

EAST AMWELL PLANNING BOARD MINUTES
7:30 PM East Amwell Municipal Building
November 11, 2009 - Meeting

Call to Order, Attendance and Pledge of Allegiance

This meeting of the East Amwell Planning Board was opened on November 11, 2009 at 7:30 PM. The following notice was read, "In compliance with the Open Public Meetings Act, this is a regularly scheduled meeting pursuant to the annual meeting notice as published in the January 29, 2009 issue of the Hunterdon County Democrat, a copy of the agenda for this meeting was forwarded to the Hunterdon County Democrat, filed in the Township Clerk's Office and posted on the bulletin board on November 4, 2009."

Present: Fred Gardner
Rob Gilbert
Bela Kamensky
Peter Kneski
Don Reilly, Chairman
Dart Sageser – *(arrived at 7:32 PM)*
Roger DeLay
Planner Slagle

Excused: Gail Glashoff
Linda Lenox
Michael Weis
Joe Wolfgang

Citizens' Privilege to Speak on Items Not on the Agenda

Chairman Reilly opened the floor to public comment. No one came forward and the floor was closed to public comment.

Review of Minutes

A motion by Fred Gardner, seconded by Roger DeLay to approve the Board's 10/14/09 minutes was approved with Peter Kneski abstaining.

New Business – Other

Public Hearing: Tree Harvesting Ordinance

Planner Slagle provided some background information on the ordinance explaining that it was established to address the removal of trees in sensitive areas of the Township. She noted the purpose of the ordinance is not to prohibit tree cutting, but rather to create an appropriate level of cutting. Chairman Reilly added that one of the main issues the Board was focused on initially was to eliminate inconsistencies between the existing Tree Ordinance and the Sourland Mountain District Ordinance. He noted that the Board was careful in crafting the revision so that residents were provided with sufficient flexibility so that they could manage their property from a landscaping perspective without any undue burden placed upon them. Chairman Reilly explained that was the reasoning behind the Board's determination to limit the tree cutting to 5 trees in a 6 month period and to exempt diseased trees or those posing safety hazards. He noted that the Board also took into consideration the unique nature of the Amwell Valley Agricultural District and tried to provide the farmers with sufficient flexibility as well. He stated that while the Board has attempted to address as many issues as possible, the ordinance is not perfect and there may still be issues and holes. Chairman Reilly commented that he believes the revised ordinance is rational and is much better than the current ordinance.

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A motion by Rob Gilbert, seconded by Peter Kneski to open to the public was unanimously approved.

Gray Jones of 170 Mountain Road came forward and was sworn in. He expressed his general approval of the revised ordinance. He indicated that he has a concern regarding how the ordinance may or may not address the “processing” of trees. He stated he lives directly across the street from Mike Fiscor and that he has spoken to the Zoning Officer regarding the operation that is taking place on Fiscor’s property. He commented that Mr. Fiscor has filed a Forest Management Plan with the Township and indicated that according to Zoning Officer McManus, some of the activity taking place on the site seems to be beyond what may be allowed under the plan. Mr. Jones stated Zoning Officer McManus has issued a Notice of Violation and said he is concerned that the ordinances don’t address the potential “processing” of trees.

Mr. Jones passed out a series of 9 photos marked as **Exhibits P1 – P9**. Mr. Jones commented that the photos demonstrate that Mr. Fiscor is conducting a milling operation. He said logs are brought to the property and milled on site. Mr. Jones said the operation is so loud that he cannot open his windows during the day. He indicated that the milling begins as early as 7:40 AM and continues until late in the afternoon. He commented that the milling takes place on both Saturday and Sunday and most week days as well. Mr. Jones stated he wears his protective ear gear when he goes outside because the noise is so loud. A report done by Mr. Jones noting the activity occurring on the Fiscor property was marked as **Exhibit P-10**.

Chairman Reilly commented that the activity Mr. Jones is explaining is a zoning violation. He stated the dilemma the Board has is trying to craft a document that catches and addresses all of these types of issues.

Mr. Jones questioned, “If a property owner works with the State to develop a Forest Management Plan, this Township either feels it has no authority or no desire to stop that from going all the way to a milling operation within the Sourland Mountains?” Chairman Reilly indicated the Board has struggled with trying to address these issues and cannot reach a consensus. He commented the original premise was that the Township had a Tree Ordinance that was at odds with the Sourland Mountain District Ordinances and the Board needed to reconcile the matter. He indicated the ordinance is now in alignment with the Sourland Mountain and in addition to that the Board crafted some other things to make it applicable to the entire Township while still providing residents with some flexibility.

