

The Regular Meeting of the Planning Board of the Township of Upper Deerfield was held on Monday, September 20, 2010 at 7:00 P.M. in the Municipal Building, Seabrook, N.J.

Chairman Bruno Basile called the meeting to order and read the following notice:

This is a regularly scheduled meeting of the Planning Board of the Township of Upper Deerfield. In compliance with the "Open Public Meeting Act" a schedule of regular meetings containing the location and time and date of each meeting was approved at the Annual Organization Meeting of the Board, and within seven days following such Organization meeting, a copy of such schedule of regular meetings was posted in the Municipal Building at Seabrook, New Jersey, which Notice has remained so posted throughout the year, and copies of the schedule of regular meetings have been mailed to The News of Cumberland County and filed with the Township Clerk in compliance with said Act.

Present:

Chairman: Bruno Basile

Vice Chairman: Ed Overdevest

Members: Robert Comer (came in at 7:10), Edward Fleetwood, Ernest Holt, Bruce Peterson, alternate # 1 Russ Vanella, alternate # 4 Pauline Smith

Staff: Planner Randy Scheule, PP,AICP, Solicitor Theodore H. Ritter, Esq., Secretary Vicki Vagnarelli.

Absent: Engineer Robert C. DuBois,P.E., (not needed at 2nd meeting) Jodi Hirata, Terry O'Neil, Gene Stoms, alternate # 2 John Timberman, alternate # 3 Gary Barbeck

On motion of Ed Overdevest, seconded by Pauline Smith, minutes of September 13 were approved with Bruce Peterson abstaining.

On motion of Ed Fleetwood, seconded by Russell Vanella the following Resolution was memorialized.

RESOLUTION #18-2010

Township of Upper Deerfield Planning Board

Applicant's Name: Comet Land Development, L.L.C.

Property: Block 1101, Lots 13, 14, 18, and 21.02

Application: Preliminary Major Site Plan Approval with Bulk Variances and Waiver

Site Plan Hearings: June 21, July 12, and September 13, 2010

Findings of Fact:

1. Applicant was represented by Alan P. Fox of the Capehart and Scatchard Law Firm.
2. Applicant was granted a Use Variance by this Board's Resolution #11-2010, following a Use Variance Public Hearing conducted on April 19, and May 17, 2010.
3. The Board accepts as factual the plans and documents submitted by and on behalf of applicant including:
 - a. Tree Management Plan dated February 8, 2010.
 - b. Major Site Plan last revised on September 2, 2010.
 - c. Environmental Impact Statement dated February 2010.
 - d. Stormwater Management Report dated February 11, 2010.
 - e. Environmental Impact Statement Addendum dated March 1, 2010.
 - f. Correspondence from Justin Michael Murphy, Esq. dated March 1, 2010.
 - g. Undated information respecting Ground Mount Photovoltaic Systems.
 - h. Correspondence from ABR Consultants dated February 25, May 7, July 2, and September 10, 2010.
 - i. Aerial photograph of Parcel in question.
4. The Board also received and considered the following additional data:
 - a. July 2, 2010 letter to Upper Deerfield Township Planning Board from Joseph J. Raday, P.E., C.M.E of A.B.R. Consultants, L.L.C.
 - b. June 17, July 12, and September 8, 2010 reports of Planning Board Planner Randall Scheule, PP/AICP.
 - c. April 5, and August 11, 2010 reports of Board Engineer Robert C. DuBois, P.E.
5. All property owners within 200 feet of applicants' premises were properly served with a Notice of Hearing.
6. Compliance has been had with each of the various requirements of the Open Public Meetings

7. The property affected by this application is situated northwest of the intersection of Silver Lake Road, and DuBois Road, in the R-1 Zone. It comprises Lot Nos. 13, 14, 18 and 21.02, of Block 1101 as shown on the Upper Deerfield Township Tax Map.

8. Applicant has requested preliminary major site plan approval from this Board together with a waiver for fence height and bulk variances for various setbacks affecting this oddly shaped property.

9. Applicant's counsel explained that Applicant was withdrawing, at this time, a request for final major site plan approval. Applicant wishes to secure preliminary site plan approval so as to begin partial clearing and installation of a silt fence and then follow-up with submission of a final site plan.

10. At the public hearing of June 24, 2010, Applicant presented the expert testimony of Mr. Raday, Professional Planner Barbara Allen Wooley-Dillon, Arborist Scott Lussier, Solar Facilities Engineer Dan Schaffer and lay testimony from Bruce Martin.

