JOINT LAND USE BOARD

REGULAR MEETING MINUTES

December 6, 2012

Chairman Schwager called the meeting to order at 7:00 pm.

Adequate notice of this meeting had been provided in accordance with the Open Public Meetings Act.

Chairman Schwager led all present in the Pledge of Allegiance.

Roll was as follows:

John Casella – Present, Frank Costantini – Absent, John Descano –Absent, John Juliano – Present, Paul Lott – Absent, Mayor Maccarone – Present, Chief Marino – Present, Joe Maugeri – Present, Alan Schwager – Present, Bob Rushton – Present, Les Viereck – Absent.

Also present: Mike Aimino – Solicitor and Tim Kernan – Planner.

First on the Agenda are the Minutes from the regular meeting of November 15, 2012. J. Juliano made a motion to accept the Minutes as written which was seconded by J. Casella. All were in favor except for J. Maugeri and Mayor Maccarone who both abstained.

Next is the Resolution for Gino Postorivo, granting variance approvals for property located at 50 Mill Road designated as Block 21, lot 1.

J. Juliano made the motion which was seconded by Chief Marino. Roll was as follows:

**J. Casella – abstain, Chief Marino – yes, J. Juliano – yes, Chairman Schwager – yes, B. Rushton – yes.**

Next is the Resolution Granting Amended GDP approvals and waivers to Main Street at Woolwich, LLC, Woolwich Commons, LLC and Woolwich Crossings, LLC for property designated as Block 57, Lots 8, 9, 10 & 11; Block 60, Lot 1; and Block 61, Lot 6.

J. Maugeri made a motion to approve which was seconded by J. Casella. Roll was as follows:

**J. Casella – yes, Chief Marino – yes, Mayor Maccarone – yes, J. Maugeri – yes, Chairman Schwager – yes, J. Juliano – yes.**

At this point of the meeting, Mayor Maccarone recused himself.

Next on the Agenda is Constance Cardillo, this is a Zoning Appeal – Zoning Interpretation for Block 56, Lot 3 which is 90 Russell Mill Road.

Mr. Joseph Alacqua and Attorney from Washington Township was present to represent the applicant. He stated that they are here for “2” reasons, the first of which is to appeal the decision of the Zoning Officer which denied the Use to construct a barn on the property and second an Interpretation regarding whether or not Mrs. Cardillo can have horses on the property.

Chairman Schwager stated that before Mr. Alacqua continues he has to advise him that there are only “6” Board Members and they are entitled to “7”. If they would prefer to ask for a continuance, they will entertain a continuance.

Mr. Alacqua stated that they will go forward.

Mr. Alacqua continued with a brief description of the project. The property is 26 acres with no structures and Mrs. Cardillo would like to construct a barn and have horses. The Zoning permit was denied by the Zoning Officer for the use of the barn on the property. His opinion was that it was not permitted in the R-1 Zone. He stated that the Zoning Officer’s interpretation is that in order to have a farm building, you must have a farm house; he does not believe that is what the Ordinance says and that is why they are appealing his decision.

Tim Kernan continued stating that Mr. Fruits sited two sections of the code in his denial, 203-40b3f and 203-40b3h. The first one says no construction permit shall be issued for the construction of an accessory building prior to the issuance of a construction permit for a construction of the principal building or structure on the same premises. The second one says the height of an accessory building shall not exceed 25 feet or the height of the principal building whichever is less.

Mr. Kernan continued stating that he thinks there is more to the code and we have to find out from the applicant, Mrs. Cardillo, the use of the proposed farm building.

Mr. Alacqua stated that he did speak with Mr. Fruits and he was denying the fact that it was a farm building that is why he requested either an interpretation or an appeal of his decision. He believes the correct interpretation is that you don’t need a farm house to have a farm building in which case the rest of it is moot as far as the arguments of it being an accessory use.

In addition to this, another part of the application is an interpretation from the Board that she will be permitted to have horses on the property.

Mrs. Constance Cardillo was sworn in by Mr. Aimino.

T. Kernan stated that he does not disagree with Mr. Alacqua that a farm building is permitted in R1 because it is permitted in 5A, but we need to know more about the use of the property and the farm building.

