

EAST AMWELL PLANNING BOARD MINUTES
7:30 PM East Amwell Municipal Building
September 9, 2009 - Meeting

Call to Order, Attendance and Pledge of Allegiance

This meeting of the East Amwell Planning Board was opened on September 9, 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 September 2, 2009."

Present: Fred Gardner
Rob Gilbert
Peter Kneski
Linda Lenox
Don Reilly, Chairman
Dart Sageser
Michael Weis
Joe Wolfgang
Planner Banisch

Excused: Gail Glashoff
Bela Kamensky
Roger DeLay

Citizens' Privilege to Speak on Items Not on the Agenda

Chairman Reilly opened the floor to public comment for any items not listed on the agenda. Frances Gavigan of 123 Wertsville Road came forward and suggested the Board consider the unintended circumstances that may arise from the proposed Tree Harvesting Ordinance. She indicated she has heard in various public forums that East Amwell is getting a reputation for being difficult and some contractors, attorneys and other professionals are reluctant to work in the Township. Ms. Gavigan asked the Board to be cautious of complicating matters and to be sensitive of what they are doing.

Mr. Gardner commented that the Board's intention on revising the existing Tree Harvesting Ordinance is to address inconsistencies and make it more literate and understandable.

A motion by Linda Lenox, seconded by Rob Gilbert to close to the public was unanimously approved.

Review of Minutes

A motion by Fred Gardner, seconded by Linda Lenox to approve the Board's 8/12/09 minutes was unanimously approved with no revisions noted.

New Business – Other

Discussion: Review of Draft Tree Harvesting Ordinance per Planner Banisch

It was noted that Mr. Gardner and Mr. Weis had worked diligently on the ordinance revisions along with former Zoning Officer John Hyland, and based on their work Planner Banisch compiled a draft ordinance for review this evening. Planner Banisch commented that he worked on clarifying some aspects of the ordinance:

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Under *Intent and Findings, letter A*: He stated he added surface and ground water and species diversity language.

Under *Intent and Findings, letter B*: He noted the Board did not need to say they have seen specific actions taking place in order to find that those techniques will result in degradation so the language was simplified.

It was noted that the definitions section of the ordinance should probably be moved up to become section 129-3 so that people are aware of what the words and terms mean right up front and can easily determine whether or not the ordinance is applicable to them.

Under *Activities Not Requiring a Tree Harvesting Permit, letter B*: Planner Banisch noted that he wanted to make it clear that in the Amwell Valley District if someone is logging without heavy equipment, they can create up to 4 acres of farmland opportunities, but that a free pass was not being given to any activity that would otherwise apply to the use of heavy equipment such as skidders and trucks requiring a CDL.

Under *Activities Not Requiring a Tree Harvesting Permit, letter D*: He noted language was added to clarify what the Board meant by trees grown on a nursery property.

Under *Violations and Penalties*: He stated language was added to clarify that fines and penalties pertain to each **day** that tree harvesting, in violation of the ordinance, continues. Whereas before, there was a separate violation for each day remediation wasn't completed. Planner Banisch commented that there should be an objective standard included in the ordinance regarding remediation in order for there to be any legal basis for the requirement. He indicated simply having a discretionary committee decide on remediation is not recommended.

Mr. Weis added that he had spoken with Board Attorney Norman who indicated there was a recent Supreme Court ruling upholding remediation as a viable penalty. Mr. Weis added that he had two of his own suggestions: The purpose section of the ordinance should be broader to apply to the Township as a whole. He commented that he thought it seems to be focused largely on the Sourland Mountain Zone. The second suggestion was the use of finite lists. He referred to the tree harvesting definition saying, "The cutting of trees for profit, forest management or personal use in excess of 5 trees." He commented that in his opinion this definition isn't broad enough to cover someone who wants to open up a view and doesn't use the trees. He suggested the term "personal benefit" instead of "personal use." Planner Banisch suggested the definition simply state, "The cutting of trees in excess of 5 trees in any six month period." The Board agreed.

