

LIBERTY TOWNSHIP LAND USE BOARD

Minutes – February 17, 2015

The Liberty Township Land Use Board met for a regular meeting on Tuesday, February 17, 2015 in the Municipal Building 349 Mt. Lake Rd, Great Meadows, and N.J. The meeting was opened by Vice Chair Ray Sosnovik at 7:34 p.m. and it was declared that all aspects of the Open Public Meeting Act had been met by posting notice of this meeting on the bulletin board in the Municipal Building and notifying the Municipal Clerk. Advertisement of notice was placed in the Star-Gazette of Hackettstown and the Courier News of Somerset, NJ.

OATH OF OFFICE: The oath of office was administered by Attorney Schneider to Matt Hawkswell as Alternate 2 – term expires 12/16.

ROLL CALL:

Present: Michael Beyer
Carl Cummins
Dan Grover
Wayne Jarvis*
Richard Schneider, Attorney
Eric Snyder, PP/ZO
Diane Pflugfelder, Acting Secretary

Ray Sosnovik
Matt Hawkswell
John Hansen, Engineer
Kathy Dossena (By Mobile Device)

Absent: Rudy Pasko, Peter Wicki, Eric Tibak, Joanne Ward, and David Schaaf

MINUTES: The Minutes of the January 20, 2015 meeting were approved as written by motion of Mr. Cummins. Mr. Beyer seconded the motion followed by a unanimous roll call.

APPLICATION: *Completeness Review and hearing for an Interpretation of the Zoning Ordinance and, if needed, a Special Use Variance for Block 1, Lot 3. Roes Island, LLC - Applicant*

NOTE: Attorney Schneider stated that Board Member *Wayne Jarvis has recused himself from the application being heard tonight. He further noted that the Board has a quorum (5 members) necessary to hear the Interpretation. If it is determined that a D-Variance is required, the Board would not have a quorum because the two township committee members would have to step down.

Attorney James Rhatican was present to represent the applicant. The original Notice documents were presented and verified. The applicant has two witnesses tonight. The application is for wetlands enhancement on the site and is necessitated because Public Service Electric and Gas has had to move vegetation from its transmission lines in other areas and therefore has to recreate wetlands that have been disturbed. This has been approved by the NJDEP. This site was

previously wetlands and has since been drained to use for agriculture. The applicant proposes to sell plantings and there will be bee keeping operations that will be consistent with agricultural use. The Liberty site is approximately 34 acres of which 11 will be used for this project. Planner Snyder submitted a report and it was noted that the applicant has requested two waivers for purposes of completeness for the Interpretation. Doug Freeze, the applicant's first witness, stated the two waivers requested are: #1- that zoning information be put on the plans; #2 - listing of the property owners within 200 feet. Being that there are no bulk variances required Planner Snyder agreed that these items could be waived. Mr. Cummins asked why the applicant does not have to apply to Warren County Planning Board. Craig Metzger stated that he contacted Warren County and was told that he did not have to file with them as there was no site plan submitted. Attorney Schneider read a letter dated January 7th from Warren County Planning Director, David Dech, which requests that if this Board requires site plan approval then one will be required by County as well. Attorney Schneider stated that the Board could waive the site plan requirement and reserve the right to ask the applicant to make formal application of same to Warren County. Concern was voiced by Planner Snyder over the impact of the ditches on neighboring property owners and that is why he feels a site plan is necessary.

Motion for Waiver Requests: Mr. Cummins made the motion that **for the Interpretation only**, to grant waivers of the plans showing zone requirements, property owners within 200 feet and submission to Warren County Planning Board of the minor site plan. Mr. Grover seconded the motion followed by a unanimous roll call.

