
CALL TO ORDER:

Mr. O'Leary called the meeting to order at 7:35pm and stated it was open to the public in compliance with Public Law 1975, Chapter 231, sections 4 & 13.

FLAG SALUTE:

ROLL CALL: Members Present: Hughes, Fette, Luthman, Randazzo,
Corcoran, Didyk, Straub, Leuthe,
O'Leary.

Members Absent: Taylor, Hahn.

Also Present: Nevitt Duveneck, PE
Richard Clark, Esq.

Mr. O'Leary advised the public that the Handweg Drive realty application would not be heard because the Board had received a letter asking to be carried to the August meeting. Mr. Duveneck said he had set up a site inspection with the applicant for the following Tuesday so he will be better prepared for the hearing next month.

HEARINGS:

1.) AES Property Holdings FSP09-8 B:17 L:2.05

Mr. John Philips, Esq. was representing the applicant. He said they had put all of the testimony on at the last meeting. He said Lafayette does not have an ordinance that allows residential in the Highway Commercial Zone. He felt the condition was invalid. He said they would accept the Engineer's report as a condition. Mr. O'Leary gave a history of the application. He read from the minutes of March 23, 2006 Land Use Board meeting. The testimony at that meeting was that COAH was part of the approval and the attorney at the time, Mr. Garafalo agreed with this. There was a discussion on what had taken place with the Tower Alpine application. Mr. Philips said his position is that the ordinance has been stricken by virtue of A500 and adopted by the MLUL. He said they could not build it even if they wanted to unless they came back for a variance. Mr. O'Leary said the approval had a condition that the applicant would come back within 120 days with plans for the two buildings and the COAH units and the two septic fields. This was never provided to the Board.

Mr. Clark said the extension resolution spoke to the COAH issue also. He said the resolutions speak for themselves. Mr. Philips read from the MLUL which addresses the COAH housing. Mr. Clark did not agree that this section of the MLUL applied to the issue before the Board. Mr. O'Leary said the meeting recording had testimony that the site would be a COAH site. Mr. Philips said this site is not part of the Township's COAH plan. Mr. Clark said he cannot render an opinion if the ordinance is invalid or not. Mr. Philips position was that at the time of the resolution extension the township had no ordinance to allow affordable housing in the HC zone. Mr. Philips said he recalled reading that it was a meeting of the minds between the applicant and the board to build the COAH units on site and the ordinance was valid at the time.

Mr. Hughes said they did submit this project as part of the Township's plan. Mr. O'Leary said it was the Board's position to keep the COAH units in the project.

Mr. Duveneck said the argument by Mr. Philips is that the submission of such a proposal says it will be at the discretion of the applicant and if you follow through to that comment it appears that that submission of that proposal has to do with timing not whether they will or will not because if you go on to the rest of that resolution approval it says it may not occur within 45 days of the publication of this resolution and not that it was at the discretion of the applicant.

Mr. O'Leary said it allowed the applicant time to come in with the plans and that is why there are no plans available. It had to do with the timing of the submission of the plans for the architectural drawings and septic design. He said there were concepts introduced and the Board was allowing the applicant more time to come in with the plans. He said the applicant's engineer testified it was a feasible project with the COAH attached to it.

He said it had to do with the plans. Mr. Philips said the reason there were no plans with the COAH is because there was no ordinance at the time and now the ordinance that was put in place is invalid. He said they are asking for approval.

Mr. O'Leary said there was no trash enclosure on the plans and they were supposed to come back to the Board with that.

Mr. Hughes said this property was in the COAH plan for round 3 that has been submitted. He said they did consider it in the plan and considered it with the Nouvelle property.

Mr. Clark said he did not have enough information to make a recommendation to the Board. Mr. Philips said the application as originally presented was a conforming application. He said no variances were involved.

Mr. Luthman said there was no question in his mind what the intent of the Board was at the time. He said the language in the resolution was confusing. He said the applicant was offering the property to the township as a COAH site. He said AES Property Holdings does not want to put the COAH on this site but at the same time they are objecting to the townships COAH plan. He said the current owners are fighting the township to put a treatment plant on a different piece of property they own in town so why can't they do it here. He said it will cost a little more money and time but it can be done. He said the Board needs everything on a plan in order to see what is being approved. Mr. Luthman said the Board may need to subpoena Mr. Dykstra to come and testify about the septic. He said the applicant would not go back to Dykstra to get the plans. Mr. Philips said they would not go back to Dykstra Engineering to get the exhibits. He said the Board Engineer is in possession of a full set of plans from Mr. Galode. He said the Board has the plans however the Board Members do not have individual sets. He said when filing for final they are not required to submit individual sets of plans. Mr. Luthman had a concern with the plans and the lack of architectural drawings submitted.