Mr. Gardner commented for the record that he had photographs of his farm taken in the 1920's and 1930's and said how extraordinary it is to see how few trees are actually visible in the photos. He said historically, many properties were used for farming and pasture including those located in the Sourland Mountain. He commented that he believes the tree growth existing today is a result of a situation that people have become used to and like and provides benefits to this Township and the surrounding areas.

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Chairman Reilly asked Mr. Weis to summarize for the record why the Board is reviewing the Tree Harvesting ordinance. He said a prior Zoning Officer (Doug Orr) had brought a concern to the Planning Board regarding inconsistencies within the Township ordinance. He specifically noted a major problem which arose when the Sourland Mountain District ordinance was updated. He said clearing for new homes was limited to 30,000 sq. ft. for the home site and up to 10,000 sq. ft. for the driveway access. Chairman Reilly added that there were other portions of the Land Management Ordinance that were inconsistent with this. Mr. Weis commented that the initial revision to the existing Tree Harvesting Ordinance was to eliminate the contradictions.

Mr. Weis noted that he had spoken with Dr. Jeffrey Keller of Habitat by Design who is an expert on wildlife ecology. He stated they had discussed the issue of clear cutting. Mr. Weis indicated Dr. Keller had informed him that if a forester is picked “out of the bag” to do woodland management, there is little guarantee that they will have any concern with species diversity. He added that a bigger surprise for him was that clear cutting, when done correctly, can actually increase species diversity. Therefore, the conclusion was that this is not the kind of situation where the Board has to guard against a single violation for fear that the ecology will be destroyed. Mr. Weis conveyed that Dr. Keller had indicated the largest threat to species diversity is deer.

Chairman Reilly opened the floor to public comment. Gray Jones of 170 Mountain Road came forward and said that he feels the Tree Harvesting Ordinance is a terrific document. He noted some potential confusion with section 129-4(A) saying the way he interprets it is skidders and logging trucks are talked about as if they both require a CDL. He indicated that these vehicles may not always require a CDL and suggested the Board review this to make sure they’re clearly stating what the intention is. Mr. Jones also commented that when the CDL was passed it left a hole in the requirements. He noted that someone could rent a 28’ box truck and not be required to have a CDL to drive it. He expressed that when the Board refers to logging trucks, unless it is an articulated, two piece truck chances are it does not require a CDL. He also said that he didn’t think the tow trucks used to pull logs up on to the flatbed trucks require a CDL.

Mr. Gilbert asked Mr. Jones if his recommendation is to leave out any mention of the CDL. Mr. Jones thought that may be a good idea. Mr. Weis suggested the possibility of addressing this issue by establishing a vehicle weight limit. Mr. Gardner suggested the Board simply needs to define heavy equipment. Planner Banisch suggested saying, “Skidders, logging trucks and/or any vehicle requiring a CDL...” The Board agreed with the change.

Mr. Jones continued his comments, suggesting that the Board consider addressing whether or not it’s appropriate for property owners to bring in trees from other sites as part of a logging operation. He indicated he believes there is some type of logging business taking place across the street from his property. He suggested the property owner is taking in trees from tree companies creating a large, on-going daily operation. Mr. Jones commented that all of the heavy equipment regularly on the property across the street wouldn’t be needed if the land owners were only taking down one or two of their own trees. He added that it wouldn’t be cost effective either, unless they were bringing in other logs. He commented that he didn’t think a major log processing operation or a commercial logging operation was what the Board wanted to see in the Sourland Mountain District.

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Planner Banisch asked how large the parcel is. Mr. Jones indicated he thought it was 35 acres. Planner Banisch asked if a lot of trees had been cut out of the land. Mr. Jones commented that everything is blocked off and you can't tell. He said, "All of the made up roads that go back there have big piles to keep you from going back there." He added that he's not suspecting that there are any misdeeds going on regarding improper harvesting and that he believes this particular person is very interested in proper forest management. He explained there is a big skidder, a roller/feeder/conveyor setup and a tow truck/flatbed type vehicle that all appear to be new and expensive pieces of equipment. He suggested that the investment that has been made into all of this equipment can't be justified by someone working within the perimeters of the Tree Harvesting Ordinance. Mr. Jones also expressed concern over the noise. He stated, "We hear operation going on there a good part of everyday it seems like."