Mr. Gardner commented on the noise levels expressed by Mr. Jones referring to section 92-65 of the ordinance. Mr. Kneski commented that a certified person must conduct noise level tests at the property line. Planner Slagle commented that jurisdictionally, because Mr. Fiscor has a State Forest Management Plan, the proper protocol is to have the Zoning Officer determine whether or not the plan is being conformed to and then follow up with the State accordingly.

Mr. Jones commented that he believes Mr. Fiscor’s operation is a commercial one that may have an environmental impact. He stated he would like to see Mr. Fiscor’s Environmental Impact Statement if he has one. Planner Slagle noted there is a difference between a State Forest Management Plan and the way that the Board has defined a Tree Harvesting Plan. She said the Board has no jurisdiction over a State Plan and the Tree Harvesting Plan is simply for the removal of trees. She said there is nothing in the ordinance that allows processing.

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Tim Mathews of 72 Linvale Road came forward and was sworn in. He explained that he believes those people with Forest Management Plans should be included in the process of revising the Tree Harvesting Ordinance. He stated he has his own plan and indicated that he has 10 acres under Forest Management and 1 acre dedicated for his home. He explained he pays taxes on the 1 acre and gets a reduced rate for the remaining 10 acres in exchange for being a forest steward. He noted his plan indicates he has approximately 35 trees per acre on his land, noting various species, and questioned why the Board would want to allow someone to be able to cut down 10 trees per year under the revised ordinance. He commented that he could effectively wipe out all of the white oak trees contained in one acre on his property. Mr. Mathews noted his white oak trees are all 80 – 90’ tall. He commented that the proposed revised ordinance may allow people to cut down more trees than the Board realizes.

Mr. Mathews commented on Mr. Jones’ remarks, saying that he thinks what Mr. Fiscor is doing is an “eyesore,” but noted that plans do often allow for harvesting, milling and processing to take place on site because it’s easier for the loggers. He added that the ordinance is essentially allowing anyone without a Forest Management Plan to harvest up to 5 trees and ship them over to Mr. Fiscor’s house to be milled. Mr. Mathews suggested the Board incorporate the need to have professional foresters involved in any tree cutting.

Mr. Mathews commented that he believes the proposed ordinance to be “unbalanced and arbitrary.” He also stated he would like to see the science behind the ordinance. He continued commenting, saying he doesn’t know if the Zoning Officer is necessarily qualified to make determinations regarding forestry and suggested the ordinance indicate State approved foresters review any potential permit applications where more than 5 trees are being requested to be taken down.

Mr. Kneski commented that his understanding of the ordinance is geared more toward residential properties that don’t necessarily have a forest. Mr. Gardner remarked that Mr. Mathews brought up a good point. He said someone cutting down a 4 – 5’ diameter white oak is far more significant than taking down a sapling. Mr. Gardner commented that the Board has wrestled with this issue and couldn’t come to a consensus. He noted that he believes he should be allowed to go out into his woods and take down trees that overcrowding other trees or posing safety hazards without having to hire a Forester.

Frances Gavigan of 123 Wertsville Road came forward and was sworn in. She commented that she has been at all of the Planning Board meetings where the Tree Harvesting Ordinance was discussed and recognizes all of the effort that was made by the Board and various participating residents to come up with a workable ordinance. Ms. Gavigan remarked that she would like to know what “process” means as it relates to Mr. Fiscor’s Forest Management Plan. She commented that the issue of “scale” regarding the amount of activity taking place on Fiscor’s property is a grey area and the “noise” being generated may be a necessary part of farming. Ms. Gavigan also noted that she suspects any issues regarding the Fiscor property would likely have to go before the SADC. She suggested that the Board may want to consider establishing a tree size diameter to be included in the ordinance to clarify the size of trees that can be cut down.

Ms. Gavigan pointed out the following areas in the ordinance that she believed needed review: Section 129-6 regarding timber standing and clear cutting, Section 129-4 noting people should not have to learn the Best Management Practices (BMP’s) and she suggested the definition of Tree Harvesting be “tightened up.”

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A motion by Roger DeLay, seconded by Peter Kneski to close to the public was unanimously approved.