11. At the public hearing continuation on July 12, 2010, applicant presented additional testimony from Engineer Raday and from Mr. Martin.

12. For the July 12, 2010 public hearing, applicant clarified locations for the proposed tree line and added locations of the proposed inverters to the site plan.

13. Applicant also placed into evidence multiple exhibits relating to buffering, elevations, pictures of the property, road setback and marked up aerial Google maps.

14. Applicant, through counsel and applicant's witnesses, advanced the argument that the variances sought could be granted under N.J.S. 40:55D-70(c)(2) and that the benefits of the proposed solar project outweigh any detriment relating to the proposed property line setbacks. Applicant's attorney and witnesses also advocated the project by juxtaposing the impact of the solar energy project versus the 49-lot residential subdivision project previously approved for this same parcel.

15. Applicant proposes to customize the visual screening for each of the adjacent residential property owners where the setback to their respective property is less than the one hundred (100) feet required by the

Township ordinance following the clearing of the solar field site and installation of the solar panels. Applicant has offered to plant trees on the neighbor's property if desired by the homeowner or otherwise on applicant's property to visually screen the solar panel array.

16. After the approval of the use variance, applicant offered several reconfigurations of the solar array on the property in order to reduce the amount of solar panel coverage.

17. Arborist Lussier testified for applicant regarding the 43 acres of trees which were slated for removal. Applicant and others noted that the proposed solar use is incompatible with tree preservation.

18. Applicant's Planner, Ms. Wooley-Dillon, gave testimony regarding the hardship caused by the odd shape of the parcel making the buffer requirement very difficult if not impossible to meet. Ms. Woolly-Dillon also testified regarding the desirability of the promotion of renewable energy and the benefits of the proposed solar facility contrasted with the arguable detrimental impact.

19. Applicant argued that it was permitted, by right, to remove all trees in order to farm the property. Applicant contrasted the removal of all trees for farming purposes to the removal of some trees for solar energy production as being a more beneficial alternative.

20. The applicant's witnesses gave testimony and applicant's attorney offered argument regarding the minimal acreage of solar panels required in order to make this solar panel energy production project economically viable. The testimony indicated that a minimum of 78.3 acres was required for construction of and improvements related to the solar panels.

21. Planning Board Planner Randall Scheule offered calculations and a diagram respecting the net area available for solar development, assuming full compliance with the Township ordinance minimum setbacks. According to these calculations, a net area of 54.9 acres is available without any variances.

22. A number of members of the public appeared at the June 17, and July 12, 2010 Site Plan hearings and testified including Lynn Maun, Blake Maloney, Frank Catalana, Dean Hawk, Rebecca McCubbin, Joseph Nicosia, John Maun, Nancy Ridgway, Sandy Morrissey and John McGlynn.

23. Several neighboring property owners testified in favor of the project and expressed the opinion that the solar energy project was preferable to the previously approved 49 lot residential subdivision.

24. Some objectors questioned the actual need for the proposed solar alternate energy project and advocated against the removal of so many trees. Some objectors raised the issue of adverse impact on area wildlife.

25. Following the Board's vote taken on July 12, 2010, to deny major site plan approval with bulk variances taken July 12, 2010, (later memorialized by a Resolution adopted on August 9, 2010), the Board received a letter from Alan P. Fox, attorney for applicant, dated August 6, 2010. The Fox letter was supported with drawings, and an August 3, 2010, letter from Joseph J. Raday, P.E. for ABR Consultants, Inc. The thrust of the August 6, 2010, letter was that Comet discovered that the testimony regarding of the net acreage to be utilized for construction, under its site plan, was incorrect. The July hearing testimony indicated that 78.3 acres would be utilized for construction on the site, including the actual footprint of the solar panel field, and access driveways.. However, according to ABR Consultants, the accurate calculation of the acreage necessary for construction was 69.47. The latter figure was thereafter verified by Board Engineer, Robert DuBois, in his report dated August 11, 2010.

26. The August 6, 2010, letter from Mr. Fox requested that the Planning Board reopen the hearing to allow corrective testimony, and, to thereafter, take a new vote on the major site plan application.

27. Various Township officials and Planning Board professionals met at applicant's request, with applicant's representatives, at the Township's Municipal Building, on August 19, 2010, to discuss ways that the impact of the proposed development could be reduced.

28. Applicant came before the Board at its meeting of September 13, 2010, following service of notice upon the 200 foot property owner's, and publication of notice in *The News of Cumberland County*.

29. After a brief presentation from applicant regarding the incorrect construction acreage testimony presented at the July 12, 2010, hearing, the Board first voted to rescind its Resolution denying major site plan approval.