Planner Banisch clarified that Mr. Jones was suggesting that a property owner would not buy or own all of this equipment to log their own 35 acre site. Mr. Jones said, "What I'm suggesting is that that economically no one could afford to do."

Chairman Reilly clarified that Planner Banisch is suggesting this is not a permitted use if this particular property is conducting a commercial logging operation. Mr. Jones added, "We have seen an articulated truck...come down and pick up a lot of logs and take them away and then we've seen other trucks come and appear to deliver logs—that's been in the past, it hasn't been recently."

Chairman Reilly asked how long the equipment has been on site and being used. Mr. Jones expressed there was minor equipment on the property when he built his house 3 years ago and that within the past 3 to 4 months the conveyor setup and the truck have been incorporated.

Planner Banisch commented that the issues brought up by Mr. Jones are a zoning matter that will have to be dealt with through enforcement mechanisms. Mr. Jones indicated he had already spoken to the Zoning Officer McManus.

Frances Gavigan of 123 Wertsville Road came forward and commended the Board for the work they put into revising the ordinance. She expressed concern over the following areas: The acreage criteria, specifically noting that if a property is in the Ag District and has 20 or more acres the land owner can enlarge pastures—etc. but this is not applicable to her farm or several other properties in the Township. Discussion took place on the possibility of scaling the acreage or using percentages.

Ms. Gavigan also expressed concern over monitoring and enforcing the tree cutting. She said the mechanism for justifying the exception is not addressed and she is worried the Board is creating a forum for "tree nazi's." Some discussion took place on the ordinance's reference to the "Tree Harvest Forestry Committee" overseeing the enforcement of tree cutting situations. Ms. Gavigan questioned how permits for professional loggers and homeowners would be blended asking if homeowners will have to pay for foresters if they want to cut a few trees. Mr. Weis clarified that if a property owner is harvesting wood as part of farmland assessment an approved forester's plan is required. He also noted that if the homeowners are using heavy equipment a permit will be required.

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Mr. Gardner commented that he believes Ms. Gavigan is turning the enforcement issue on its head. He said someone would have to come along and accuse a property owner of cutting down 5 trees that were not diseased or invasive and he didn't believe that there is an enforcement mechanism for this type of situation. He commented that unless someone chops down a huge area of trees, no one would take notice. Chairman Reilly said we can simply provide guidance for the Zoning Officer who will ultimately make the determination.

Mr. Weis commented that Ms. Gavigan is raising an issue that challenges almost every ordinance that has been written in New Jersey. He expressed that the Board can't do anything to stop a "tree nazi" from accusing someone of doing something wrong.

Chairman Reilly commented that the Board will address being more inclusive in the acreage issue rather than stopping at the 20 acres previously noted. He expressed that this was a good point Ms. Gavigan had brought up.

Ms. Gavigan's final comment was to request the Board clearly express their intention for the ordinance as well as the guidance that will be provided to the Zoning Officer.

Mr. Kneski commented that a homeowner could protect themselves from potential tree cutting accusations by consulting a tree expert who could certify that the trees in question should come down.

John Hyland of 152 Mountain Road commented that he had issues with the use of the words "Township Committee designee." He asked if this was the Township Committee forestry designee, or someone else. He also commented on section 127-C which refers to the Tree Harvesting Committee advising the Township Committee designee. He said if the Township Committee designee is a member of the committee, he will be advising himself. Mr. Hyland expressed that people will get lost in the words of the ordinance.

Planner Banisch explained that usually when the language of designee is included, the Township Committee has the discretion to appoint who they want. Chairman Reilly suggested that enforcement generally refers to the Zoning Officer and the ordinance should reflect that.

Mr. Hyland commented that section 129-7 refers to a forester hired by the Township Committee, then in section (C) there is mention of a forester hired by the permittee with no criteria established for why a second opinion may be needed. Planner Banisch agreed saying that it isn't clear what mechanism would enable the homeowner to engage the forester.

