

# CHESTERFIELD TOWNSHIP PLANNING BOARD

March 17, 2015

The meeting of the Chesterfield Township Planning Board was called to order by Chairman Panfili at 7:05PM. The Open Public Meetings Act statement was read and compliance noted.

Roll call was taken showing present: Gerard Hlubik; Glenn McMahon; John Nunziato; Alex Robotin; Jignesh Shah; F. Gerry Spence; Mary Acevedo; Michael Russo; Chairman Panfili. Absent: Jeremy Liedtka and Joseph Malison. Professional staff present: Douglas Heinold, Solicitor; Joseph Hirsh, Engineer; Barbara Fegley, Planner and Phil Caton, Planner.

## MINUTES

### January 15, 2015 Regular Minutes

A motion was made by Mr. Nunziato seconded by Ms. Acevedo to approve the January 15, 2015 Regular minutes. All were in favor with the exception of Mr. Spence who abstained. Motion carried.

## RESOLUTIONS

None

## APPLICATION FOR ACTION

E & E Landscaping Block 700, Lot 21.05, 139 Bordentown-Georgetown Rd, Use Variance and Revised Site Plan.

Mr. Roselli informed the board that this application is being continued from November 2014, they are seeking a use variance. A sound test was performed upon the request of the board on December 12, 2014, the residents within 200 feet were notified and a report was generated.

Mr. Shourds, Professional Engineer and Planner stated that the portion of property that is being proposed is approx 109 acres, the site is used as Agricultural use. The farms grows landscape material, organic vegetables and a section is being dedicated to a starting a vineyard. The applicant would like to expand to a CSA. Mr. Heinold stated that a CSA is a permitted use and that the applicant would have to come back before the board for a site plan approval if when proposed. Mr. Shourds stated that there are 2 entrances to the site, there is an overflow parking area which holds 40 self parked spaces if valet parked it will be more and will be lit with lower level lighting.

Mr. Walter Endres was sworn. He is the operations manager of On-Site Acoustic Testing. He testified that he personally conducted the sound test on site, sound monitors

were placed around the property boundaries, decibels were collected every second, specific measurements were taken using white noise, pink noise and music at the site. Industry standards were followed during the testing. A written report was submitted, it was written by Mr. Endres however it was overseen and signed by Mr. Salz. Exhibit A-3 was marked, Noise data collector map which showed where all the monitors were set up. Exhibit A-4 was marked, logged testing unit one which showed the level of noise in a graph. The test took approximately less than an hour and during that time the noise generated in the center may have added to the ambient noise level but did not increase the level. White noise is equivalent to static its 100 to 150 hertz which is low level of spectrum; Pink noise expands the level of spectrum which gives a lower base and higher trebles. An iPhone was used for the music and the same decibel was used as the white and pink noise. Ambient noise is background noise. Bodies, buildings, trees and wind can absorb sound and can have an impact on the testing. The testing is done scientifically using electronic sound. Ms. Fegley stated that NJ standards states that wind and temperature are major factors in testing, a test cannot be done if the wind is more than 12 mph and the temperature cannot be below 14 degrees, Mr. Endres could not verify these factors also each reading should be done every 2 minutes, Mr. Endres testified that the readings were done approximately every minute., therefore Ms. Fegley believes the test would be inaccurate. Mr. Hirsh stated that he thought the test was going to mimic a DJ that would be playing at a wedding when in fact it did not. Mr. Endres stated that it is a technical process that noise is measured. The conclusion to the report states that the current operations have minimal effect at various neighbors' residence. A comparison of pink noise and music at the measured locations is particularly telling. A 100.6 dbA noise at sound source translates to between 43.14 to 48dbA at the residential locations. Therefore both noise figures are very low and Mr. Endres believes that the operation at the current venue will have little to no effect at the adjacent properties.

Chairman Panfili stated that he doesn't believe this test did what the board was expecting; it was supposed to mimic a band at a wedding with the exact noise and conditions that would be generated with such.

Mr. Roselli asked Mr. Ehrich to give a background on the application. Mr. Ehrich testified that there would be an estimate of 2 events per weekend, light corporate events and weddings, there would be approximately 120 to 150 people on average, he anticipates the events to be directly around the building within the 2 acres. He has a caterer that he has been working that will typically be bringing in food. He anticipates valet parking. Events usually start between 6 and 7 and ends 10 or 11 and clean-up to be done by 12am. There are 3 bathrooms in the building. Above 150 people an outside temporary tent could be added in the sunken area. There will be a couple of workers from the farm at the events to trouble shoot and for traffic control. There are dumpsters on site, with 150 or more people there will be port-a-johns, which are on site. Mr. Ehrich stated that he will restrict the events to be within 200 ft of the building. The lower level of the building is ABA accessible and equipped with a ramp.