30. The Board next voted to grant a reopening of the site plan hearing to formally receive the evidence correcting the actual amount of construction acreage which would be occupied by the solar panel project.

31. Applicant then presented testimony from Mr. Raday, Daniel Schaffer, Mike Sullivan, and Bruce Martin.

32. Applicant also offered a revised site plan bearing a revision date of September 2, 2010, together with a five-page exhibit A-7 comparing the proposed solar field design denied on July 12, 2010, with the new proposed solar field layout which would involve 68.94 acres of the 87.0 acre site.

33. The Board received testimony from Mike Sullivan, an employee of Comet/Millennium, who testified that he went door to door and received signed letters from owners of ten of the contiguous residential properties where the solar panels would be set back less than the one hundred (100) feet required by the Township ordinance. The signed letters from the aforementioned neighbors: Anthony Bermudez, Glenn Rose, Earl Dooley, Thelma Dooley, Frank Bruno, Timothy Barton, Peter Bagby, Dr. James McGlynn, and Frank Catalano, were introduced as a package, and labeled Exhibit "A-8".

34. Applicant also seeks permission for preliminary, limited clearing of approximately 3.6 acres in the southeast corner of the site for the purpose of seeding that area with grass. The extent of this area is to be shown on the revised site plan.

35. Applicant proposed to finalize landscaping plans for the surrounding residential properties, after the installation of the solar field. The above-mentioned owners of the ten contiguous residential properties indicated, in their signed, respective letters, their agreement with Comet's approach.

36. During the public portion of the September 13, 2010, hearing, the Board received testimony from Larry Benz, Lynn Maun, Sandy Morrissey, and Frank Catalana.

37. The Board finds and determines that the applicant's site plan can be preliminarily approved and that the bulk variances requested for property line setbacks, and the tree ordinance, and fence height waivers,

can be granted without causing substantial detriment to the public good, and without impairing the intent and purpose of the Zoning Ordinance and Master Plan.

38. The Board also finds that the applicant has provided sufficient justification for the applicant's proposed deviation from the Township's tree preservation ordinance.

39. The Board further finds and determines that applicant has met its burden of proof that the proposed benefits of the project outweigh any detriments to the neighborhood and the zone plan arising from the bulk variances and waivers requested.

NOW, THEREFORE, BE IT RESOLVED that the Upper Deerfield Township Planning Board does hereby grant preliminary major site plan approval with requested bulk variances, and requested waivers, to Comet Land Development, L.L.C., conditioned upon the following:

- A. A corrected site plan addressing all representations made by the applicant, and addressing all outstanding comments as contained in the Planning Board Engineer's and Planner's respective reports is to be filed forthwith by applicant.
- B. Applicant is permitted to perform limited clearing of approximately 3.6 acres, in the southeastern portion of the property, and to begin seeding once applicant has submitted the corrected site plan referenced above.
- C. Applicant can complete its survey for the new fence, and is permitted to install silt fencing in accordance with Soil Conservation Service requirements.
- D. Applicant is granted a waiver for a perimeter fence height of six feet.
- E. Applicant will offer individual property owners the choice of galvanized anchor chain-link fencing, or green vinyl coated chain-link fencing bordering each individual residential property owner's adjacent property line.
- F. The six foot chain-link perimeter fence will not be installed prior to final site plan approval.
- G. Applicant will post a cash deposit, or other form of surety, that is acceptable to the

Township Solicitor, in the amount of Seventy-Five Thousand (\$75,000.00) Dollars, or in such amount as deemed necessary, and appropriate, by the Planning Board Engineer to guarantee installation of the landscaping buffers.

- H. The four separate lots comprising the property must be consolidated into one lot. The lot consolidation Deed must be submitted to the Board Solicitor for review and approval prior to recording.
- I. Applicant must execute an abandonment of the previously approved 49 Lot Subdivision coincidental with the Board granting final major site plan approval for this solar energy generation project.
- J. Applicant will secure from the Cumberland-Salem Soil Conservation District Office a certification that sufficient groundcover has been established prior to applicant installing any solar panels.
- K. Applicant will enter into a Developer's Agreement memorializing Applicant's obligations and the conditions of approval, which Developer's Agreement will be recorded in the County Clerk's Office. The Developer's Agreement will include the property owner's obligation to remove the solar panel improvements upon the cessation of the solar panel energy generation use.