Mr. Hughes said both the applicant and the township have paid for additional engineering for the septic for the COAH plan.

Mr. Philips said the application is fully conforming. Mr. O'Leary said the applicant was to come back within 180 days with architectural drawings. Mr. Duveneck said the Biggs report referenced revised drawing by Charles Schaffer consisting of 3 sheets dated 12/12/05. He said he does not have the drawings but they were part of the submission.

Mr. Philips said they would pay the COAH fee. Mr. Hughes said the original applicant came to the Board with the COAH units above the two proposed buildings not a payment in lieu of the units. He said the current applicant is now changing what was originally presented. Mr. O'Leary said there was engineering testimony from the applicants engineer that the septic could be put in with this project.

Ms. Didyk said there was a lot of discussion about the elevation and the parking and the COAH was a big part of this application and the applicant came to the Board with the COAH units. Mr. Hughes said that was the basis of the approval of the project. Mr. Luthman said the resolution does say the applicant will return within 180 days with architectural drawings.

Mrs. Straub said the only thing the attorney for Tower Alpine wanted removed from the resolution was that they had to return within the 190 days with the conceptual. Mr. Luthman said the Board was concerned the application would drag on for a long time however the time limitation was removed not the condition. Mr. Clark said the most recent resolution says the applicant will pursue the COAH units. He said the Board cannot approve the final site plan application unless it undoes the condition regarding COAH. He said they would have to undo the most recent action which is the requirement of the COAH units. Mr. Philips said in order to do the COAH units the applicant would have to get a subdivision and the approval would not be valid anyway. Mr. Clark agreed. There was a discussion on the legal issues of the resolutions. Mr. Philips said there is no ordinance that permits the affordable housing in the zone so it is not a reasonable

condition. Mr. Hughes said the ordinance does allow it. Mr. Philips felt that ordinance was void. Mr. Clark said he cannot speak to that. He said if the application was conforming and the applicant still offered the COAH housing then it should be a condition. He felt the May resolution codified the condition. He said the final is not consistent with the preliminary to the May resolution or the extension resolution so it cannot be approved. Mr. O'Leary said the applicant offered the property as a COAH site.

A motion to deny the final site plan approval as presented because it is not consistent with the preliminary site plan approval and the resolutions of January 2006, May 2006 and February 2009 was made by Mr. Hughes. It was seconded by Mr. Leuthe and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, Leuthe, O'Leary. Mr. Luthman said he was voting to deny the application because the testimony and presentation made by the applicant's attorney when the preliminary site plans were presented all were leading in the direction of affordable housing on the site. He felt the applicant had not done anything to put affordable housing on the site.

2.) Barsumyan MNR08-16 B:14 L:15.07

Mr. O'Leary advised the public that this application will not be heard this evening.

3.) Peck, Harold MNR09-1, VAR09-2 B:14 L:11.01

Mr. O'Leary advised the public that this application will not be heard this evening.

4.) Handweg Drive Realty VAR08-14 B:14 L:7

Mr. O'Leary advised the public that this application will not be heard this evening.

5.) Casagrande MNR09-3, SP09-4, FSP09-5, VAR09-6, VAR09-7 B:15 L:6.01

Mr. O'Leary advised the public that this application will not be heard this evening. Mr. Luthman asked for a status update on this matter. Mr. O'Leary said they had advised the Board earlier they were moving out of Lafayette however the Board has received no further correspondence to suggest they have a date to vacate the premises. Mr. Luthman recommended the Board Secretary send a letter to Casagrande advising them they are operating without an approved site plan and the Board has extended to them the courtesy of presenting a site plan and unless the Board hears from them by the August meeting date, the Board will ask the Zoning Officer to inspect for compliance. Mr. O'Leary gave Mr. Clark some background on the situation. Mr. Clark suggested the Zoning Officer file a complaint or notice to the business owner. The Board agreed.