Exhibit A-5 was marked as Multi use area parking. Mr. Shourds stated there are 86 parking spaces not valet parked and 24 spaces next to the design center. Ms. Fegley stated that her notes indicated that all waste brought in will be removed by the caterer, Mr. Ehrich stated that typically the caterer will remove his own waste however has an option to use the on site dumpster.

Chairman Panfili opened the meeting up to the Professionals, Mr. Phil Caton was sworn. He stated that he has a contract with the Township for approximately 20 years and he

helped design the TDR program. The board asked him to review the relationship between the application and the TDR regime. He wrote a letter dated February 13, 2015 that was given to the board members which gives a background of the program. Mr. Roselli asked that his objection go on record based on not knowing what the purpose is and also the Governing body authorized the release of the TDR credit through settlement and the board's decision should not be influenced. Mr. Heinold stated that the concern is a legal issue and it will be address at a later time; however Mr. Caton will continue his testimony because the definition of TDR credits have been raised by the public. The program permits residential development credits to be retained by the property owner at a rate of one credit per 50 acres. As a final comment he stated that if the applicant proposes to utilize the credits for commercial use on the property he would urge the board to insist the applicant demonstrate the legal basis for such an application.

Chairman Panfili opened the meeting for public comment.

Mr. Little stated that he hired by Mr. Coover and Mr. Braun, he informed the board on the background of the previous resolutions regarding the property owned by E & E Landscaping. In 2005 the application signed a deed of restriction of use within in that it states that it will be used for agricultural use and productions. In 2013 the Township brought a lawsuit against the applicant in 2014 the lawsuit was settle with a provision in it allowing the application to apply to the Planning Board for uses which the Township had issues with and if granted all TDR restrictions on this parcel would be lifted. Mr. Little brought this to the attention of the Township and they are working with the applicant to rectify that part of the agreement. The Townships settlement agreement is not binding on this board and he submits that this board deny the application on the legal grounds of the Master Plan and TDR Ordinances.

Mr. Heinold informed the board that Mr. Little's argument is a legal issue regarding the deed restrictions when the TDR's were sold is a bar to this application. He informed the board that he cannot say if this is permitted use or is bared, he recommends to the board to leave the issue between the Township Governing Body and the applicant as a legal issue.

Mr. Roselli would like on record that he disagrees with Mr. Little's legal arguments and that it was voted upon at the Township Committee level.

Ms. Jerry Malano – 106 White Pine Rd. Fernbrook events on Saturdays and sometimes double on Sundays the noise level is so loud they cannot use their property. The test should be done with a DJ to get an accurate reading, they would be sandwiched if approved and their property value will suffer, it's also a traffic and safety issue.

Ted Lang-104 White Pine Rd was sworn. He purchased his property from Mr. Kuser 20 years ago in the Ag Zone it was not a TDR deal but had restrictions. Then the lots subdivide had to be large enough to farm. Fernbrook was approved a bed and breakfast but when the weddings started they were not questioned by the Township to go through a use variance.

Don Coover-127 Bordentown-Georgetown Rd. agrees with Mr. Little. As a resident do not feel my home and family values are silly and he is opposed to this. For the past 20 years Mr. Ehrich stated he was going to move here but has not yet.

Rich Lohmann-73 White Pine Rd. was sworn, he moved from Jacobstown to get away from the noise.

Beverly Mills – 44 Chesterfield-Georgetown Rd was sworn. Even though she lives out of the zone she can still hear the noise on a summer night.

Debra Schuster-174 Bordentown-Georgetown Rd the issue is the noise and that the trees do not block the noise from Fernbrook and also the traffic is an issue. In regard to the winery laws she looked into it and they have to be an existing winery which they are not.

John Benton-194 Bordentown-Georgetown Rd was sworn. He expressed concern regarding the soil compaction on the site. There is a tremendous amount of water that comes off the property and runs under Rt. 545 and onto Fernbrook property.

Valerie Jones-Crosswicks she contacted Governor Christie and also in touch with the Executive Director of Agriculture and received a letter from Mrs. Payne. The board informed her that Mr. Caton was here because we had asked him to clarify the TDR program.

Frank VanGelder-16 White Pine Rd is opposed to the application for reasons being E & E receiving a large amount of money for TDR credits and agreed to keep it agricultural also the proposal does not follow the guidelines of the Master Plan, it is not wanted or needed by the residents.

