

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:00 PM
August 10, 2010**

Call to order and compliance with the Open Public Meetings Act

The regular meeting of the Board of Adjustment was called to order at 7:00 PM on August 10, 2010 in the Main Meeting Room of the Municipal Building, 1070 Route 202/31, Ringoes, NJ by Administrative Officer Andrews.

In compliance with the Open Public Meetings Act, Ms. Andrews announced this was a regularly scheduled meeting pursuant to the Annual Meeting Notice as published in the January 21, 2010 issue of the Hunterdon County Democrat, filed in the Township Clerk's Office, and posted on the Bulletin Board on August 4, 2010. Ms. Andrews noted this meeting was specially noticed to start at 7:00 PM.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham – Chair
Gael Gardner
Paul Gavzy
Sue Posselt
Kendra Schroeder
Diana Garrett – Alt. #1 – *(arrived at 7:12 PM)*
Anne Williams – Alt. #2

Absent: Gloria Frederick

Presentation of Minutes

A motion by Paul Gavzy, seconded by Sherrie Binder to approve the minutes from 7/13/10 was unanimously approved with no revisions noted.

Presentation of Bills for Payment

A motion by Sherrie Binder, seconded by Paul Gavzy to pay the vouchers as listed on the agenda was unanimously approved.

Correspondence

It was noted that the correspondence will be dealt with as it comes up over the course of the meeting.

Applications to be Deemed Complete or Incomplete

There were no applications listed on the agenda for completeness.

Applications for Public Hearing

Michael & Audrey Fiscor – B:40 L:51.05 – 157 Mountain Road: Appeal of Zoning Officer's Action

It was noted that Board Member Anne Williams recused herself and stepped down from the dais because the company she works for is the listing agent on the home for sale across the street from Mr. Fiscor's property.

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Present for the application was property owner Michael Fiscor, his Attorney Kevin McManimon and author of Mr. Fiscor's Woodland Management Plan Les Alpaugh. Also present was Attorney Arnold Lakind on behalf of opposing neighbor Grey Jones of 170 Mountain Road.

Attorney Waterbury referred to the legal memo she had prepared outlining the issues before the Board and the scope of the Board's role in making a determination. She said, "What this Board can only do is what is set forth in the MLUL. As you know there were arguments presented in May about your jurisdiction and the Zoning Officer's jurisdiction involving the Right-to-Farm Act...after doing the research and reviewing the arguments...the Right-to-Farm Act is outside of the Board's purview." Attorney Waterbury explained that the Board's role is to review a decision that was made by the Zoning Officer and to determine whether there was an error in that decision. She noted that in doing so, the Board is evaluating the Zoning Officer's decision against the provisions of the Township's Land Management Ordinance. She noted this was the function assigned to the Board under the MLUL.

Attorney Waterbury said the decision made by the Zoning Officer was that the sawmilling activity that is being conducted by Mr. Fiscor on his property requires either: (1) Conditional Use Approval from the Planning Board (2) A Use Variance from the Zoning Board or (3) The applicant to go to the County Agriculture Development Board (CADB).

Attorney Waterbury clarified that any arguments involving the Right-to-Farm Act would not be appropriate for this forum. She stated the matter before the Board is the Notice of Violation (NOV) and whether or not the Board thinks there is any error in the NOV. Attorney Waterbury said, "As I indicated the Zoning Officer, in the NOV determined that what Mr. Fiscor is doing—the sawmilling activity specifically requires either Planning Board or Zoning Board approval." She explained that Mr. Fiscor's position is that there is an error in the NOV because the Land Management Ordinance specifically exempts Woodland Management Activities from Planning Board approval and his activity is a Woodlands Management Activity. Attorney Waterbury commented that agricultural uses, including Woodland Management are conditional uses in the Sourland Mountain District where the subject property is located. She clarified that in order to conduct a conditional use, you would need conditional use approval from the Planning Board. However, the Land Management Ordinance states that Woodland Management Activities conducted in order to qualify for Farmland Assessment do not require Planning Board approval. Attorney Waterbury indicated this is the essence of the question before the Board and what needs to be decided. She said in order to qualify for Farmland Assessment, Woodland Management Activities must be conducted pursuant to and in compliance with a Woodlands Management Plan that has been established for that specific property. Attorney Waterbury said, "Therefore if Mr. Fiscor's activity falls within the parameters of his Woodland Management Plan, then...he is expressly exempt from Planning Board approval. If, however, his sawmilling activity...is outside the parameters of his Woodland Management Plan then he is not expressly exempt from Planning Board approval." She said this is a factual question and the Board needs to gather factual testimony from the applicant, the Zoning Officer and members of the public and make a determination whether the activity conducted is within or outside the parameters of Mr. Fiscor's Woodland Management Plan.