Mr. Alacqua questioned Mrs. Cardillo about the intended use of the property. She currently lives at 10 Greenleaf Lane in Elizabethtown, Pa but intends to move to Woolwich in the very near future to 21 Russell Mill Road. This is less than 1/10th of a mile from the property in question. She currently owns 3 horses, 2 are used for horseback riding lessons at the facility where she keeps them and the other is a horse that she adopted from the track and she has brought him back to health and he is currently for sale. Once this horse sells she would be open to the possibility of rehabilitating another horse. She would continue to train the horses and have riding lessons on the property in question.

J. Maugeri asked if the proposed use would be a business. Mrs. Cardillo stated that she is currently a Librarian and that is her primary income at the moment; the horses would be a side business.

J. Juliano asked if she is paid a fee or receive any compensation for any of the training that may occur on the property. She stated if it were someone else’s horses she would require a fee.

J. Maugeri asked about the horses that she would have on the property; 2 are being used for lessons but it is not her giving the lessons to which Mrs. Cardillo stated correct. Mr. Maugeri asked if this were approved and she had these 2 horses at the proposed site, would she be giving lessons to people in exchange for a fee. Mrs. Cardillo stated that they would be leased out to someone else that had a training facility. Right now they are at training facility with an instructor. Mrs. Cardillo stated that they are leased for a monthly fee and they could keep them there or trailer them to a training facility.

Mr. Aimino stated that the training wouldn’t take place at the proposed location. Mrs. Cardillo stated that it could on a limited basis; she plans on having a riding ring. She envisions it would be more likely that they would take it to another facility and she would be open to that.

J. Maugeri stated that she would own the horse, it would not live in her barn, and someone would lease it from her and keep it at their barn or training facility. Mrs. Cardillo stated that it was a possibility.

Mrs. Cardillo stated that there would never be more than 3 horses – she will only have 3 stalls.

Mr. Alacqua stated that although Mrs. Cardillo is a Librarian, she is retiring next week and all this is uncharted territory because she hasn’t been able to devote full time effort to it.

Conversation continued over the leasing of the horses.

T. Kernan asked if the land is farmland assessed and has it been verified. Mr. Alacqua stated that the property has been under farmland assessment for a period of time. Mrs. Cardillo stated that Charles Vaselli has been using 13 of the acres for soybean.

T. Kernan stated that the reason he asked is because the boarding of horses does not qualify for farmland assessment. If its part of a bigger farm that otherwise qualifies, such as growing of grains or soybeans, and that portion of the farm qualifies then you can have horses for riding lessons.

Chairman Schwager stated that the applicant wants to put a barn up as the principal building and in the R1 zone it says to go to the 5A zone. If you go to 5A zone it says they can put up a farm building, which he would consider a barn a farm building. T. Kernan agreed with this. The Zoning Officer did not agree with this. J. Maugeri asked if the Zoning Officer was hung up on 203-391b – farm houses and farm buildings? M. Aimino stated yes he thinks that the Zoning Officer believed you needed both.

Extensive conversation continued over what is a farm building.

T. Kernan stated that perhaps Mr. Fruits was under the impression that these horses were for the applicant’s personal use and enjoyment. Under that premise than they would not be permitted. If that’s not the case, then we are dealing with a commercial use and an agricultural use that falls in this case under the farmland assessment act, which allows boarding and giving of riding lessons only as relates to a larger farm that otherwise qualifies.

J. Juliano asked if the land is no longer being farmed once the horses get there, are we back to this being the use for just the horses. T. Kernan stated if it is not being farmed than it would no longer qualify for farmland assessment.

M. Aimino stated that he believes Mr. Fruits interpretation was if the horses were for personal use there is a section in the Ordinance that says you have to have a house in order to have a barn as an accessory use, but if the horses are for a commercial type enterprise for profit or some sort of gain, then you can uses it as a primary structure under the 5A section. Mr. Aimino stated he doesn’t think Mr. Fruits had enough information to make the call so he denied the permit. So if the Board thinks these horses are for personal use only then they should deny the appeal; however, if the Board thinks the horses are there for gain of some degree and that this qualifies as a working farm then the barn is a permitted use.

