

Unofficial Minutes

Township of Pilesgrove January 20, 2021 Minutes

This meeting was held virtually on GoToMeeting.

The Chair called the meeting to order at 7:00 p.m. He announced that the South Jersey Times and the Elmer Times were properly noticed and agenda/notices were published on the Township bulletin board and website. All of the above was done in accordance with the New Jersey Sunshine Law and the Governor’s Executive Order.

Members stood for the Pledge of Allegiance.

Roll Call

Members:

- Jeff String, Chair
- George Brooks -- absent
- Joe Crevino
- Russell Davis
- Mark Desiato
- Jeff Dobbs
- Milton Eachus
- William Miller
- Craig Lewis

- Alternate #1 Matt Hitchner
- Alternate #2 Joe Blandino
- Alternate #3 Mark Valente
- Alternate #4 Ruth Peters

The Chair seated Mr. Hitchner for Mr. Brooks. The Solicitor swore in the Board professionals.

Motion to approve minutes from December 16, 2021 (Eachus/Desiato), all ayes on roll call.

Resolutions

Res. # 2021-006 John and Judy Williams, memorializing approval of bulk variance, Block 24, Lot 3.07. *Motion to approve (Eachus/Dobbs), all ayes on roll call.*

Res. # 20212-007 Trim Factory, memorializing approval of site plan, Block 80, Lot 2.03. *Motion to approve (Eachus/Dobbs), all ayes on roll call.*

The Solicitor said the Resolution for 843 Rt. 40 LLC is off the agenda.

Completeness Determination

2021-01 Tractor Supply, minor site plan and use variance, Block 65, Lot 3

Mr. Crevino and Mr. Lewis stepped down. The Chair seated Mr. Valente for Mr. Crevino and Mr. Blandino for Mr. Lewis.

Attorney Laura D'Alessandro introduced herself. The Engineer reviewed his report and described the property, which currently contains the Tractor Supply Store with outdoor display area and parking. He said the proposal is to sell propane from a 1000-gallon tank, properly protected. He said propane sale to customers is not a permitted use. The Engineer said he has no objections for the purposes of completeness.

Motion to deem complete (Valente/Eachus), all ayes on roll call with Lewis and Crevino having stepped down and Valente and Blandino voting.

2021-02 John Esh, bulk variance, Block 79, Lot 16

The Engineer described the property of 6.6 acres with residential dwelling, barn, garage and various outside accessories in the AR district. The proposal is to construct a new dwelling to the rear of the existing dwelling, which will be demolished, with a 50 foot setback rather than the required 75 foot required. The Engineer said he has no objection to the waivers requested from wetland buffers and the NJDEP's LOI. Proof of taxes paid will have to be presented prior to the public hearing for completeness. He recommended the application be deemed complete.

Motion to deem complete (Crevino/Eachus), all ayes on roll call.

Public Hearings, New and Continued

2020-016 Dennis and Becky Kelly, bulk variance, Block 24, Lot 3.07

Mr. Davis stepped down.

Simon Darlington of Darlington Designs, the contractor representing the Kelly's, was sworn in. He said the applicant is requesting a variance for impervious coverage to add a swimming pool, patio, pool decking and walkway, a concrete pad for basketball and other improvements. Mr. Darlington said the Township's definition of impervious coverage includes a stone driveway, which takes the property over the allowable per cent, as it equals 4 per cent of the current 9.29 per cent. The changes will increase impervious coverage to 14.63 per cent.

Motion to open to public (Desiato/Dobbs), all ayes on voice vote. There was no comment.

Motion to close to the public (Crevino/Dobbs) all ayes on voice vote.

Motion to approve request for a bulk variance (Miller/Desiato), with a majority of ayes on roll call, with Davis not voting and Eachus voting no.

2020-019 T. Tucci, bulk variance, Block 11 Lot 7.06

The Solicitor swore in Mr. Tucci.

Mr. Tucci said he wants to build a pole barn behind his current residence, but the size exceeds the cap because it is 1400 + square feet. Other than that size, he said the site meets all other requirements. He will use the building to store two boats, a tractor, implements, and personal items. It is approximately 17 feet high at the pitch of the roof. The Engineer said regardless of whether it is considered a shed or garage, it exceeds the allowable size and still requires a variance. Mr. Tucci said his property is buffered by thick woods and a creek.