Mr. Fiscor and Attorney McManimon came forward. Mr. Fiscor was sworn in and identified himself as Michael John Fiscor. Attorney McManimon commented on the jurisdictional argument. He said, "The determination that this Board is being asked to make requires an understanding that goes beyond what the Board is qualified to do...the nature of Woodland Management Plans are questions best left to a body like the CADB." Attorney McManimon added that the State Statute confers jurisdiction to the CADB and commented that it is difficult for him to understand how the Board of Adjustment can take jurisdiction

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over the application and proceed this evening. He noted that Mr. Fiscor is responding to an action initiated by the Zoning Officer. He said one of their options was to appeal and he believes Zoning Officer McManus does not have the authority to direct them to file an application with the CADB. He said while the CADB is an option, they chose this (appeal) avenue because the issue began with the Zoning Officer issuing a NOV in what they contend was the wrong place. They believe Zoning Officer McManus should have brought his complaint to the CADB. Attorney McManimon clarified that the application is to dismiss the NOV because in his opinion the Board lacks the jurisdiction, and has the ability to determine that the Zoning Officer lacked the jurisdiction, to issue the NOV because the substance of the violation notice relates to a matter that only the CADB has jurisdiction over.

Attorney McManimon commented that he heard Attorney Waterbury's recommendation to the Board and suggested that perhaps the Board should rule on her recommendation as a matter of formality. Attorney Waterbury remarked if the Board is deprived of jurisdiction because the Right-to-Farm Act preempts the MLUL, then the Board cannot even be here because the Board can only act under the MLUL. She indicated that if Attorney McManimon's contention is that the appeal is outside of the Board's jurisdiction to hear, than she suggested Mr. Fiscor withdraw his appeal and the NOV will stand. Attorney Waterbury said the only thing the Board can do is decide if there is an error in the decision that was made.

Attorney McManimon asked again that the Board make a formal ruling on whether or not they have jurisdiction to hear the application. Attorney Lakind spoke up from the public on behalf of objecting neighbor Grey Jones and commented that if the motion is that the Zoning Board's jurisdiction is preempted, he requested the opportunity to be heard. Attorney Waterbury noted that there is no motion at the present time.

Ms. Binder commented that she felt the only way to consider the applicant's appeal is to interpret the Forest Stewardship Program/Right-to-Farm Act so the Board can determine whether or not the activity is in violation. Attorney Waterbury clarified that the Board's determination must be made under the provisions of the Township's Land Management Ordinance. She noted that the Board was not being asked to decide whether sawmilling was a protected agricultural activity, but rather to decide whether the milling Mr. Fiscor is conducting on his property does or doesn't comport with what is set forth in his Woodland Management Plan.

It was the consensus of the Board that they had jurisdiction to proceed with the public hearing this evening.

Attorney McManimon and Attorney Waterbury continued their debate. Attorney McManimon remarked that they would like the Board to determine that because of the provisions of the Right-to-Farm Act and the sole jurisdiction which is conferred to the CADB to hear this type of matter that the Zoning Officer was simply without power to issue the NOV. Attorney Waterbury asked Attorney McManimon to explain if this argument is supported in the MLUL or the Right-to-Farm Act. Attorney McManimon explained his argument is derived from the Right-to-Farm Act and Attorney Waterbury commented that he was asking the Board to do the very thing he was arguing they didn't have jurisdiction to do—read statutory references in the Right-to-Farm Act, read the case law that interprets the Right-to-Farm Act—analyze it and decide whether or not they agree.