Karl Braun-10 White Pine Rd believes it is difficult to regulate the activity by noise, Also the SADC is an important part of the process and he is glad that Ms. Payne has spoke to Mr. Caton.

Allen Gould-128 Bordentown-Georgetown Rd. at the last meeting someone stated that reality prices could go up and benefit however he believes that people will be coming in for an event not to look for real-estate. This will have a negative impact on the residents. The noise is also a major issue.

Elizabeth Broderick was sworn, she moved her because it is a rural community and liked the TDR program, it seems clear that the application signed a waiver that he wasn't going to do anything other than Agricultural use, its not right and she is opposed.

Kevin Broderick-47 Chesterfield-Georgetown Rd was sworn, he stated that a lot of work went into the TDR program and he believes the program works and does not believe that commercial use should be in an Agricultural Zone.

Ben Woolverton-22 Front Street was sworn and he questioned a statement that the sound professional made regarding bodies absorbing sound and also all materials block sound, he asked if that would be a restriction on where the band would set up.

Kim Kelly-183 Bordentown-Georgetown Rd was sworn expressed concern on the sound testing that was completed. She lives far from the property but still hears Fernbrook, she also expressed concern with the amount of people and time limit on the events.

Dave Schwalje-18 Greenview Drive was sworn he just moved here and it's an inconvenienced to drive to work however they did because of the TDR program and the

preserved land in the Township. He believes that a percentage of people attending the event will be drunk and driving on the same roads as he does.

Michael Kelly-183 Bordentown-Georgetown Rd was sworn, he believes that Fernbrook should be back before the board to see what they have in place. He was informed that the Zoning Officer would be the one to inquire to.

Christine Catalfamo-71 White Pine Rd expressed concern if buses would be coming in and also that the building could only hold a certain amount of people.

Mr. Little gave closing comments he asked that the board deny the application, he stated that the application is a perversion of the TDR program, the enforcement of a noise ordinance will have a great burden on the Township. In regard to the sound expert, he was not familiar with the EPA Standards and does not have a license or the knowledge of the New Jersey Law; he also expressed his concern with the merits on a use variance.

Hearing no further public comment Chairman Panfili closed the public portion.

A motion was made by Mr. McMahon seconded by Ms. Hlubik to deny the application.

A roll call was taken:

Hlubik-yes; Mr. McMahon-yes; Mr. Nunziato-yes; Mr. Shah-yes; Chairman Panfili-yes; Ms. Acevedo-yes; Mr. Russo-yes.

All were in favor, motion carried.

Chairman Panfili called for a 5 minute break @ 9:47

The meeting resumed at 9:52. Mr. Spence left the meeting at 9:52

The board had a short discussion on the discrepancies regarding COAH that are before the Superior Court

## **DISCUSSION**

### Officially appoint TRC

F. Gerry Spence volunteered as long as it can be a Thursday or Friday, Glenn Riccardi, Construction Official, Joe Malison, Mary Acevedo will check her work schedule. The secretary will reach out to Debbie Kelly to see if she is interested. All meetings will be held on Thursday mornings at 8:30 when necessary.

The board had a brief discussion on the definition of recusals. Mr. Heinold suggested that the Township Committee come up with a town wide policy for the board's protection.

### Memo from Caryn Hoyer regarding the Historic Preservation Ordinance

The Historic Committee would like to establish an ordinance to give allow them a more active approach on applications not only in the Village Zone but the PVD Zone as well. The Township Committee would like the Planning Board to create a sub committee to meet with the Historic Committee to develop an ordinance. The board asked Doug, Joe and Barbara to touch base on the draft for next months meeting.

#### Traditions Phase 3 & 4 Elevations

Chairman Panfili spoke to Barry Edelman prior to the meeting and informed him that at tonight's meeting a TRC would be appointed and they will meet to discuss this elevation changes.

#### **CORRESPONDENCE**

Letter from EBI consulting regarding proposed telecommunications tower, invitation to comment.

Caryn Hoyer stated that she received a letter from the Historic Committee regarding this letter with their comments. She will provide that letter to the secretary for the file.

Letter regarding Public Notice for Multi Permit Applications to the NJDEP

This letter is notification and has no impact on Chesterfield.

#### **INVITATION FOR PUBLIC COMMENT**

Chairman Panfili opened the meeting for public comment. There being none the public portion was closed.

#### **ADJOURNMENT**

A motion was made by Ms. Acevedo seconded by Mr. McMahon to adjourn. All were in favor, meeting adjourned at 10:26 PM.

Respectfully submitted,

Aggie Napoleon, Secretary