BE IT FURTHER RESOLVED that a Certified copy of this Resolution be furnished to applicant and Notice of this action be advertised as required by Law.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: September 20, 2010

Roll Call

Bruno Basile –Aye
Robert Comer – Aye

Ed Overdeest –no vote
Ed Fleetwood – Cannot Vote

Jody Hirata –no vote/Absent

Terry O’Neill – Cannot Vote

Gene Stoms – no vote/Absent

Russell Vanella, Alt #1 – Aye

Gary Barbeck, Alt #3 –no vote/Absent

Ernest Holt – Aye

Bruce Peterson – Cannot Vote

John Timberman, Alt #2 – Absent

Pauline Smith, Alt # 4 - Aye

On motion of Ed Fleetwood, seconded by Ernest Holt the following Resolution was memorialized.

RESOLUTION #19-2010

Township of Upper Deerfield Planning Board

Applicant’s Name: Bridgeton Farms Associates, L.L.C./Cruz Canango

Property: Lot 5, Block 2801

Application: Request for Interpretation, or Use Variance for
Animal Slaughtering in Agricultural Zone

Public Hearing Hearing: September 13, 2010

Findings of Fact:

1. Applicant was represented by Jeff Thakker, Esq., who appeared for the Public Hearing.
4. The Board accepts as factual the documents submitted by and on behalf of applicant including:
 - a. Existing conditions plan by Land Engineering, LLC, dated April 15, 2010.
 - b. Application dated July 18, 2010, and Checklist with Rider “A”, Rider “B”, Rider “C” and Rider “D” to Development Application form.
 - c. Plan of Survey dated April 20, 1980, by David W. Shifflet, L.S.
 - d. Photographs Exhibits “A-1” through “A-6”.
3. The Board also received and considered:
 - a. Review Report of Planning Board Planner Randall Scheule, PP/AICP dated September 8, 2010.
 - b. Letter from Cumberland County Board of Health, dated August 18, 2010.

4. All property owners within 200 feet of applicant's premises were properly served with a Notice of Hearing.

5. Compliance has been had with each of the various requirements of the Open Public Meetings Law, P.L 1975 c. 231.

6. The property affected by this application is located on the Southeast corner of the intersection of Irving Avenue and South Woodruff Road, in the Agricultural Zone. The Southern part of this property is located in Fairfield Township.

7. Applicant has requested an interpretation, or in the alternative, a use variance for animal slaughtering as part of the animal husbandry farming operation conducted by applicant Cruz Canango, and her husband David Aguilar, on the property owned by Bridgeton Farms Associates, L.L.C.

8. Applicant has also requested a waiver of site plan and setback variances for existing conditions, namely the existing farm residence structure, and outbuildings.

9. At the public hearing of September 13, 2010, applicant offered the testimony of Mr. Aguilar, who raises chickens, sheep, goats, cattle, and pigeons on the farm.

10. Applicant wishes to perform incidental slaughtering for the sale of freshly killed goats, lambs, sheep, and chickens. Applicant sells live animals, and is requested from time to time to slaughter and dress freshly killed animals. If authorized to perform the slaughtering activity on the property, as an accessory use, applicant will abide by all applicable regulations of the Cumberland County Board of Health, New Jersey Department of Agriculture, and/or the United States Department of Agriculture.

11. Applicant agrees to only slaughter and dress animals that are raised on site. Applicant's husband testified that there will be no slaughtering of animals raised off site or owned by others

12. Counsel for applicant offered argument that the proposed slaughtering, dressing, and sale of animals raised on this farm is a permitted accessory use to the primary agricultural animal husbandry, pasturing, and breeding use.

13. In the alternative, applicant's counsel argued that special reasons exist for the granting of a use variance to permit the incidental slaughtering of goats, sheep, and chickens, and the sale of freshly killed, and dressed, livestock as part of this farming operation.

14. Mr. Aguilar testified that there are five cattle on the property. He will not be slaughtering cattle. His cattle are kept for breeding purposes, and according to Mr. Aguilar are sold live at auction.

15. Applicant offered testimony that no swine are kept at the property.

16. The pigeons are raised for ceremonial use.

17. Mr. Aguilar testified regarding existing conditions, and applicant's counsel introduced as photographic evidence Exhibits "A-1 through A-6".

18. Applicant rents part of this farm property, including the building improvements, from property owner Bridgeton Farms Associates, L.L.C.

19. Applicant has arranged to rent additional pasture acreage from his landlord, which according to the Existing Conditions Plan is 10 acres.

20. Applicant introduced evidence showing that facilities and improvements exist, at this location, indicating a past animal slaughtering use at the property.

21. Applicant introduced photographs showing a freezer (not presently in use) that had been part of the former animal slaughtering operation.