Attorney Waterbury said, “The Zoning Board is created by statute and that statute is the MLUL which sets forth the sum total of what the Board may or may not do and what it is obligated to do.” She commented that if the applicant wishes to present his appeal, the Board is obligated to hear it under the MLUL and the Board is obligated to review the decision that was made—not the fact of it having been made—but the decision that was made, and determine whether or not the decision was correct under the Land Management Ordinance otherwise she said there is no option but for Mr. Fiscor to withdraw his application and go to a different forum.

Attorney McManimon continued to argue that the appeal includes the argument that the Zoning Officer simply lacked the jurisdiction—even under the Land Management Ordinance to issue the NOV that he issued. He said, “There is a jurisdictional component to the appeal and we should not be required to withdraw the appeal to have the Board rule on it.”

Attorney Waterbury said the Board has two alternatives: (1) Accept the applicant’s arguments that the Board is without jurisdiction under the Right-to-Farm Act which she suggested the only recourse would be to dismiss the appeal without prejudice and the applicant can go to a different forum to raise his Right-to-Farm arguments or (2) Hear the appeal within the bounds of the Land Management Ordinance. She clarified again that she does not believe the Board has the authority to do what the applicant is arguing, which is to say that neither the Board nor the Zoning Officer have any jurisdiction or authority under the Right-to-Farm Act and therefore the Zoning Officer’s actions must be vacated.

Attorney McManimon commented that he was prepared to move forward with the public hearing. He explained that the NOV issued by the Zoning Officer in February 2010 cites the statutory provision that, in their opinion, essentially creates a permitted use. He said the way the Land Management Ordinance is drafted, it provides for certain conditional uses in the Sourland Mountain Zone and agricultural uses is one of those uses. Attorney McManimon stated Mr. Fiscor operates a farm where he harvests timber, processes it and sells it. It was noted that Mr. Fiscor has applied for, and been granted, farmland assessment each year since 2002. The NOV indicates that in order for Mr. Fiscor to conduct certain types of activities related to the agricultural use, he needs to apply for conditional use approval. Attorney McManimon contends that because of the language of that specific provision of the ordinance, it carves out an exception from the Planning Board approval requirement for this type of conditional use and as a result, the kind of activity that is referenced in the NOV is permitted. He said the activity is contemplated in the Woodland Management Plan applicable to Mr. Fiscor’s property and their plan this evening is to demonstrate this through the testimony of Mr. Fiscor and Mr. Alpaugh.

Chair Cunningham asked the following questions of Mr. Fiscor:

1. What does your Woodland Management Plan generally allow?

“... We found Les Alpaugh...who worked with us in employing a philosophy of Woodland Management that encompasses not only the forest lands...the value of the ecosystem, the aesthetics of the forest and the habitat it provides. Over the last 10 years we’ve been operating under the plan which...specifically mentions the attack and eradication of invasive species...to come in and restore the health of our forest land which was degraded due to the previous logging operation which is basically activity that involves culling out inferior trees—invasive trees and promoting healthy, live, diverse species of trees...we applied for State Stewardship...and were granted stewardship in 2001...from there the plan mentions activities that we can be involved with...and activities that are surrounding forestry and Woodland Management such as employing a portable sawmill.”

2. Do you believe the plan contemplates or allows for the milling of lumber?

“Yes it does.”

3. Can you tell us where that is referenced in your plan?

Exhibit A-1 was presented: Forest Stewardship and Management Plan 2001 – 2011 Prepared by Forestry Consultants dated November 24, 2000.

“...page 12 – timber...second paragraph...the goal is to produce high quality products from timber species and to sell firewood from less desirable species removed during the restoration process. Additionally, as Mr. Fiscor’s capacity and knowledge grow it may be possible to utilize larger diameter culls by engaging a portable sawmill owner to saw fencing or other rough boards for use on the farm...”

4. Does the plan limit the extent of the milling that may take place?

“Not that I’m aware of, the years that I’ve been working in the forest and the seminars that I’ve attended and the other experts that I have talked to from Professors at Virginia Tech to Mississippi State University have described portable sawmilling as part of the process to improve the economic value of the commodity.”

