

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
JULY 29, 2009**

Meeting called to Order by Mr. Novellino at 7:35 p.m.

Mr. Frost read the adequate notice.

Salute to the Flag.

Roll Call: Present: Curcio, Morelli, Novellino, Bailey, Devine, Conoscenti, Frost and Lambros. Absent: Barthelmes.

MINUTES: Mr. Curcio made a Motion to approve the June 24, 2009 Meeting Minutes and Mr. Morelli offered a second. Roll Call Vote: Curcio, Morelli, Bailey, Devine, Frost and Novellino voted yes.

CARRIED APPLICATON:

Z09-01 SHELLY'S SCHOOL FOR DOGS – Block 57, Lot 33 – Located at Burnt Tavern Road consisting of 56.47 Acres in the BP Zone. Applicant seeks preliminary site plan approval to construct a 25,471, one-story building to operate a facility to include boarding for dogs and cats, pet training school, pet grooming school and pet grooming. Carried from 6-24-09 without any further noticing required.

Attorney Kenneth Pape representing the applicant.

Attorney Gregory Vella read the following evidence into the record:

- A-18 Landscape Plan prepared by Crest Engineering dated June 2009
- A-19 Storm water Management Revisions
- A-20 Site Plan prepared by Crest Engineering dated 5/1/08;last revised 7/2/09
- A-21 Mounted Landscape Plan with permanent fencing and portable fencing
- BOA-4 Letter from OEM Coordinator Kenneth Gann to Ken Pape, Esq. dated 7/27/09

Pursuant to the Board's request, Mr. Pape met with Mr. Kenneth Gann, a representative of the Millstone Office of Emergency Management.

Attorney Vella swore in Kenneth Gann. His responsibility to Millstone is acting coordinator of the Office of Emergency Management (OEM). Mr. Gann is also the Superintendent of the Millstone's Department of Public Works.

Mr. Gann stated that in order to relocate Millstone animals to Mr. Leibowitz' facility in an emergency situation, both Mr. Leibowitz and the Township must be protected. Mr. Gann suggested that an area be created to separate the residents' animals from the animals in his kennel. Mr. Gann explained that once shots were verified, the residents' animals could be integrated with the animals that are at the kennel. Mr. Gann stated that other vets in the town would be involved in this verification procedure. Mr. Gann explained about putting up a fence and temporary corrals.

Attorney Vella marked into evidence Exhibit A-21, Mounted Landscape Plan.

Mr. Pape indicated that the new design for the entry sign had been completed but he did not have it available for the board to review. He asked that the board consider approval of the sign during Final Site Plan approval and the board agreed to do so.

Engineer Peter Strong is still under oath. Referring to Exhibit A-21 he explained that a permanent 6-foot high Jerith fence would surround three sides of the building. Portable fencing would provide a temporary area for animals at the facility.

Mr. Pape indicated that Mr. Leibowitz does not want chain link fence that is why they are using the Jerith fencing. The purpose of the fence is to keep the animals segregated until shots can be verified or until shots can be given.

Mr. Coppola went over the fencing. He does not want to jeopardize the landscaping. He asked if a portable corral spacing could be tightened a bit elsewhere on this site. His comments are about the aesthetics.

Mr. Gann explained that the fencing could be expanded to encompass a 50-foot area. The fencing is not a bulky item and can be easily broken down to lay flat and stored. This would only be used during an emergency situation. Mr. Gann reiterated that this would be for Millstone residents only.

Mr. Leibowitz made a commitment at the previous hearing to cooperate with the OEM. Mr. Gann's main concern is to separate the animals as they come in. This would be worked out with Messrs. Leibowitz, Coppola and Gann.

Mr. Gann explained why wider doors would allow for a better exit if there was an emergency at the School. Two insulated barn- style doors could be installed if board were comfortable with that decision. The board agreed that barn-style doors could be used.

Peter Strong, previously sworn in discussed that the driveway. Mr. Strong explained how the driveway would be designed with double yellow lines down the driveway. Referring to Exhibit A-21, he explained the parking lot configuration. The plan allows for additional shade trees and landscaping. They now have in place the standard 16-foot light stations. Mr. Strong advised that they have increased the landscaping in front and around the detention basin with additional landscaping around the parking lot. The applicant appeared before the Shade Tree Commission with their plan.

Road improvements to the intersection of Burnt Tavern and Rt. 526 are included in the revised plan. For the Intersection, the applicant must go to Monmouth County Planning Board for approval.

The applicant agreed to work with Mrs. Pat Butch regarding the horse trail to be placed in a mutually acceptable location at the site away from the building.