22. Bridgeton Farms managing partner, G. Wayne Patterson, testified regarding the property.

23. Ms. Kathleen Gandy, of the Cumberland County Board of Health, testified regarding her Department's involvement.

24. Applicant testified that farm animals are being raised across the street, at the southwest corner of Irving and South Woodruff Road, by another farmer. These are not applicant's animals, and applicant is not, in any way, associated with them.

25. Applicant offered to voluntarily limit the amount of animal slaughtering to be conducted on the premises. Applicant, through Mr. Aguilar, testified that there would be not more than fifteen goats, lambs, or

sheep, slaughtered per month, and not more than thirty chickens slaughtered per month.

NOW, THEREFORE, BE IT RESOLVED that, following a public hearing at which the Board received testimony from Mr. Patterson, Ms. Gandy, and Sandra Morrissey, of the Upper Deerfield Township Environmental Committee, the Board finds and determines that the slaughtering and dressing of animals owned by applicant, or her husband, and raised on this farm is an accessory use to the permitted primary animal husbandry farming use at 740 Irving Avenue, Block 2801, Lot 5, Township of Upper Deerfield.

BE IT FURTHER RESOLVED that a Certified copy of this Resolution be furnished to applicant and Notice of this action be advertised as required by Law.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: September 20, 2010

Roll Call

- | | |
|--------------------------------------|---------------------------------|
| Bruno Basile –Aye | Ed Overdevest –Aye |
| Robert Comer – Aye | Ed Fleetwood – Cannot Vote |
| Jody Hirata –no vote/Absent | Ernest Holt – Aye |
| Terry O’Neill – Cannot Vote | Bruce Peterson – Cannot Vote |
| Gene Stoms – no vote/Absent | |
| Russell Vanella, Alt #1 – Aye | John Timberman, Alt #2 – Absent |
| Gary Barbeck, Alt #3 –no vote/Absent | Pauline Smith, Alt # 4 - Aye |

Planner, Randy Scheule, PP, AICP discussed and reviewed with the Board questions from Township solicitor concerning the following 3 ordinances the planning board approved August 9.

An Ordinance amending Section 98-40.3 of the Code of the Township of Upper Deerfield

An Ordinance amending the “Upper Deerfield Redevelopment Area Redesign guidelines”

An Ordinance amending “Exhibit F” of the Township of Upper Deerfield Redevelopment Plan

On motion of Ed Fleetwood, seconded by Ernest Holt the Board took formal action to send back all 3 ordinances to the Township Committee with no additional modifications.

Roll Call

Bruno Basile –Aye

Robert Comer – Aye

Jody Hirata – Absent

Terry O’Neill – Absent

Gene Stoms – Absent

Russell Vanella, Alt #1 – Aye

Gary Barbeck, Alt #3 – Absent

Ed Overdevest –Aye

Ed Fleetwood – Aye

Ernest Holt – Aye

Bruce Peterson – Abstain

John Timberman, Alt #2 – Absent

Pauline Smith, Alt # 4 - Aye

Proposed Landscape Ordinance:

Members of Planning, Environmental, and Shade tree had received earlier information from Randy dated 9/8/10 addressed to chairman Basile pertaining to requests for input from committee/commissions, and community for our discussion at the September 20 meeting. Randy informed Board he hopes to have a draft landscape ordinance within the month of October.

Chairman Basile suggested a subcommittee with Ed Overdevest as chair person and one member from each Planning Board, Environmental, and Shade tree. Mr. Holt, Planning Board member volunteered. Letter will go out to Environmental Commission, and Shade Tree Committee.

Regulation for Residential Renewable Energy: Planner Randy Scheule and Zoning Officer Mr. Ed Fleetwood handed paperwork out dated September 20 from Office of Housing & Zoning. Concerns are about interpreting the ordinance in sections 98-24.1C, C1 d. and e. and C2 b., c. and d. After discussion on motion of Ed Fleetwood, seconded by Robert Comer the board unanimously agreed to remove parts and revise parts of the Ordinance.

MP Reexamination Recommendations: Planner Randy Scheule gave hand out dated September 20, 2010 Master Plan Reexam. The report adopted at a public hearing August 9, 2010 recommends 19 specific changes to the master plan and or development regulations. Recommendations are showing list in priority order. This handout is for review by Board members and Committees/Commissions for further discussion at the October 18th meeting.

Being no further business on motion of Ernest Holt, seconded by Robert Comer the meeting adjourned 8:45pm.

Respectfully Submitted,

Vicki Vagnarelli
Planning Board Secretary