Mr. Weis commented that he believes this issue is in the existing ordinance as well. He said the intent is to provide the Township Committee with professional advice and that the cost of that professional advice is the responsibility of the permittee, not the Township. Chairman Reilly questioned how this will be implemented if there is no escrow.

Mr. Kneski clarified the enforcement issue explaining that the land use law allows for the Zoning Officer to enforce the zoning requirements of the ordinance. He said anything outside of the ordinance is usually enforced by the Township Engineer. It was noted that the draft ordinance should be forwarded to the Township's current Zoning Officer, Dick McManus for his review and comments.

It was the consensus of the Board to delete the Tree Harvesting Committee from the draft ordinance and establish the Zoning Officer as the enforcing agent.

Chairman Reilly identified the following issues that Planner Banisch will work on and return to the Board next month with another revised Tree Harvesting Ordinance draft:

1. Integrating the intent and purpose of the ordinance—expanding the purpose
2. Permit requirements
3. Moving the definition section up
4. Reviewing a sliding scale concept regarding the 20 acre threshold
5. Clarifying enforcement by the Zoning Officer

Chairman Reilly suggested that Planner Banisch review the ordinance to determine whether or not a permit could simply be required for anything over 5 trees being cut with the exception of diseased trees or those posing safety hazards.

Ms. Gavigan commented that she had attempted to draft her own purpose section for the Tree Harvesting Ordinance. She began reading what she had composed and Chairman Reilly asked her to email it to him and Ms. Andrews so it could be distributed to Mr. Gardner, Mr. Weis and Planner Banisch for their review. Ms. Gavigan agreed to do so.

Mr. Gardner commented on Mr. Weis’s original suggestion, expressing that he didn’t want to complicate things, and remarked about the relevance of singling out the Sourland Mountain District saying, “Most of the people on this Board would say the Sourland Mountain District is unique enough so that it should be singled out.” Planner Banisch indicated 95% of the resources the Township is trying to protect are located in this area.

Discussion: Steep Slopes per Engineer O’Neal’s email dated 9/1/09

Planner Banisch commented that the model ordinance that is required by the NJDEP as part of the Wastewater Management Plan has a series of requirements that relate to how much disturbance and development can occur in areas with slopes greater than 20%. He noted that the model ordinance goes on to say that any ordinance or part of an ordinance that conflicts with this requirement is inconsistent. Planner Banisch indicated that the Township’s ordinance which references 12% steep slopes is probably fine because he said he doesn’t believe the intent of the DEP’s model ordinance is to override the Township’s stricter criteria. He stated he is in the process of trying to verify this and will get back to the Board. Planner Banisch recommended that the Board move forward with the model ordinance and noted he will ask Attorney Norman to review it as well.

Discussion: Fence Ordinance

Chairman Reilly explained that Mr. Gardner had asked for this matter to be placed on the agenda, but in the interim he had done some research. He stated there was an application before the Board of Adjustment that Mr. Gardner indicated may have raised some issues with the existing ordinance. Chairman Reilly noted he had reviewed the Board’s Resolution and had spoken with the Board of Adjustment Chair. The conclusion was that the Zoning Board made a decision based on a unique set of circumstances that were presented. He indicated there are no issues that the Planning Board needs to address at this time.

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Mr. Kneski commented that the fence ordinance should be clarified at some point because it does not refer to “fences and walls” consistently throughout. He also noted that the Board may want to consider having the ordinance address driveway piers because there are instances where having piers in a driveway may not present anymore of an impact than a fence or a wall.

Oral Reports

FOSPC – No report given.

Agricultural Advisory Committee – Ms. Lenox invited everyone to the Farm Forum scheduled for Monday, October 19, 2009 at 7 PM in the Municipal Building Main Meeting Room.

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.

Open to the Public

There was no public in attendance at the meeting at this time.

Presentation of Vouchers

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

Chairman Reilly adjourned the meeting at 9:35 PM.

Maria Andrews, Administrative Officer