The list of condition for preliminary approval are as follows including but not limited to:

- conservation easement to be in place over woodlands;
- applicant shall provide fire resistant certification for acoustic ceiling (part of Final approval and issuance of building permit);
- installation and maintenance of dry hydrants;
- installation of 18- foot dedication for fire lane around the building; placement of truss construction per the Millstone Township Fire Department;
- installation and approval of fire alarm and location of knox box, removal of overhead doors on arch (at Final) double paned glazed windows to be placed on the actual building plans;
- work with Mr. Goodfriend regarding the sound measures (at Final);
- revise the plans to provide the bridle path through the garden center property through to the State owned area;
- conservation easement and or farming element (at Final);
- deed restrict the remainder of the property from BP use;
- the Site plan commitments at preliminary are carried through to final all the way through to the Developer's Agreement;
- MCPB approval for the intersection configuration;
- restriction against any medical facilities on site;
- no attack dog training

- no other easements granted over the site;
- retention basin for irrigation for farming aspect and fire department use;
- OEM to house Millstone residents' animals;
- no caretaker apartment on site;
- presence of employees 24/7;
- no composting of pet waste;
- compliance with the Engineer's June 12, 2009 report and Planner's report, etc.

Chairman Novellino opened the application to the public at 8:17 p.m. Seeing no public comment on the application, that portion was closed at 8:17 p.m.

The Board discussed the application.

Attorney Vella addressed the COAH issue. The applicant shall be bound by the COAH Ordinance and the statute that is in effect.

Mr. Coppola advised that placing residents in the proximity of the facility is inconsistent with everything that they have done. Mr. Coppola feels that this is not a parcel suited for carving a portion of for affordable housing.

The sign shall be discussed at the time of Final site plan approval.

Mr. Morelli made a Motion to approve as conditioned. Mr. Curcio offered a Second. Roll Call Vote: Morelli, Curcio, Devine, Bailey, Lambros, Frost and Novellino voted yes to grant Preliminary Site Plan approval.

Z09-03 PARAMOUNT MARINAS – Block 54, Lot 1. 14.4 acres located in the RU-P Zone Located near Yellow Meeting House Road. The Board to consider applicant's Application for Soil Removal Permit. Heard in part on 5-27-09. Carried to 6-24-09 without any further noticing. Applicant not prepared to continue, application carried to 7-29-09 with informal noticing to neighboring property owners.

Attorney Vella Entered into evidence:

BOA-2 Township Engineer's Report dated 7/22/09

Paul Schneider appeared representing the applicant.

Chairman Novellino provided a brief overview of the history of this applicant and the property.

Lynn Mitchell of the NJDEP is sworn in by Attorney Vella. Ms. Mitchell works for the NJDEP. She was the case manager for this application at its conclusion.

The Board advised that representations were made to this Board which necessitated that the Board request Ms. Mitchell to appear. Specifically, that there was 55,000 to 58,000 cubic yards of contaminated soil removed from Upper Freehold, and placed in a "borrow pit" in Millstone Township and then encapsulated. Millstone Township was never notified of this remediation plan until the board engineer questioned the appearance of encapsulated soil on an updated site plan.

While the bottom of the pit containing the contaminated soil has to be over 5 feet above seasonal high water level, the applicant did not retain any soil logs and determined the seasonal high water table by visual inspection.

The applicant could only approximate several items including the depth of the "borrow pit" and the amount of soil excavated and encapsulated. This information was presented to the Board at the last meeting and the applicant indicated that people who were involved in this project are no longer employed by the applicant.

Part of the remedial action plan report included a letter stating that Ian Borden visually reviewed the pit and found the pit to be no less than five feet from the high water mark. The applicant stated that the NJDEP approved the remediation plan by e-mails.

The Board of Adjustment was not involved in any aspect of review, approval, or monitoring of this remediation and was unaware the remediation was to occur until after the fact. The Board wants to know how the oversight of this project was done and what information was received. In order for the Board to render a proper decision, they wanted to know that oversight of this project was done adequately. Furthermore, the board expressed concern that the remediation may have created an environmental hazard as the property is adjacent to the Doctors Creek.

Ms. Mitchell advised that her job is overseeing the clean-up of contaminated sites and she deals with certain remediations. She advised that the original case manager was Michael Tompkins who no longer lives in New Jersey. Mr. Tompkins went over the case with her when she took it over. She explained the DEP approval procedure to the Board.

The original plan was to blend the soil then to encapsulate it under the road then to bury it in a pit on the site. She explained how they blend soil and why they blend it. Mr. Curcio asked where the information as to the volume of containments comes from. He advised that we had asked for a copy of this report but have not been provided this information.