6.) Lentini Redi-Mix AFSP09-9 B:1.01 L:1

Megan Ward, Esq. advised the Board she was representing the applicant. Mr. Anthony Lentini, president of the corporation was also present as well as Owen Dykstra, PE and Mr. Jason Dunn, PP of Dykstra Engineering.

Ms. Ward said the application was submitted to the Board and approved for a length of four years and now they have returned and are seeking a 10 year operation of approval. She said the prior approval resolution was adopted on June 23, 2005. Ms. Ward supplied with the application a 10 year lease and supply agreement so they are seeking a 10 year approval. She said they are not planning on making any changes to the original site plan except to add some lighting. Lentini Redi-Mix gets the aggregates from the site. The only material brought onto the site is sand.

Mr. Jason Dunn, PP and Mr. Anthony Lentini, president of Lentini Red-Mix were sworn in by Mr. Clark. Mr. Dunn had previously qualified before the Board as a planner.

Ms. Ward discussed the hours of operation with the Board. She said they will need to start loading trucks at 5:30 am and because of that they will need the lighting. Mr. Jason Dunn explained the lighting needs to the Board. He said they are proposing sufficient lighting that conforms to the ordinance for the zone. He said it is an isolated site. He proposed submitting a lighting plan to the Board Engineer for his approval as a condition of the application being approved.

Ms. Ward noted the recreation hall on the adjacent property, located in Sparta Township is owned by the same owner as the quarry. She noted the pool has been removed.

Mr. Duveneck noted the last time this application was granted approval, there was no variance granted for the buffer line for the quarry. He said he is aware both properties are owned by the same owner. There was a discussion on the quarry buffer line in relationship to the setback line. Mr. Luthman noted there is a berm in that area and nothing can be seen because of it. Ms. Ward said they are seeking a variance from the 200 foot setback to 43.3 feet at it closest to the property line.

Mr. Fette asked Mr. Dunn how many lighting fixtures they are proposing. Mr. Dunn said he did not know because they have not done a complete study but about 5 to 10 poles. He said they will conform to the ordinance. The hours of the lighting will be from 5:30a.m. until sun up. They will not need lighting at night. A lighting plan will be submitted for Mr. Duveneck's review. Mr. Luthman made the applicant aware the Board is concerned about night glow.

Mr. Randazzo asked about truck repairs. Mr. Lentini said the truck repairs are done onsite in a shop area. Mr. Luthman asked about the number of trucks. There are 5 to 10 trucks. The truck trips per day vary from 4 to 20.

Mr. Hughes asked if the applicant was willing to post and keep current an escrow account to cover periodic inspections. Mr. Duveneck suggested \$400.00 be held in escrow. The Board agreed to this amount. Mr. Corcoran asked how many total trucks the plant can handle to which Mr. Lentini said 12 per day.

Mr. O'Leary asked about the recycling of the concrete. Mr. Lentini explained the process to the Board. Mr. O'Leary felt the applicant would need to submit a recycling plan. The applicant agreed to this as a condition of approval.

Mr. Luthman requested as a condition of approval that no stock pile can be higher than the berm and that all of the conditions in the prior resolution be in the final site plan approval resolution.

The Board went over the conditions of approval with the applicant.

There was a discussion on the water being brought to the site. Mr. Lentini said they no longer bring water to the site because they hooked up to an existing well and now get the water from the site.

Mr. O'Leary opened the meeting to the public. With nobody coming forward, the meeting was closed to the public.

Mr. Clark felt the standard two year approval for final site plan should be sufficient. He explained to the Board why he felt this way. The applicant agreed to the two year protection. Mr. Clark said the Board can change the zone and then the applicant may have to return for a use variance.

A motion to approve the preliminary and final site plan application with the variance from the buffer and with the noted conditions was made by Mr. Fette. It was seconded by Mr. Randazzo and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, Leuthe, O'Leary.

7.) Lafayette Asphalt, Inc. SP09-10, FSP09-11 B:1. 02 L:1

Ms. Megan Ward, Esq. stated she was representing the applicant. Mr. Owen Dykstra, PE was present to testify.

There were three reports written by Mr. Duveneck on this application. Mr. Duveneck recommended the application be deemed complete.

Mr. O'Leary noted the requested E.I.S was submitted by Mr. Jason Dunn, PP however he is not an environmental engineer. Ms. Ward said Mr. Robert Tessier, who is a professional planner with Dykstra Engineering also worked on the document.