Motion to open the hearing to the public (Crevino/Desiato), all ayes on voice vote. There was no comment. Motion to close to the public (Crevino/Lewis), all ayes on voice vote.

Motion to approve the bulk variance (Crevino/Desiato), all ayes on roll call.

2020-011 Pilesgrove Solar (Nichomus Run Solar Farm) Use/Conditional Use Variance, Block 60, Lots 3, 4, 4.01, 5, 8, and 9, Block 61 Lots 3, 4, 5.

Mr. Crevino and Mr. Lewis stepped down. The Chair seated Mr. Hitchner for Mr. Brooks. The Solicitor noted eight members are eligible to vote.

Keith Davis, attorney for the Pilesgrove Solar LLC (Nichomus Run Solar Farm) application described the solar energy facility/ sheep farming/egg production operation. He said there has been considerable testimony from his professional witnesses and those in opposition. Davis said they agreed to allow all counsel to present a summary of what the law is. Davis said his applicant did so and counsel for objectors did the same, and he wants it in the record. He referenced a Nov. 6, 2021 letter citing certain website printouts to be marked exhibit A10, not A9. He said the applicant was asked to provide information on determining fiscal impacts, and that was updated from Nov. 5 and shows no negative fiscal impact -- and that should be included in the record as well. He said additional witnesses are on-line and available for questions. He asked if all eight members present were at all previous hearings or listened to tapes and signed certifications. He was advised all eight had been present.

Jeffrey Baron appeared as opposing attorney and introduced Planner Barbara Wooley Dillon, who was sworn in. He presented her credentials as a professional planner and her review of pertinent documents. Ms. Wooley Dillon described the project as a massive solar facility that

nearly rises to the status of an industrial facility, and it does not meet the definition of a utility, in her opinion. She agrees that the promotion of renewable energy resources is inherently beneficial, and she discussed the definition. She said she finds it unusual that the Applicant fluctuates in how it describes the operation of the solar and agricultural uses. The Township's land use ordinance regarding solar facilities was read. In her opinion, she said there is more than one principal use on the property; she provided an opinion on restrictions to certain areas. Of the 838 acres in AR2 zone, the project would take up 20 per cent of the entire AR2 district and be in conflict with the Township's master plan for preservation of AR districts. She discussed the Township's stated policies regarding agriculture, and she said solar facilities are not farming and can have detrimental impacts. She said stand-alone facilities do not provide employment etc. She referenced the Township's Master Plan of 2011. In discussing positive and negative criteria, she said preservation of farmland is a critical mission of the Township. Criteria for measuring negative criteria was discussed. She restated that the proposal is almost tantamount to an industrial district in and of itself, if designated as such. She reviewed the Township's zoning map. She said the proposed solar operation would be nearly half of the AR2 district in this portion of the township.

Mr. Davis objected to discussion of a case which he deemed not relevant to Pilesgrove Township. Mr. Baron said it's a decision in the same county, in a township close to Pilesgrove, a project similar in nature, and a decision that remains enforced. Mr. Davis said the decision is unpublished and therefore not binding upon this Board, and it is unfair since Mr. Baron's argument this evening has been the Applicant is proposing two principal uses and the Upper Pittsgrove case relates to a stand-alone facility, and, in zoning law, every case stands on its own merits. Mr. Davis said Mr. Baron is attempting to prejudice this board based on the Upper Pittsgrove case. Mr. Baron said Mr. Davis is asking for a use variance for a solar energy facility, and yes, the Upper Pittsgrove case is not about sheep, but it is about conditions and restrictions, and the reasoning and factual consideration are similar. He said though not published, a board can consider it however it chooses to do so. Mr. Davis said he has consistently said this is an application that is a solar energy facility with sheep farming and egg production; that is the use and that is the use variance requested.

The Board's Solicitor said the Upper Pittsgrove opinion is sufficiently relevant, but advised the Board it is not a published case and therefore not binding, and to give it the appropriate weight.