Chairman Schwager stated that it comes down to the uses of the horses.

T. Kernan asked Mrs. Cardillo if she had any contracts for the leasing of her horses. Mrs. Cardillo stated that they sign contracts with the barn manager for liability purposes. She currently does not have written contracts with them. She continued stating that she is currently not charging because it is mutually beneficial, the girls get to have a horse for them to ride and the horses get more attention. If they will be leased off her property then she would have a contract. This is the business area she needs to learn about.

Conversation took place over the possibility of this being for personal use or a business.

Chairman Schwager stated that he does not see where there is clear cut definition here of this being a continual commercial operation. He has heard a lot of talk of it being open to possibilities and fees being charge and sometimes not being charged; there’s going to be 3 stalls, 2 personal horses and 1 could be a boarded horse for a fee or another horse brought in for rehab – could be a fee charged, could not be a fee charged. The horses may be leased and may be boarded somewhere else. He stated that he hears a lot of uncertainty in this and they need to focus on the use of the horses here.

Mr. Alacqua stated again that Mrs. Cardillo is a Librarian and she is moving here and these are her intentions because the situation does not exist yet. She is not in a position to sign agreements with people and set things up until she has a place to do it. He is also not sure that he agrees that the horses would have to be for commercial purposes.

B. Rushton asked what if the land loses its farmland assessment because they stop farming. T. Kernan stated that if the farming stopped, then the riding and lessons continued then that would not qualify for farmland assessment. J. Maugeri asked if she were to fence in the whole 26 acres and let the horses graze would that be considered farmland assessed. T. Kernan stated that there has to be a certain monetary amount. T. Kernan stated that if it is just horses, it may not fit under the Township definition of agricultural and may not be a permitted use by itself. B. Rushton said that answers his question.

J. Casella asked if she ever plans on putting a house on the property. Mrs. Cardillo said she already has a house across the street, so no.

Chairman Schwager stated that they have to take action on this.

M. Aimino stated to Grant the Appeal which will overturn Mr. Fruits decision and allow the barn to be built or Deny the Appeal which would uphold Mr. Fruits decision and deny the barn from being built.

T. Kernan read allowed the Townships definition of Agricultural.

J. Maugeri made a motion to Grant the Appeal and allow the barn to be built. Chief Marino seconded the motion. Roll was as follows:

**J. Casella – yes, Chief Marino – yes, J. Maugeri – yes, J. Juliano – no, B. Rushton – no, Chairman Schwager – no.**

**Tie vote.**

M. Aimino stated that the practical effect of that is that the upholding of the decision of Mr. Fruits takes place.

Chairman Schwager stated that there is tie vote so they are going to take a 5 minute recess to confirm what a tie vote means.

The meeting went in to recess at 8:08.

The meeting reconvened at 8:17.

Chairman Schwager stated that they Board members are going to be polled to state why they voted the way they voted so it is on the record and then Mr. Aimino will let everyone know what a tie vote means.

**J. Casella – Voted because there is 26 acres that Mrs. Cardillo owns and feels that she can put a building up as long as she complies.**

**Chief Marino – He agrees with J. Casella about the 26 acres and he heard numerous times that there was rehab involved with a horse and when that was completed would result in the sale of that horse. So there is a rehab project on the property plus a sale for profit – so that is why he voted yes.**

**Joe Maugeri - The language in our Ordinance; boarding, raising, rehabilitating and training are all part of the language that the applicant used in her testimony. She is retiring from her present career and he can understand how this will be a commercial entity in the future. The rehabilitating and sale of horses, boarding were mentioned in the testimony and that is why he voted to Grant.**

**John Juliano – He vote no because with the use of what is being asked, the interpretation being hinged upon specific commercial use for the farmland, it wasn’t clear that it was absolutely going to be commercial.**

**Bob Rushton - He voted the way he voted because it came down to the use of the horses, commercial vs. personnel. He just felt the possibility of commercial wasn’t strong enough; there wasn’t a definitive commercial purpose.**