A motion to deem the application complete was made by Mr. Corcoran. It was seconded by Mrs. Straub and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, Leuthe, O'Leary.

Mr. Owen Dykstra, PE of Dykstra & Associates, Mr. Victor Marotta, general manager of Lafayette Asphalt, Inc., Mr. Eric Hutchinson, employee of Terex Corporation, and Mr. Jason Dunn, PP were sworn in by Mr. Clark. All gave their addresses and qualifications which were accepted by the Board.

Mr. Jason Dunn presented a colored version of the plan presented to the Board entitled "Lafayette Asphalt Preliminary and Final Site Plan for Temporary Paving Facility" with a date of 7/7/09 that was marked and entered as exhibit A-1. Mr. Dunn explained the drawing to the Board. The applicant was proposing 51 storage bins. They will use the existing structure for an office, testing facility and minor repairs. The plant will be 230 feet in length and 120 feet in width.

Mr. Hutchinson explained the asphalt operation to the Board.

A drawing of the elevation of the loading silo was marked and entered as exhibit A-2. The silo will be 34 feet 7 inches at its highest point. Mr. Hutchinson explained the loading silo and said the loudest noise will be the burner.

A colored chart entitled "Typical Sounds in Our Environment" was marked and entered as exhibit A-3.

A Sound Level Chart was marked and entered as exhibit A-4.

Mr. Hutcherson said they will get a stack permit from the D.E.P. as well as approval from Sussex County Engineering.

There will be a 25,000 gallon asphalt tank with a concrete pad to prevent a spill from going into the ground. Mr. Marotta said he will add curbing to the spill area and noted even if there was a spill the material is so thick they will be able to pick it up. Mr. Randazzo asked about secondary containment. Mr. Marotta said the asphalt will not run so he felt there was no need for it. Mr. Dykstra said he will get some information on that to the Board. Mr. Marotta said the area where the trucks access the concrete pad there cannot be curbing so the trucks can drive over it. It was agreed the engineers will look at this issue.

Ms. Didyk asked how much steam is released from the plant to which Mr. Marotta said there is no way to measure it. He did say it would be visible. Mr. Hughes asked how much heat input is going into the plant. Mr. Marotta said it burns around 100 million BTUs.

Mr. Marotta said the plant can operate year round but it is not typical. He said they usually close from January through February. The applicant requested permission to be allowed to occasionally operate outside of the proposed hours of 5:30a.m. to 4:30 p.m., Monday through Friday and 6:30a.m. to 12 noon on Saturday.

Mr. Randazzo asked if any material will be imported to the site. Ms. Ward said possibly sand. Mr. Randazzo asked if any contaminated soil will be brought to the site. Mr. Marotta said it was not part of his plan however if the Township asked them to do so as part of their recycling plan then they would do so. No construction debris or contaminated soil will be brought to the site.

The Board agreed the lighting plan can be reviewed by the Board Engineer. There will be lighting only in connection with the operation and the lights will comply with the ordinance.

Mr. O'Leary asked how many trucks would be needed to use up the 25,000 gallons of asphalt stored in the tank. Mr. Hutchinson said about 80 trucks. Ms. Didyk felt there

will be an increase in truck traffic and the trucks will be slow on the road and clog up the rural roads in Sussex County.

Mr. Marotta said there will be no water used in the processing of the asphalt and no odor from the plant.

Mr. Marotta described the existing structure and said it will be used for a laboratory and office and will have a desk, chairs and testing equipment.

Mr. Hughes asked if all of the lighting, existing or new will be compliant with the ordinance to which Ms. Ward said yes. Mr. Hughes asked if the operation requires a fire inspection. Mr. Fette said he will check with Mr. Paterson, Fire Official. Mr. Hughes asked if the applicant will be submitting a stormwater management plan. Mr. Dykstra felt it would not be needed. Mr. Duveneck agreed.

Mr. Marotta said they will have solvents and they will be stored properly as required by the D.E.P. The storage will need to be shown on the plans. The D.E.P. does routine inspections.

Mr. O'Leary opened the meeting to the public. With nobody coming forward, the meeting was closed to the public.

The applicant provided testimony that about 50% of the material used will come from the quarry.

Mr. Marotta said air quality is done by a consultant that is licensed and reports to the D.E.P.

