

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD
REGULAR MEETING HELD AUGUST 21, 2019**

Vice Chairman D'Emidio called the meeting to order at 7:30 p.m. and asked for roll call. Upon roll call:

ROLL CALL

PRESENT: Mayor Warren Gisser, Mr. Monaghan, Mr. D'Emidio, Ms. DeMeo, Mr. Johnson, Mr. Perri, Mr. Mayer, Mr. Maglione

ABSENT: Chairman Giordano

Others present: Mr. Edward Buzak, Esq., Attorney, Mr. Denis Keenan, Engineer, Dr. Jack Szczepanski, Environmentalist, Ms. Nicole Venezia, Planner

SALUTE THE FLAG

ADEQUATE NOTICE of this meeting of the Mendham Township Planning Board was given as follows: Notice was sent to the Daily Record and the Observer Tribune on January 10, 2019 and Notice was filed with the Township Clerk on January 10, 2019

This meeting is a quasi-judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Board may legally consider in reaching a decision and decorum and civility appropriate to a quasi-judicial hearing will be maintained at all time.

MINUTES

A motion was made to approve the June 19, 2019 minutes, and it was seconded. All agreed.

APPLICATION – PB 19-02

Pitney Farm Development, LLC
Ballantine Road
Block 131.01, Lots 1.02 & 1.03
Major Preliminary and Final Subdivision

Vice Chairman D'Emidio recused himself from the meeting at 7:33 pm since he is a neighbor of the subject property. He handed over the gavel to Mayor Gisser, who was designated by protocol, to continue to conduct the meeting.

Mayor Gisser clarified that pursuant to Planning Board rules any questions the public may wish to pose for the witnesses or any general questions as to the testimony should be held until the conclusion of the testimony of the witnesses.

Mr. Dominique Cerminaro entered an appearance as Counsel on behalf of Pitney Farm Development, LLC. in connection with a Preliminary and Major Subdivision application for Block 131.01, Lots 1.02 & 1.03. He stated that Mr. Anatol Siemienczuk is the principle of the LLC along with being the builder and that Mr. Siemienczuk is proposing to subdivide the two current lots into a total of five lots, one of which would be a flag lot.

Mr. Cerminaro continued to say that several bulk variances are required for most of the proposed lots and particularly on the one flag lot. There is also a request for various waivers

some of which were discussed that TRC meeting. Mr. Cerminaro stated that his first witness is Mr. Siemienczuk who was sworn in by Mr. Buzak. To allow for a voir dire by the Board and persons in attendance, Mr. Anatol Siemienczuk of 524 Union Avenue, Bridgewater, NJ 08807 stated that he has been constructing residential and commercial properties for over 20 years in many different towns, including Chester. The range in size of the houses that he has built is anywhere from 2,500 square feet to about 6,000 square feet and with a price point of \$500,000 - \$1.5 million. Mr. Siemienczuk went on to say that the houses proposed on Pitney Farm will be very similar in character and size to the houses in Mountainview development.

Mr. Cerminaro called his next witness, Mr. Christian Kastrud, engineer for the applicant. Mr. Buzak swore in Mr. Kastrud who stated his business address as 1952 Rt. 22E, Bound Brook, New Jersey. To allow for a voir dire by the Board, Mr. Kastrud stated that he holds a Bachelor of Science in civil engineering with 12 credits towards a Masters Degree in water resources engineering from Rutgers University. He is a licensed professional engineer in the State of New Jersey and Pennsylvania and has represented municipalities for Warren Township in Somerset County, Mansfield Township in Warren County along with being the conflict engineer in Greenbrook Township, Somerset County, Franklin Township, Hunterdon County, and Bedminster. Mr. Kastrud went on to say that he has been involved with major subdivisions, site plans, and grading plans for Boards of Adjustment and Planning Boards, and he stated that he has appeared before the Mendham Township Board of Adjustment in the past. Upon receiving no challenges, Mayor Gisser stated that the Board accepted Mr. Kastrud as a professional engineer. There was no one from the public who questioned Mr. Kastrud's qualifications as an expert witness.

Mr. Kastrud stated that he will mark his Exhibits A-1 – A8 with an original date of June 6, 2019, revised through July 26, 2019 and that he will mark each exhibit as such when presented. He stated that these are the same subdivision plans that were submitted to the Board. He also presented a colorized rendering of Sheet 3 of the 8 with today's date of August 21, 2019 (Sheet 1 of 1) and whereby some landscaping was added to this colorized rendering. This was marked as Exhibit A-9.