The property is owned by Roes Island LLC; Amy S. Green has an interest in Roes Island LLC, and lies partially in Independence Township. Douglas A. Freeze was sworn in by Attorney Schneider and is qualified in environmental sciences and has been involved in wetlands mitigation for the last 20 years. The Board accepted Mr. Freeze as a qualified witness. A colorized version of the Planting Plan, Sheet 4 of 5 last revised November 2014, was submitted into evidence and marked as **Exhibit A1**. Mr. Freeze explained about the ditches and how they would operate noting that they would not affect neighboring properties. The project will be planted with native trees and shrubs. The DEP reviewed this plan and approved it. The vernal pool, which was on the original plan, has been eliminated. The regulated maintenance period for this enhancement project is five (5) years and this could be extended by the DEP. Local farmers will work the remainder of the land. **Exhibit A2** is sheet 3 of 5 entitled "Grading Pla", November 24, 2014, Revision #5. The primary access will be Island Road. A letter from Pinelands Nursery, January 19, 2015, was marked into evidence as **Exhibit A3**. Marked as **Exhibit A4:** The approved (NJ Dept. of Agriculture and Soil Conservation) Certified Soil Erosion Plan. The eight (8) foot fence would come down after five (5) years if the plantings have grown satisfactorily. The applicant will request a variance for the eight (8) foot fence. Mr. Grover asked who handles the bee-keeping and also confirmed that PSEG is paying Amy S Green to develop the property and maintain it. Mr. Cummins noted that if bees are put there and a neighboring farmer uses

insecticides – it could kill the bees. What happens after five (5) years? Mr. Freeze stated that the wetlands are deed restricted

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and can never go back to farmland, which is a DEP requirement. The DEP is out of it after five (5)

years. The owner will then either actively run the property or sell it. Mr. Grover asked about the chemicals that could be used by farmers during the development period and about the ditches. Mr. Beyer questioned maintenance of diseased plantings. Mr. Freeze stated that any erosion or dead plantings, during the five (5) year maintenance period would be repaired by the applicant. The woodlands area (which is over 50% of the property) is maintained for 10 years. This property will have both a Woodlands Management Plan and Farmland Assessment Plan. Mr. Cummins asked for confirmation from the tax assessor that the site can utilize both plans. John Hansen asked if the wetlands boundary will change after the project. Mr. Freeze stated that the project should take two weeks to complete. Mr. Hawkswell questioned backup onto the road from the ditches. Mr. Freeze answered that he did not see that happening. Eric Snyder stated that we now have more information than we had originally. Attorney Schneider stated that he feels the questioning of Mr. Freeze was very comprehensive. Mr. Grover asked Mr. Snyder to explain the code for this zone. Mr. Snyder noted that this provision was put in place because one of Liberty's identifiers is agriculture. This area has a character all of its own and that is why we put special wording for this and labeled it as a "Special Ag Zone". Attorney Schneider read the definition of agriculture. Does this proposal fall into the context of our code – is there sufficient agricultural activity proposed?

As there were no further questions from the Board members for Mr. Freeze, Attorney Schneider opened the meeting for questions from the public (10:00 pm) to Mr. Freeze concerning the Interpretation only. Attorney Rhatican asked if our ordinance requires Notice to the public for a B-Variance as ordinarily the applicants witness would not be answering questions from the public. Wayne Jarvis questioned why Mr. Freeze stated that ditches were not present before 1970 as there are neighbors that can testify to the contrary. Will the applicant protect the ditches so landowners can maintain them and Mr. Freeze answered yes. Mr. Jarvis asked for confirmation that the Deeds would state that there will be maintenance of ditches and agricultural use of the farmlands. Mr. Freeze answered yes. Joel Schneitzer stated that he is a member of the Warren County Agricultural Board. It was further clarified that Mr. Schneitzer is speaking as a resident of Warren County and not as a representative of the WC Ag Board. Mr. Schneitzer asked who the engineer is that the applicant has been dealing with at Soil Conservation and Mr. Freeze noted that it was John Showler. Mr. Schneitzer continued with asking how long will it take for the proposed grasses to become establish? Mr. Freeze noted that the site will be prepared and seeded in its entirety and then the trees planted. Mr. Schneitzer questioned if there has been consideration given to the fact that the fencing will put more deer pressure on the adjoining landowners. Attorney Rhatican noted that the fence is a requirement of the DEP, is temporary, and is permitted by ordinance. Mr. Schneitzer requested that the applicant please review the Ag Retention Act, Section B. As there were no further questions of Mr. Freeze, Acting Chair Sosnovik closed this public portion of the meeting.