Chairman Reilly commented that some of the issues brought up from the public may be items that need to be addressed through the existing ordinances currently in place. He stated that while the proposed Tree Harvesting Ordinance is not perfect, the Board struggled with all of the issues raised this evening. He noted that the Board's biggest concern was to get this ordinance consistent with the Sourland Mountain Ordinance so the Zoning Officer has no enforcement issues.

Mr. Sageser commented on Mr. Jones' statements regarding a commercial use taking place on a residential property. Planner Slagle clarified that when a property owner has a State Forestry Management Plan, they are protected under the Right to Farm. She explained that in this case, instead of farming crops, the property owner is farming trees. Mr. Sageser commented that if this is the case, consideration should be shown to the surrounding neighbors. Planner Slagle indicated this is an enforcement issue where the plan needs to be reviewed to ensure that what is actually taking place on the property is in fact outlined in the plan and not exceeding what is allowed.

Mr. Gilbert added that there is the issue of trees being processed from other properties.

Mr. Kamensky commented that on a 35 acre parcel, the placement of such an operation should be carefully considered and part of the plan. Mr. DeLay added that if the operation was taking place further back on the lot the potential for environmental damage increases.

A motion by Fred Gardner, seconded by Roger DeLay to approve the draft Tree Harvesting Ordinance and recommend it be forwarded to the Township Committee was unanimously approved.

Roll Call Vote: Fred Gardner: Yes, Roger DeLay: Yes, Rob Gilbert: Yes, Bela Kamensky: Yes, Peter Kneski: Yes, Don Reilly: Yes, Dart Sageser: Yes.

Mr. Gardner commented that if woodlands management is put into the context of a farming operation it is no different from the local farmers who farm various residents' properties and then process the corn on their own property.

Discussion: Steep Slopes and Riparian Buffer Ordinance Update

Planner Slagle noted that this matter will be on the Board's December agenda. She commented that the Wastewater Management Plan requires the Board to submit updated ordinances. She and Engineer O'Neal are working on the matter. It was noted that draft ordinances will be submitted with final revisions to be worked on in 2010.

Discussion: 2010 Planning Board Budget

The Planning Board reduced their budget from \$46,300 in 2009 to \$43,000 requested for 2010.

Oral Reports

FOSPC – Mr. Gilbert reported that the Farmland Preservation Plan was submitted to SADC and they are awaiting comment. He also reported that FOSPC has targeted 10 farms for preservation and the Farm Forum held in October was a big success.

Agricultural Advisory Committee – No report given.

Environmental Commission – No report given.

SM Smart Growth Grant – No report given.

Stormwater Committee – No report given.

COAH – No report given.

Wastewater Management – No report given.

PB Secretary – No report given.

Chairman – No report given.

Correspondence

No comments were made on any of the correspondence listed on the agenda.

Open to the Public

A motion by Rob Gilbert, seconded by Roger DeLay to open to the public was unanimously approved. Frances Gavigan of 123 Wertsville Road came forward and asked who provides the final approvals when violations are satisfied and asked if there is a process for informing the office staff when violations have been rectified. Chairman Reilly commented that with regard to the Tree Harvesting Ordinance, if there is a remediation plan where someone has been ordered to do something, and the Courts are involved, the Board has provided the Court with a vehicle to determine whether or not the issues have been satisfied. Chairman Reilly noted that the Zoning Officer indicated he did not feel comfortable putting together a remediation plan therefore the Planner will be the contact person for remediation plans regarding the Tree Harvesting Ordinance.

Tim Mathews of 72 Linvale Road came forward and commented that he is a Risk Manager. He noted that there is an impending risk for a forest fire on the Sourland Mountain and asked if there was any emergency plan in the event of a raging forest fire. He commented the Township needs to consider risk and seek active prevention. Mr. Kneski commented that East Amwell has an Office of Emergency Management (OEM) which is required by State Law to put together plans in conjunction with the Rescue Squad and Fire Department for the purpose of dealing with any catastrophes our local community may face.

A motion by Dart Sageser, seconded by Rob Gilbert to close to the public was unanimously approved.

Presentation of Vouchers

A motion by Fred Gardner, seconded by Roger DeLay to approve the vouchers for payment as listed on the agenda was unanimously approved.

Adjournment

Chairman Reilly adjourned the meeting at 9:15 PM.

Maria Andrews, Administrative Officer