Ms. Mitchell advised that if the contaminants come from the same property, DEP considers it one farm regardless if a portion of it is contained in another town. The applicant must make sure that the contaminated soil is five feet from the water table. When asked what would she look at to identify the water table. She stated that she is not a geologist and cannot tell where the high water table is. It can be done visually and certified by the applicant. The Board asked what qualifies someone to make this certification. Ms. Mitchell stated that certain information is required to be submitted, but at the time this report was submitted there was no required qualifications for the person submitting the report.

Mr. Frost indicated he has a problem with what the true responsibilities of the NJDEP appear to be. Ms. Mitchell advised that this case was part of a voluntary clean-up program that is no longer in operation. The NJDEP did not go out and force this cleanup to happen, the applicant came to them voluntarily. Mr. Frost asked how she assessed the competency of the people giving you the information. Does anyone from the NJDEP go on site to verify? Ms. Mitchell indicated that she did not go out to this site. The competency of the person submitting the report is not checked by the DEP. The person certifies that what they have submitted to the NJDEP was true, accurate and complete. If the NJDEP finds out they are lying then they would go after them.

Attorney Vella asked Ms. Mitchell if the only analytical reference of the seasonal high water table is contained in a letter from the professionals at Paramount Homes. Ms. Mitchell indicated that the letter was the only information she has seen. Attorney Vella stated that in the deed notice there is no reference to high water tables.

Attorney Vella asked if the NJDEP did not require, in this case, any specific modeling certified report or depth analysis as to how deep the pit is or specific plans over the 3.2 acres.

Chairman Novellino asked how did the applicant obtain an NFA letter and what does it mean?

Ms. Mitchell did not remember the specifics of this application. She advised that typically, she would make sure that the soil samples would be taken and that the cap had a sufficient cover. The NFA is a restricted use NFA. Ms. Mitchell advised that she relies upon the data that is provided from the applicant's consultant. She was looking at whatever the applicant submitted to the NJDEP and then she would make sure the deed notice contains the proper information in accordance with the technical requirements.

Attorney Vella asked who determines that noticing went out and what are the public notice requirements. Ms. Mitchell advised the applicant to contact the Township, but indicated that there was no legal requirement for them to do so. She indicated that since Millstone Township was not going to take ownership of the land, there was no requirement to notify the township. A hand-written note in her file reflects that the applicant was asked by Ms. Mitchell to contact Millstone Township. The applicant's consultant e-mailed her back advising her that he had contacted Millstone Township.

Greg Vella entered the following exhibits into the record and read them into the record:

BOA-3 E-mail from James Lang dated 9/6/2006 with hand written note to check with Millstone Township

BOA-4 E-mail from James Lang dated 2/1/07 indicating Millstone Township was informed of the new plan.

Mr. Mitchell advised that voluntary clean-up projects must comply with all regulations and laws. She advised there was no time frame on when this had to happen.

The application was opened to the public to enable questioning of Ms. Mitchell.

Attorney Vella swore in Charles Maraldo of Millstone Township. Mr. Maraldo stated that in the deed notice it states that the contamination must be placed greater than five feet from the seasonal high water table.

Ms. Mitchell stated that the requirement is that contaminated soil must be five feet from the seasonal high water table and contamination.

Attorney Vella swore in Kevin O'Rourke, 15 Fern Drive, Millstone. He asked if the applicants are legally responsible to notify anyone around that there was contaminated soil. Ms. Mitchell advised that in January 2007, there was no requirement for public notice required.

Attorney Vella swore in William Baker, 11 Fern Drive, Millstone. As Mr. Baker had no direct questions for Ms. Mitchell, he was advised that there would be additional public portions opened for questions of other witnesses or testimony.

Seeing no further public comment, Chairman Novellino closed the public portion at 9:47 p.m.

Attorney Schneider advised that in order to receive an NFA from the NJDEP you must comply with their requirements.

Attorney Vella swore in Ian Borden, an environmental scientist with Professional Design Services. He had received his BS from Rutgers. Mr. Borden advised that no logs of the soil test pits were prepared. He did not observe the digging of the pits and he does not know the exact location on the site plan. There were witnesses to the excavation of the pits but no records were kept. He explained that he determined the seasonal high water table by observing the soil characteristics. The "borrow pit" used to contain the contaminated soil varied in depth and no as-built survey of the pit was prepared. The deepest point was estimated at 11 feet. No soil records were kept because it was not a requirement to do so. No one kept any records of depth. He advised the Board that PDS was not the only consultant and that he worked directly for the applicant.