Mr. Kastrud stated that the subject property is a remnant of Pitney Farm and that through the decades some of the property was sold for residential subdivision purposes with the remaining area left for the farm and its accessory structures. He went on to say that a few years ago it was subdivided by the Township into three lots, Lot 1.01, 1.02, 1.03 until a fire occurred on the main house and subsequently Lots 1.02 and 1.03 were auctioned off with Mr. Siemienczuk being the winning bidder. Mr. Kastrud referred to the cover page and stated that the property is located close to the border of Mendham Borough with Cold Hill Road to the west, Shelton Road to the north and Ballantine Road to the east and south. The property is bordered by Lot 1.01 and Lot 6, 7, 8, 9, and 10 and a portion of Lot 11 in Mountain View. Lot 1.02 is currently a landlocked piece located between Lot 1.01 and Lot 1.03, and Lot 1.03 has access through approximately an 80-foot piece down to Ballantine Road, where the development will connect for vehicular traffic and all the utilities.

Mr. Kastrud referred to Sheet 2, which is the existing conditions and demolition plan and also shows the number of trees that will be removed along with steep slopes in a band located on Lot 1.03. He clarified that the steep slopes are not really very steep even though it is located in the red zone of 25% and up and that they are really only a 1-foot vertical for 3 feet of horizontal. Mr. Kastrud went on to say that the access for the cul-de-sac will be off of Ballantine Road and that it is necessary to disturb this steep slope band. Sheet 2 also provides the existing utilities on Ballantine Road, which includes water, gas, cable, telephone, and electric with storm sewers

in the street. There is no sanitary sewer system since the lots will be served by individual subsurface septic systems.

Mr. Kastrud referred to Sheet 3, which indicates a 5-lot subdivision with a 400-foot cul-de-sac running off of Ballantine Road and terminating in the cul-de-sac. He stated that the lot line for Lot 1.02 was rearranged, which then became Lot 1.06. This lot is at the end of the cul-de-sac with access from the cul-de-sac through an easement across both Lot 1.05 and Lot 1.07. A footnote in the ordinance allowed for a design change whereby the lot frontage could be reduced to 75% of the required lot frontage on curves, which resulted in a more pleasing geometry (layout) with all the lots now fronting on the cul-de-sac and eliminating the need for the variance across the two other lots. All five lots would face in an enclave-type arrangement on the cul-de-sac. Mr. Kastrud stated that he would like to present the exhibit illustrating this design change, which was not included in the plans submitted to the Board. He stated that he would still like to continue with his testimony on the plans that have been submitted and that the design change is not overly substantial. All of the testimony offered will apply to the new design layout as well. He went on to say that the cul-de-sac was extended an additional 25 feet to the west. Mr. Kastrud distributed the exhibit to the Board members, which was marked as Exhibit A-10 and stated that the exhibit is called Concept A with yesterday's date of August 20, 2019.

Mayor Gisser clarified with Mr. Kastrud that this design change on the exhibit being distributed addresses the flag lot, which now creates enough frontage to satisfy the ordinance on a curve. Mr. Keenan stated that he did see a copy of the design change sent earlier today but has not had much of an opportunity to review it.

Mr. Kastrud confirmed that the design change eliminates any variances associated with the flag lot but does not eliminate waivers necessary for access through the steep slope areas. Mr. Buzak clarified for the Board, professionals and the public that there is an application that has been reviewed and noticed for multiple variances, many of which affected the flag lot. The Board has now been presented with Exhibit A-10, and Mr. Buzak stated that he was aware of the design change from Mr. Cerminaro. He went on to say that the notice that was given was based upon the original plans A-1 – A-8 and that this is what was available to the public for their review at least ten days prior to the hearing. The question becomes whether this is a substantial or insubstantial change and whether it is fair for the Board and public to now discuss a design change that the Township engineer has not really had the opportunity to review and comment upon. The notice issue is a risk factor for the applicant since any actions that the Board may take can be challenged for insufficient notice since the plans with the one revised lot were not in the Township's possession prior to the ten days. This can become a potential issue. On the other hand, Mr. Buzak went on to say that the revised plan eliminates the flag lot variance so that to a large extent the applicant has asked for something that they are now withdrawing with a revised plan. He opined that one way to proceed is to continue with the hearing as if the plans previously submitted to the Board members were the only plans before the Board since the EIS and engineering was based upon this plan. This way all the testimony would be complete. If Counsel is then willing to take a risk, then the applicant's engineer can then focus solely on the design change and compare what that change does to his prior testimony. This may make it a little easier for the Board to assess the impact of the change with any reports that the professionals would need to produce as a result. The meeting would then be ultimately carried.