There will be between 5 to 6 employees.

The applicant agreed to notify the Zoning Officer of any hours outside the normal hours.

Mr. Luthman wanted the plan to reflect the correct information the applicant is testifying to. Mr. Duveneck said the plans need to be revised and the revisions should be accurate.

The Board and the applicant agreed to carry the application to next month's meeting.

8.) Jiggetts, Danita VAR09-12 B:22 L:20.06

Mr. Keith Hyche, Esq. said he was the attorney for the applicant. Ms. Danita Jiggetts of 95 Meadows Road was sworn in by Mr. Clark.

Mr. Duveneck recommended to the Board the application be deemed complete.

A motion to deem the application complete was made by Mr. Fette. It was seconded by Mr. Corcoran and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, O'Leary. Mr. Leuthe was not in the room during the roll call vote.

The applicant was seeking an interpretation of the definition of "home occupation". Mr. O'Leary read the definition of home occupation.

Mr. Hyche said his client is going for a kennel license and the ordinance requires Board approval.

Ms. Jiggetts went over the number and types of dogs she currently owns. She has 14 dogs presently. She keeps all of the dogs inside her home at 95 Meadows Road. She said she will usually have 5 to 6 litters with 3 to 5 puppies in each litter per year.

The dogs are kept inside in Ms. Jiggetts sunroom where every wall has a window. There is a ceiling fan, automatic air freshener, puppy playpens and the room is air conditioned. The dogs go outside when she is home and they are in by 10:00p.m. If it is hot they are in by noon. There will be no signs or displays outside and no other dogs coming in for

breeding purposes. There will be no employees and no more than two customers per day. The square footage of the house is approximately 4200 square feet.

Ms. Jiggetts presented an array of photos of the house taken by the applicant which was marked and entered as exhibit A-1. Ms. Jiggetts explained the photos to the Board. All cages have food and water at all times.

All of the dog waste is disposed of in the garbage with nothing going into the septic. Outside waste goes into a compost pile on the property. Ms. Didyk was concerned about fly control with the outside waste. Ms. Jiggetts said she does not have a problem with flies. Ms. Didyk expressed a concern about the noise. Ms. Jiggetts said her dogs are not barkers, they may only bark on occasion. She does limit the number of dogs outside at any one time.

Mr. Luthman felt the applicant would need a variance for the sale of the dogs. Mr. Hughes requested a survey of the property to see what is in the area near the house. He felt it was not a home occupation because the dogs are not kept inside the house. Mr. Fette felt it is a kennel business and not a home occupation. Mr. Luthman noted if a variance is granted, it goes with the land and the next owner may have 14 large dogs that do bark.

Mr. O'Leary opened the meeting to the public. With nobody coming forward, the meeting was closed to the public.

The Board and applicant agreed to carry the application to next month's meeting. The applicant may want to come back with a variance application.

AUDIENCE:

Mr. O'Leary opened the meeting to the public. With nobody coming forward, the meeting was closed to the public.

OLD BUSINESS: None.

NEW BUSINESS: None.

RESOLUTIONS: None.

ORDINANCES: None.

ZONING REPORT: None.

BILLS: List # 10

Mr. Leuthe went over the bills with the Board. Mr. Clark waived his \$30.00 bill for the LAA Snack Stand courtesy application since there was no escrow posted.

A motion to pay the bills with the two adjustments to the attorney's bills was made by Mr. Leuthe. It was seconded by Mr. Luthman and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, Leuthe, O'Leary.

EXECUTIVE SESSION:

A motion to go into executive session to discuss pending litigation was made by Mr. Hughes. It was seconded by Ms. Didyk and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, Leuthe, O'Leary.

A motion to come out of executive session was made by Mr. Hughes. It was seconded by Ms. Didyk and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Didyk, Straub, Leuthe, O'Leary.

CORRESPONDENCE:

1.) From: Rejina Sharma – Matrix Newworld

Re: Notice of LOI application for property in Andover Township – Limecrest Quarry Rd

2.) From: COAH
To: Rick Hughes
Re: Pre-mediation report requesting additional information

ADJOURNMENT:

A motion to adjourn was made by Mr. Randazzo. It was seconded by Ms. Didyk and passed with everyone saying aye.

Respectfully submitted,

Stephanie Pizzulo
Land Use Board Secretary