Attorney Vella asked if he had observed the depth of the pit. Mr. Borden indicated that he does not know the exact depth or the exact seasonal high water level elevation. He asked how Mr. Borden could come to the conclusion and certify to the NJDEP that the high seasonal water table is no less than 5 feet. Mr. Borden was asked if it is normal to perform 3 test pits on a 3 ½ acre site. He stated that there is no standard for the number of pits required.

The Board inquired if there were any records showing seasonable high water table on the property. Mr. Borden advised that normally, he would perform soil logs but the applicant did not ask for them. He did not know if there was a remedial action report. He knew that they were bringing in contaminated soil. Brilliant Lewis was performing the record keeping.

Mr. Borden testified that he did not provide his findings in writing. At the site, Mr. Borden verbally advised a Paramount employee of his visual findings. The board noted that a letter from Mr. Borden was submitted to the NJDEP as part of the remedial action plan report.

The board discussed the possibility of digging additional test pits. At the previous hearing the applicant had agreed to work with the Township engineer to dig additional pits to determine the seasonal high water table in the area of the encapsulated soil. However, the pits were never excavated.

Mr. Borden indicated that additional test pits may not be able to indicate the seasonal high water table within the encapsulated soil area. Engineer Shafai indicated he had sent the applicant a map with four proposed test pit areas. Mr. Schneider advised Mr. Shafai that the applicant does not have to perform any testing. The Township would need the applicant's permission to test and Mr. Schneider said no testing is to be done.

This witness's testimony was open to the public as to 10:30 p.m.

Charles Maraldo, 17 Fern Drive who was previously sworn in came forward. He questioned Mr. Borden and asked if he was familiar with the contaminated soil that was brought into the pit and the location of the test pits. He asked about the highest and lowest points of the pit. Mr. Borden indicated the pit was irregular and it was impossible to determine the bottom. Mr. Maraldo suggested that variations in the soil characteristics or in the level of contaminants in the soil could indicate the bottom of the pit if additional test pits were dug.

Seeing no further comments or questions, Chairman Novellino closed the public portion at 10:42 p.m.

Mr. Schneider presented his summation. He felt that the Boards' problem is with the NJDEP approval process. Mr. Frost clarified that it is the Board's obligation to do what is best for the residents of the Township and he did not appreciate the suggestion that the Board has ulterior motives. Mr. Novellino indicated that in addition to the serious environmental concerns there are significant planning issues that the board needs to consider. Specifically, 3 plus acres of farmland in Millstone has been rendered unusable for farming and a residential lot in the Rural preservation zone with a significant portion of it containing contaminated soil has been created. This goes against the goals of the township's master plan.

Mr. Curcio stated that the Board has made every attempt to get all of the data possible in this matter. He advised that for two months the Board asked for this information. The applicants' witnesses did not keep accurate records which would tell the Board if the encapsulated contaminants are within five feet of the seasonal high water table. He stated that perhaps more test pits could reveal the answer but the applicant refuses to perform the tests and will not allow the Township to perform the tests.

The Board discussed the application. Remediation may have been done in a manner that does not protect the environment. The applicant's testimony is that they put the contaminated soil in Millstone because they wanted to dump it on one lot for their convenience. Documentation on the "borrow pit" depth and determination of the seasonal high water table is not anywhere to be found. Furthermore, anyone working for the applicant who was involved in the remediation directly is gone. The lack of documentation led to witnesses needing to be subpoenaed to testify.

Mr. Lambros is able to vote on this application and has signed a certification to that effect.

The Board questioned the adequate separation of the borrow pit from the wetlands. This zone has been depleted from acreage due to the importation of contaminated soil.

There are concerns as to the pits location in proximity to the wetlands and the Doctor's Creek.

The Board had concerns as to the lax manner of NJDEP approving a plan that includes clean soil being taken out of Millstone and contaminated soil brought into Millstone and encapsulated. Additionally, oversight by NJDEP was minimal in that it only included tracking of paperwork filed by the applicants consultants. The board was also very concerned that no one from Millstone was given the opportunity to provide any approval or oversight of the remediation as the township was never notified of the plan.

Mr. Lambros made a Motion to Deny the application and Mr. Curcio offered a second. Roll call Vote: Lambros, Curcio, Devine, Bailey, Morelli, Conoscenti and Novellino voted yes to the Motion.

The bulk variance application will be heard on August 26, 2009 beginning at 7:30 p.m. at this location. An extension of time was granted through and including August 31, 2009. No further noticing is necessary.

At 11:15 p.m., the meeting adjourned by Motion of Mr. Conoscenti and a Second offered by Mr. Curcio and by unanimous vote.

Respectfully submitted,

Pamela D'Andrea