Mayor Gisser referred to the professional reports and that most of the issues are at a macro level so these issues need to be addressed and answered irrespective of whether it is the original plan or a revised plan. Mr. Kastrud clarified again that the flag lot went through many iterations and that finally a solution was reached that satisfied all the bulk requirements of the

ordinance; however, unfortunately, the solution was reached after the plans were submitted for this hearing. He went on to say that regardless of which plan is chosen, the main difference is whether there will be a lot that has an access easement across two other lots or a conforming subdivision with respect to all of the bulk requirements.

Mr. Cerminaro stated that Mr. Buzak's suggestion from a legal standpoint makes great sense. If the application proceeds with the current plan and application as submitted, the testimony would address this application as submitted but that the Board would also be presented with what would occur should the Board have any interest in the design change. He opined that this may be more beneficial since it could accomplish both goals.

Mr. Buzak stated that Mr. Maglione raised an interesting question of whether there are two plans before the Board and whether the applicant is asking the Board to choose the preferred plan or whether the applicant is choosing the revised design change. Had the application been carried to the September meeting, which would have allowed more time for proper noticing etc., Mr. Buzak asked if the applicant would have presented the revised plans, which would include the design change that was passed out (Exhibit A-10) instead of the current plans before the Board dated 7/26/19. Mr. Kastrud responded that the revised plans with the design change would have been presented. Mr. Cerminaro agreed with this also and opined that this is an application that everyone would like to see commence. So by giving the Board the ability to suggest that the revised plans are viewed more favorably, then the applicant may agree with the Board that it is a better plan and that this would be accomplished at the hearing. Mr. Buzak opined that the applicant in fairness to the Board must make a choice on what plan they are going forward with since the Board should not be the arbiter of two different plans presented.

Mr. Mayer opined that the application itself is incomplete and should not be heard and that he as a Board member would be forced to process everything that is different along with every report associated with the application. If the developer would like to present the current plan at this meeting, then the Board would obtain a good background on what the concerns may be. The applicant would then return to the Board with the revised plans by the next meeting with everything that needs to be addressed. Mr. Buzak agreed that this is certainly an alternate way to do this since it is not unusual to have an application come before a Board whereby a Board will hear an application, make a variety of suggestions and then the applicant concur with many of those suggestions that may involve retooling of the plans before returning to the Board with a revised set of plans. He went on to say that based on the fact that Mr. Keenan has not even reviewed the revised plans for his evaluation that the application would never be approved as submitted anyway since revised engineering reports would need to be submitted on the revised plans.

Mayor Gisser suggested that the Board proceed with the presentation as submitted but not dwell on the issues related to the flag lot since the Board now has a preview of what the solution to that issue would be; however, the macro issues remain the same with the professionals in the room to review this at this hearing. As these macro issues are being heard, the applicant can consider what was discussed at this hearing on these issues and incorporate that into the alternate plan and then convene at a subsequent meeting incorporating all of the necessary revisions, including the flag lot issue.

There was further discussion amongst the Board members regarding whether it would be beneficial or not to hear testimony on the current plan at this hearing regardless of the revised plan (Concept A) or even without the revised plan. It was generally agreed that there should only be one plan considered at the hearing.

Mr. Buzak concluded that if the application is heard at this hearing, it should be based upon the plans that are currently in front of the Board without Exhibit A-10. If the applicant wishes to go forward with the revised plan, which is the preferred plan from their perspective, then in fairness to the professionals, those revised plans should be submitted, reviewed, and reports generated by the professionals as a result of these revised plans. He went on to say that a month may be lost in this process, but in fairness to the public and everyone involved, one subdivision plan going forward should be heard and that the application should be carried to the next meeting. Also, the applicant should re-notice since the notice is going to be different. However, if the applicant wishes to go forward with the current plan then they should do so without the revised design change.

Mr. Cerminaro requested a short recess with his client, which the Mayor granted. Ms. Foley went off the record at 8:27 pm.

Ms. Foley went back on the record at 8:41 pm.

