zoning or design standards, or other health and safety standards that would apply to this development which would weigh against extending the approval as granted that is still consistent with the current zoning. Germinario continued that he would recommend approval of granting the extension for one year and there would be a remaining one year that the applicant could seek an additional extension for it.

Kobert wanted clarification of the length of the extension. Germinario stated that this extension would run to January 18, 2011.

Spinney stated that although perhaps not relevant, he wished to point out the stormwater detention basins are not functioning and wished to have some type of assurance that the performance of those detention basins would be approved.

The applicant, Phil Deacon of Ballantine Woods, was sworn in for testimony. Deacon stated that the State agencies have been to the property and the township engineer and all have found the applicant to be compliant.

Germinario informed Spinney that he directs his inquiry to the township engineer and that this is not an issue that is relevant to the extension request.

Christodlous asked for a motion to approve and memorialize the extension request. Motion was made by Pattison, second by Phoebus. In favor: Pattison, Huelbig, Phoebus, Bensley, Christodlous, Messerschmidt. Opposed: Spinney. Motion carried.

PG&S, LLC, Block 154, Lot 48 – Minor Subdivision & Use Variance – Completeness hearing.

Christodlous stated that the Board's engineer recommends that the application be deemed incomplete in his report.

Christodlous asked for a motion to deem the application incomplete. Motion was made by Huelbig, second by Howell. In favor: Pattison, Howell, Huelbig, Phoebus, Spinney, Bensley, Messerschmidt, Christodlous. Opposed: None. Motion carried.

CAMBRIDGE PAVERS/LIMECREST QUARRY – Block 108, Lot 4.02 – Preliminary Final Site Plan and Variance.

Phoebus recused from this application. Bernd Hefe, Esq. of Lake Hopatcong, stated that he is representing the applicant Cambridge Pavers/Limecrest Quarry.

Germinario wanted counsel to address the issue of the status of the two objectors as interested parties. He continued that Hefe has written a letter dated November 25, 2009 which the Board members are in receipt of. Germinario stated that in Hefe's letter he contends that the two objectors Ronald Krueger, represented by Donna Erim, Esq. and Shawn Moroney and Andrea Riker represented by William Hinkes, Esq., are not legitimate objectors that their only interest in the application is as commercial competitors. He continued that Erim of Wolf & Samson has responded with a letter dated November 30, 2009 on behalf of her client, Ronald Krueger in which she indicates that Mr. Krueger is, in addition to being an owner of a concrete stone and tile company is a resident of Sparta within one mile of the site and has other contacts with the site, etc. which makes it sufficient to qualify him as an interested party under the relevant case law and municipal land use law.

Germinario stated that there is also a letter dated December 1, 2009 addressed to the Land Use Board that states that in the case of his two clients, one of Rolling Hills and one of Sussex Mills, Hinkes states that they drive by and use Limecrest Road daily and, therefore, qualify as interested parties of property in question.

Germinario explained the "interested parties" rule and confirmed that the two objectors qualify as "interested parties". Hefe agreed that the definition of "interested parties" as stated by Germinario, is a very broad definition and that what came to his attention was that the objector Ronald Krueger is the owner of Concrete Stone and Tile and is a direct competitor and that the two objectors represented by Hinkes are employees of Grinnell, also a competitor. Therefore, he wanted to bring to the Board's attention that under the municipal law and the case laws, particularly the *Exxon case*, simply objecting for competitive reasons is not appropriate and direction should be based on legitimate land use rules.

Donna Erim, Esq., of Wolf & Samson, _____ stated that she represents Ronald Krueger and said that she set forth her position in her correspondence which she wished to have marked for evidence and also in that correspondence it cites leading case laws, especially

the *Shop-Rite case Village Supermarkets* and Mr. Krueger even if he were only appearing as a competitor, could have taxpayer standing. However, she continued, in this particular case he has personal interest here and lives within a mile of the site and lives in Sussex Mills which has had issues with respect to the quarry location and for that reason he has sufficient contact to maintain standing in this case.

INTERPRETATION OF SECTION 190-22J – Prohibited uses --[Crushers, asphalt and concrete product plant] of the Land Use Ordinance of Andover Township.

Master Plan Consistency –

Ordinance to Address the Requirements of the Council on Affordable Housing (COAH) Regarding Compliance with the Municipality’s Prior Round and Third Round Affordable Housing Obligations

RESOLUTION

BALLANTINE WOODS – Block 6, Lot 3.02, Block 7, Lots 10, 10.02, 10.03

VOUCHERS – Motion was made by Howell, second by Boyce to approve the vouchers. All in favor: Aye. Opposed. None. Motion carried.

ADJOURNMENT – Motion was made by Huelbig to adjourn, second by Spinney. All in favor: Aye. Opposed. None. Motion carried.

Respectfully submitted,

Stan Christodlous, Chairman

T. Linda Paolucci, Secretary