There was testimony regarding change of zoning and the role of the Township Committee and Planning Board. Ms. Wooley Dillon testified that the Applicant should be asking for two use variances. An opinion by Judge Williams was discussed regarding variances that are so large it triggers the Board's responsibility to deny the Application. She testified that the size of the area in this application is exactly what the Judge is talking about; it is questionable rezoning and it is incumbent upon this Board to make a decision that does not support this application. It was noted Judge Wilson's opinion was confirmed by Appellate Division. Key points are site sensitivity, site context, and use. Mr. Baron asked the Solicitor to mark an item into evidence.

Ms. Wooley Dillon discussed the County ADA map and plan and supporting documents. The County map was placed into evidence as an exhibit. There was considerable discussion. The County map designating growth areas was submitted as evidence. She discussed the state report for preferred lands for siting solar facilities, and the site selected by Pilesgrove Solar is not a preferred site. She quoted from the Board's Planner report. She discussed other challenges with the application, including intensive feed operations that will require a general permit from NJDEP. She said the Applicant will have to show how it comports with water quality standards. She discussed long term operations and impact on returning to agriculture. She added that decommissioning can cost millions. Ms. Wooley Dillon said the application is "too much," and it is "too much" to put in in this place. She said it is in conflict with six documents from the state to the county to the township on multiple levels, and the project could go someplace else. Ms. Wooley Dillon said based on everything presented, professional sources and mapping, it flies in the face of logic if the board approves. Mr. Baron said that ended the testimony in opposition to the plan.

Under questioning by Mr. Davis, Ms. Wooley Dillon said she visited the site. She said she did not attend one of the hearings, but that it would not change her opinion. Mr. Davis asked questions to determine her knowledge of solar facilities, municipal land use laws and her experience in representing solar applicants. He questioned her understanding of inherently beneficial use, the "balancing test", principal uses and district zone differences,

There was discussion on how long testimony would continue and whether this would be a good place to stop since it is now nearly 10 p.m. and the Board has additional business.

The Solicitor called an end to the hearing. The Board Secretary read the February 17th GoToMeeting access information into the record. The Solicitor said the Applicant would not need to re-notice.

The Chair said he reviewed vouchers and recommended approval.

Motion to approve vouchers (Crevino/Dobbs) all ayes on roll call.

The status of the Master Plan Re-examination Report update was discussed. The Planner said he has been working on the report and hoped to have a public hearing on the report at the next meeting and one in March, if necessary. He said the Township's goal has consistently been to preserve the township's agricultural character. Since the Master Plan's adoption in 2011, there has been little construction activity in the township -- a total of 16 new housing units between 2011 and 2019. He gave a general overview of his draft work. He said since 2011, few applications have utilized the conservation design ordinance. He will give a strong recommendation that the land use plan element be evaluated to include non-contiguous clustering, consideration of medical marijuana facilities, changes or updates to ordinance on above ground swimming pools, revisiting the definition of garage vs. shed, electrical vehicle charging stations, agriculture buffers, berms, and a grading plan review ordinance. He recommended an updated farmland perseveration plan element, incorporating new mapping

and the stormwater management plan update. Also, updated census information needs to go into the housing element. He said he is not recommending anything with redevelopment areas. In general, he said he does not see any major changes to the Master Plan.

He added that it is challenging to have discussions virtually and he misses the interaction. Mr. Crevino said regular meetings are getting longer and longer, and the Board could consider a separate meeting for discussing the plan.

The Solicitor said the Board needs to formally submit its recommendation to Township Committee regarding the review of the above ground pool ordinance.

Motion to state Ordinance 12012 is in compliance with the Master Plan and the Township should move forward with adopting language regarding above ground pools, (Lewis/Crevino) all ayes on roll call.

Motion to open the meeting to public comment (Eachus/Dobbs), all ayes on voice vote. There was no public comment. Motion to close public comment (Dobbs/Eachus), all ayes on voice vote.

The Chair noted an upcoming subcommittee meeting on the Master Plan.

Motion to adjourn (Eachus/Dobbs), all ayes on voice vote.

The Meeting adjourned 10:25 p.m.

Minutes submitted by Board Secretary Rita Shade.