

The Special Meeting of the Planning Board of the Township of Upper Deerfield was to be held on Monday, July 25, 2011 at 7:00 P.M. in the Municipal Building, Seabrook, N.J. Due to the number of residents that came to hear the application the meeting had to be moved to the Seabrook Fire and Rescue, 90 Foster Road, Seabrook, N.J.

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

This is a special scheduled meeting of the Planning Board of the Township of Upper Deerfield, which was published in The News of Cumberland County. 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: Edward Fleetwood, Ernest Holt, Gene Stoms, Russ Vanella, Terry O'Neill, Scott Smith, Jack Waselik alt # 1, Louis J. Bramante, Jr. Alt # 3

Anthony Buono, Sr Alt # 4

Staff: H. Ritter, Esq. and Matthew Ritter, Esq., Secretary Vicki Vagnarelli.

Absent: Pauline Smith

On motion of Ed Fleetwood, seconded by Ernest Holt minutes of June 20, 2011 meeting unanimously approved.

On motion of Ed Fleetwood, seconded by Jack Waselik the following Resolution was memorialized.

RESOLUTION # 17 - 2011

Township of Upper Deerfield Planning Board

Applicant's Name: Perdue Agribusiness, Inc.

Property: Block 1205, Lot 4
73 Silver Lake Road

Application No.: P 11-11

Application For: Preliminary and Final Major Site Plan

Zone: General Industry

Public Hearing Date: July 11, 2011

Findings of Fact:

1. Applicant was represented by Rocco J. Tedesco, Esquire, who appeared and presented the application on its behalf.
2. Applicant operates a grain drying and distribution facility from the premises. The principal use is a permitted one in the GI Zone.

3. Applicant seeks to add a paved area, measuring 160 feet by 410 feet, for outdoor corn storage, together with an additional basin to handle stormwater runoff.
4. Matthew Baldino, Professional Engineer, testified as an expert on behalf of applicant.
5. The following plans and documents constituted the application:
 - a. Upper Deerfield Development Application Form.
 - b. Site Plan (four sheets) by Fralinger Engineering, dated March 23, 2011.
 - c. Stormwater Management Report by Fralinger Engineering, dated May 5, 2011.
6. The Board also received and considered the report of Planning Board Planner, Randall Scheule, PP/AICP, dated July 5, 2011.
7. The Board received and considered the report of Robert E. DuBois, P.E., dated July 6, 2011.
8. The evidence presented by applicant indicated that there will be no change in operations at the site. A grain storage area is merely being paved whereas, the grain storage currently is being conducted on bare ground. No increase in truck traffic is expected.
9. The Board received and considered correspondence from the Upper Deerfield Environmental Commission, dated July 8, 2011, respecting applicant's request to waive the Environmental Impact Statement.
10. At the public hearing, Township Resident, Lynn Maun, appeared and questioned the applicability of the Upper Deerfield Township Tree Ordinance #580, in conjunction with the removal of a portion of an old hedge row (described during the testimony as "scrub woods"). Based upon the testimony, it appears that approximately 7,500 square feet of scrub woods will be disturbed in conjunction with the construction of the proposed storage pad and drainage basin.
11. No one appeared in opposition to the application.
12. The Board finds that the application will not require any variances.
13. During the hearing, in the course of discussions with Board Engineer DuBois, and Board Planner Scheule, applicant agreed:
 - a. to include a maintenance plan for the stormwater management trenches as part of applicant's perfected plan.
 - b. to revise the plan to show the setbacks to the new pad, and
 - c. to plant five trees in mitigation of the trees being removed for the paved pad. The species and location of the new trees will be coordinated with the Township through Planning Board Planner, Randall Scheule.
14. The Board finds and determines that administrative conditions 5. (a), (e), (f), and (g), in the report of Board Planner Randall Scheule, are inapplicable to this application.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of Upper Deerfield Township does grant waivers to applicant for:

- a. Letter of interpretation for freshwater wetlands,
- b. Photograph of the premises,
- c. Topography of the site,
- d. Location of trees, six inches or more in diameter,
- e. An Environmental Impact Report, and
- f. A Landscaping Plan.

BE IT FURTHER RESOLVED by the Planning Board of Upper Deerfield Township that the Application of Perdue Agribusiness, Inc., for preliminary and final site plan approval is hereby granted subject to the following conditions.

1. Applicant shall file its perfected plan including the data enumerated in paragraph #13, *supra*.

2. Applicant shall provide an Engineer's Cost Estimate of the site improvements, and a performance bond in a form approved by the Planning Board's Solicitor, in an amount approved by the Planning Board Engineer.