Kaynan Hughes, Professional Planner, is witness #2. Attorney Schneider swore in Mr. Hughes who then stated his qualifications. The Board accepted Mr. Hughes as a qualified witness. Zoning ordinance – the way Mr. Hughes views this proposal is that the predominate use is crop farming.

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20 acres of farming will continue on this property. It is not unusual that your ordinance does not permit nor prohibit wetlands mitigation, stated Hughes. Plugging of drainage ditches and planting of trees are not land uses that are affecting offsite draining. The zoning ordinance does not prohibit

this from occurring. Mr. Hughes also noted that wetlands exist throughout this entire area. He continued to compare the definition of agricultural operations to this proposal. Attorney Rhatican discussed the statement of “for profit” within the definition of agricultural use. Matt Hawkswell questioned the plugging of the ditches...why not just plant trees? Mr. Freeze answered that it is an enhancement of the Wetlands functions and requirements for the mitigation. Carl Cummins noted that we are taking from one area and putting in another. Mr. Freeze stated that from a zoning standpoint this is not relevant. Attorney Schneider noted that this is a very unique application and we are dealing in unchartered waters. From a legal perspective noted Schneider, the Board needs to consider that you cannot always zone for every intended use. Eric Snyder noted that the question as he sees it is we are taking the 11 acres out of agriculture and it will never return to that use. Therefore, is what is being established on this site sufficient enough to replace the agricultural use to make it all work? Is this an acceptable substitute or not? The Board can also decide that the use is permitted however a site plan is required. At this point, Mr. Sosnovik opened the meeting up for public questions of Mr. Hughes for Interpretation purposes at 10:34 pm. Wayne Jarvis asked Mr. Hughes to define accessory use and then referred to the DEP letter of September 2014. Joel Schneitzer asked if this site, if all in Liberty, would qualify for farmland assessment and Mr. Hughes stated that the predominate use of the property will be row crop farming. If a change of use would occur, it would have to come back before this Board. Mr. Hughes feels that bee keeping is an agricultural use. As there were no further questions, this portion of the meeting was closed at 10:42 pm. Attorney Rhatican read the USDA definition of specialty crop listed on Page two in Paragraph 2 of the document concerning the intensity of the management of crops.

At this time the meeting was opened for public comment. Joel Schneitzer stated that after five (5) year period, he feels we will lose these 11 acres as agriculture and this project will also degrade the neighboring farmland. As no further comments were heard, this public portion was closed.

Attorney Rhatican made his closing statement by reiterating some earlier statements. He noted that this site is regulated wetlands and there is no change in the use of the property.

Motion on Interpretation Variance: Dan Grover thanked Mr. Freeze and Mr. Hughes for answering all the questions and noted that he understands the value of restoring wetlands. He

does however have enough concern to make the following motion, based on our township code: The applicant will be required to file a minor site plan along with a request for a Special Use Variance and a variance for fence height. Carl Cummins also thanked the applicant's professionals and stated that he will second the motion. Roll call as follows:

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Ayes: Mr. Cummins, Mr. Grover, Mr. Beyer, Mr. Hawkswell, and Acting Chair
Sosnovik

Nays: None recorded.

Abstain: None recorded

Motion carries with five (5) affirmative votes.

Attorney Rhatican asked that the absent members listen to the tape of this meeting. Attorney Schneider noted that we will make every effort to have them listen to the tape rather than repeat the testimony, however repeating the testimony may be quicker.

Attorney Schneider stated that the Notice will be carried to March 17th (no further Notice will be required of the applicant) and the absent Board members will be requested to listen to the tape. A revised plan will be submitted to the Board and also to Warren County.

BILLS: None were presented for payment.

ADJOURNMENT: As there was no further business, Vice Chairman Sosnovik adjourned the meeting at 11:11 p.m.

Respectfully submitted,

Kathy Dossena
Land Use Administrator