**Chairman Schwager - He voted no, he feels that this decision was bigger than one lot – this was an appeal of a zone, the R1 zone so it was larger than one 26 acre lot. He also feels that the testimony was very vague, a little too vague on the activity of the horses. There was talk of rehabilitating, there was also talk of not rehabilitating ~ it was too vague, honest by vague and again this was about the entire zone not just one lot and that is why he voted no.**

Mike Aimino continued stating that he took a look at the Law and he cited **NJSA40:55D-9A** and that statute which is in the MLUL specifically says that in the instance of a tie, where the motion is made for an approval, that it essentially results in a denial when there is a tie. What we had here was a motion to “grant” an appeal which would in effect overturn the decision of Mr. Fruits. That appeal was denied by the Board with a vote of 3-3 because they were unable to get the sufficient votes in order to make that happen. His reading of the statute that he quoted and the law that he read is that the Appeal was Denied in a 3-3 vote.

Mr. Aimino asked Mr. Alacqua if he agreed that the second part, the Interpretation, would not make sense at this point given the denial or does he want the Board to go forward with that decision?

Mr. Alacqua withdrew the second part of the application.

J. Maugeri asked if this decision precludes the applicant from coming back in for a variance if they so choose. M. Aimino said no they will be permitted to apply for a variance.

Chairman Schwager stated that next on the Agenda are a few Ordinances which is a Planning decision so at this time Mayor Maccarone has rejoined the meeting and also make note for the record that John Descano is now here as well.

There are “2” Ordinances to discuss.

T. Kernan continued with the Ordinance entitled Zoning for Large format retail uses, Big Box retail uses and so on. Mr. Kernan continued with the changes that are being considered.

The second Ordinance is dealing with grading; Mr. Kernan read the proposed changes for this ordinance.

After a brief discussion, J. Juliano made a motion to open to the public which was seconded by J. Maugeri. All were in favor.

Mr. William Dion was sworn in by M. Aimino.

Mr. Dion discussed his concerns with the proposed changes for the Ordinances and how it pertains to the Woolwich Commons GDP.

Chairman Schwager stated that any changes to these Ordinances will be good for anyone not just this project.

J. Maugeri agreed he thinks this decision should be made on a waiver or variance basis and doesn’t think this should be done for everybody.

Extensive conversation took place over proposed changes to these Ordinances.

J. Juliano made a motion to close the public portion which was seconded by J. Casella. All were in favor.

J. Juliano made a motion to recommend these Ordinances to Township Committee for further review as written which was seconded by Chief Marino. Roll was as follows:

**J. Casella – yes, Chief Marino – yes, J. Descano – yes, Mayor Maccarone – yes, J. Maugeri – yes, J. Juliano – yes, B. Rushton – yes, Chairman Schwager – yes.**

Chairman Schwager continued with the next Ordinance regarding grading.

J. Maugeri made a motion to send it on to Township Committee for further review and was seconded by J. Casella. Roll was as follows:

**J. Casella – yes, Chief Marino – yes, J. Descano – yes, Mayor Maccarone – yes, J. Maugeri – yes, J. Juliano – yes, B. Rushton – yes, Chairman Schwager – yes.**

Before adjourning M. Aimino would like to discuss the outcome of the lawsuit regarding Woolwich Sand & Gravel. He stated that the Judge had held the opinion for 6 to 8 weeks and has decided to set aside the Boards decision. So the Boards decision was denied. It was challenged on 4 counts, 1) was the notice – the Judge so no problem with the notice; 2) they said that they usurped the power of the Township Committee – the Judge said that was completely not true, the Board has the power to grant a variance and the right thing was done; 3) the negative criteria – the Judge found there was no negative criteria and that the Board had properly done all those types analysis and even took the extra step with having trucks go on a certain route; 4) the positive criteria – the Judge basically said it had to be proven that this property was particularly suited for this operation and it couldn’t be done anywhere else in Woolwich Township and that this site couldn’t be used as a residence or as a farm.

With nothing further to discuss, J. Casella made a motion to adjourn which was seconded by J. Juliano. All were in favor.

The JLUB meeting adjourned at 9:07 pm.

Respectfully submitted,

Christina M. Marquis

Joint Land Use Secretary

*Minutes not verbatim*

*Audio recording on file*