Mr. Cerminaro stated that he had an opportunity to confer with his client and his professionals and that he is requesting with the Board's permission that the application be adjourned to the October 16, 2019 meeting in order to allow for a plan that will include the revised design change. This would be the one and only plan to be heard by the Board and would also allow the professionals to review the plan and generate their reports after their evaluation of such plan. Mr. Mayer stated that the professionals did prepare reports that had a lot of good comments in them and would appreciate if the applicant gave those comments fair attention so that a lot of time would not be spent on some of these comments that were already made and that could be incorporated into the revised design plan.

Mr. Cerminaro stated that he will re-notice for the October 16, 2019 meeting. Notices would also need to be re-sent to residents on the 200-foot list.

Mr. Buzak clarified that any comments made by the public are general comments and will not be part of the record or hearing for this application even though it will part of the minutes. If those same comments apply to the revised plans, then the comments would need to be repeated.

Mayor Gisser entertained a motion to open the meeting to the public. A motion was made, and it was seconded. All agreed.

Mr. Eric Svenson of 18 Ballantine Road approached the microphone. He stated that he is very pleased to see how this application is proceeding and opined that this could be a very nice development and an enhancement to the area. He went on to say that that the adjacent development where he lives (Mountainview Development) is part of a Pitney Farm Homeowners Association and that in the Association there is a stormwater management system, whereby the water in the catch basins on the street ultimately discharge into a detention basin, which is managed by the Pitney Farm Homeowner's Association. This then ultimately discharges into the ground water. He would like the developer to be aware that the new development will be discharging onto Ballantine Road but that the plan is to use the detention basin of the Pitney Farm Homeowner's Association. He opined that there needs to be some way of addressing this between the developer and the Homeowner's Association as a result of using this detention basin. Mr. Svenson went on to say that he is a retired engineer and was at one time Vice President of PSE&G Environmental Health & Safety and that he has many concerns about pollution. He stated that Pitney Farm most likely contains residual fertilizers and materials from the past that have polluted the soil. If the stormwater is discharged off the site and ultimately into the detention basin, he questions the liability to the Homeowner's Association as a result of

residual contaminants in this stormwater discharge. He stated that it may be minimal contamination; however, it can be significant with what type of liabilities could incur even though most the residents in Mountainview have catastrophic liabilities riders on their Homeowner's policies. It is worrisome what the consequences could be as a result of soil contamination being discharged into the detention basin even though it may be slim. Mr. Svenson opined that the Township, the developer, and the Homeowner's Association must come to some arrangement if indeed that detention basin was to be used in the ultimate stormwater management system. The deriving benefits must be addressed along with some way of addressing potential future liabilities. Also, since the development is almost an extension of the Pitney Homeowner's Association, then perhaps the new development and their Homeowner's Association should be part of the Pitney Farm Homeowner's Association since the access to the development is off of Ballantine and adjacent to Mountainview.

Mr. Peter Dumovic of 3 Shelton Road approached the microphone. He stated that he is also a neighbor of the potential development. He stated that he applauds the builder in terms of the work he has accomplished in such a short period of time with little disturbance to the neighbors. Mr. Dumovic went on to say that he has no issues with the potential subdivision and opined that it will be an asset to the community overall, including the immediate neighborhood. He stated that the plan sites five conceptual dwellings and asked whether the applicant can expound a little more on the size, price etc. of the dwellings when he returns for the October meeting. Mr. Dumovic also requested if the applicant can also discuss in October the timeframe for the commencement of the development (should it be approved) along with where the access road or roads would be.

Mr. Tasio Konidaris of 6 Ballantine Road approached the microphone. He stated that he would like to echo what Mr. Svenson and Mr. Dumovic said previously. He is in favor of the development and is pleased to see how quickly the developer is moving in cleaning up the entire area, especially with so little disturbance to the neighborhood. Mr. Konidaris went on to say that because the elevation is slightly higher on this property that when cars come off of Ballantine the car lights may shine into the current residential homes in Mountain View. This was apparent with the old Pitney property. He requested that the developer consider vegetation on the Ballantine Road side that would help conceal the lights that would be shining into the homes.

Mayor Gisser entertained a motion to close the meeting to the public. A motion was made, and it was seconded. All agreed,

Mayor Gisser entertained a motion to adjourn the meeting at 8:41 pm. A motion was made, and it was seconded. All agreed.

Respectively Submitted,

Beth Foley
Planning Board Secretary