3. This approval is granted subject to outside agency approval of the Cumberland County Planning Board, Cumberland County Soil Conservation District, and any other agency having jurisdiction.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: July 25, 2011

Roll Call

Bruno Basile – Aye

Russell Vanella – Aye

Pauline Smith – Absent

Terry O'Neill – Aye

Gene Stoms – Aye

Jack Waselik, Alt #1 – No Vote

Vacant, Alt #2

Ed Overdevest – Aye

Ed Fleetwood – Aye

Ernest Holt – Aye

Scott Smith – Aye

Louis J. Bramante, Jr., Alt #3 – No Vote

Anthony Buono, Sr., Alt # 4 - No Vote

APPLICANT/DEVELOPMENT

Sunset Lake 100 LLC - 1601/1, 2, 5, 1701/12 Conversion of existing Pre/Final Maj. S/D

Representing applicant was Richard J. Hoff Jr. Esq., Attorney, Daniel Busch, PE, Engineer, Creigh Rahenkamp, AIC, PP, Planning, Maurice Rached, PE, Traffic Engineer, David Meiskin representative of applicant but not expert and Robert J. Boccolini, Certified Court Reporter.

Solicitor Ted Ritter read the following letter dated July 25, 2011 from Theodore E. Baker, Township Solicitor regarding hearing on Sunset Lake.

UPPER DEERFIELD TOWNSHIP



THEODORÉ E. BAKER
Township Solicitor

MARIAN E. HAAG
Assistant Solicitor

REBECCA J. BERTRAM
Assistant Solicitor

56 Fayette Street
P.O. Box 257
Bridgeton, NJ 08302
Phone: 856-455-6000

July 25, 2011

Theodore H. Ritter, Esquire
Matthew Ritter, Esquire
The Ritter Law Office, L.L.C.
55 Fayette Street
P.O. Box 320
Bridgeton, NJ 08302

Re: Sunset Lake 100 - Application before Planning Board

Dear Ted and Matt:

The above application is before the Upper Deerfield Township Planning Board on July 25, 2011. This application is part of an approval that was granted to the developer in December, 2003, pursuant to a Court Order and Settlement Agreement. I enclose a copy of the Court Order and the Settlement Agreement which was approved by way of a fairness hearing held before the Court on December 12, 2003. That fairness hearing resulted in a court order of December 18, 2003, which implemented a Settlement Agreement dated November 18, 2003. The preliminary and final subdivision approvals were granted by order of the Court enforcing litigant's rights dated June 15, 2005. A copy of that order is also enclosed.

Sunset Lake 100, LLC had initiated litigation against the Township and its Planning Board in two separate law suits, Docket No. CUM-L-623-01 and CUM-L-178-03 pertaining to the development of Block 1601, Lot 1, Block 1701, part of Lot 12 to construct age restricted housing with a 10% low and moderate income set aside.

There was both a binding Settlement Agreement that was entered into between the Township and the developer, and the Settlement Agreement was incorporated into the terms of a judgment, both of which are attached.

My concern at this juncture is that the Township Planning Board may have no subject matter jurisdiction to consider the present application which is before it. The applicant is bound by both the Settlement Agreement and a judgment which the applicant initiated through litigation against the Township and its Planning Board. The Township and its Planning Board are likewise bound by that judgment and Settlement Agreement. In my view, both the Settlement Agreement and the judgment are legally enforceable between the parties according to the terms thereof.

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Attorney Hoff disagreed with the interpretation and recommendation from Solicitor Ritter regarding the letter, which was the Planning Board did not have jurisdiction to hear testimony from the applicant.

Ed Overdeest questioned if time is tolled and Solicitor Ritter stated "if we don't have jurisdiction time does not tick"

On motion of Ed Fleetwood, seconded by Ernest Holt the Board voted to Not Hear testimony from the applicant and to table the application on the recommendation of Township Solicitor Bakers letter and Planning Board Solicitor Theodore Ritter's verbal recommendation.

Roll Call

Bruno Basile – Aye

Russell Vanella – Aye

Pauline Smith – Absent

Terry O'Neill – Aye

Gene Stoms – Aye

Jack Waselik, Alt #1 – Aye

Vacant, Alt #2

Ed Overdevest – Aye

Ed Fleetwood – Aye

Ernest Holt – Aye

Scott Smith – Aye

Louis J. Bramante, Jr., Alt #3 – No Vote

Anthony Buono, Sr., Alt # 4 - No Vote

Public Portion: Public was informed this was not a public hearing for the applicant Sunset Lake as the Board just voted to table and not hear testimony, so they could not ask questions of the applicant or the Board regarding the application.

Mr. Dennis Cook, 8 Oak Hill Drive commented he would be angry if judge decides we have jurisdiction and the clock has ran out. You would have taken our rights of participation and input away.

Cindy Zirkle, Fairfield Township commended the board for not being afraid to take legal action if need be.

Being no further business on motion of Russ Vanella, seconded by Jack Waselik the meeting was adjourned at approximately 8:00pm.

Respectfully Submitted,

Vicki Vagnarelli, secretary