5. Do you believe that your plan limits the milling activity?

“No.”

6. Was milling taking place on your property when the Notice of Violation was issued?

“Yes.”

7. Can you explain what the nature and extent of the milling was that was taking place at that point?

“...basically we are producing timber products and cutting boards and planks from trees from our property and at one point in time we were also taking commodity off of noncontiguous properties—from other properties, some of which are other farmers in the area that needed products produced from their timber products at which time we received a notice from the Zoning Officer advising us to stop bringing in material from other properties...that was my understanding of any point of contention that anyone had with what we were doing. Since that notice we have not received wood from other properties...we have been exclusively milling what is on our own property. Consequently the notice that we received regarding the portable sawmill came after our notice to stop receiving material from other properties...that’s a...point of confusion for us because...we stopped...and then we received another notice.”

8. What kind of equipment was used for the milling process?

“We employ a portable sawmill...it hooks off the back of a truck, it’s no larger than a boat...it’s smaller than a camper...I believe it’s a 20’ trailer with a carriage and motor head and a saw blade unit that travels on top of a rail system that travels across the base of the log...maybe 5’ wide...the whole unit is not 20’ x 5’ there is a carriage motor head that is on top that is relatively small compared to the 20’ travel bed that it’s on.” It was noted that no photographs of the unit were available at this time.

9. Where on your site is the sawmill located?

“The area on our site is designated in our Forestry Management Plan...it’s the Fiscor Activity Map...where it says the home site, firewood sales and storage...it’s the firewood sales and storage area...that’s where our activity takes place.”

10. Do you own the sawmill?

“Yes.”

11. Do you operate it as well?

“Yes.”

12. Do other people operate it as well?

“Yes but I’m the primary operator of that mill.”

13. Could you talk a little bit about what it is that you’re milling—what you’re making?

“...we’re a primary and secondary manufacturer...we have a primary and secondary manufacturing facility in Pennsylvania in which we take our raw product. Primarily what we’re doing at the farm is making a raw timber...product.”

14. Do you have an idea, at the time that the 2/25/10 violation was issued, about what percentage of the wood being milled was from your own property and what was from other properties?

“...probably 50% - 60%...about 50% mix of our own and other wood.”

15. About how many trees on average are being milled a day?

“That’s not easy to answer because we don’t actively mill daily...we maybe mill 10 trees a month...we employ the portable sawmill—two benefits: Number one is when we do take the commodity off of our site we’re taking a lot of the wood that is valuable. We’re not shipping the exterior of the log, the bark and the waste product. Number two is we heat our house in the winter time with the wood.”

16. Do you use, on your property, any final product from the milling?

“Yes we do...we’ve used the timber for framing...we did some barn repairs...siding and there is hopefully opportunity to do more...that’s the long term goal, is to be able to do our repairs and our construction with wood from our property.”

17. You also sell your wood?

“Yes we do.”

18. Is it trucked off of your property to somewhere else?

“Yes it is.”

19. What percentage of the wood, that you mill do you actually sell and what percentage do you use for yourself?

“We probably sell a good 80% of our wood.”

20. In your Woodlands Management Plan on pages 12 – 13 where you reference the milling activity, what do you take the language to mean and do you believe that the milling activities that you are engaged with are consistent with the statement in the Plan?

“They are and the reason I say that so positively is because the person that I consult with, the author of this Plan (Les Alpaugh) comes with a long list of credentials...he was the State Forester for a number of years so in discussing our objectives and our goals for our farm and our forest those conversations occur with that type of expertise. The dialog has occurred about the use of the portable sawmill and my interpretation...my position is reaffirmed by these consultations with other experts basically saying the use of a portable sawmill goes hand in hand with forestry...I believe we’re following the (Plan)...frankly I believe we are exceeding the (Plan)...we are not only part of the State Stewardship program, we also belong to the Rain Forest Alliance which is an international party that certifies ecologically managed forests and we are New Jersey’s first property to do so.”

21. What is your best explanation/argument for why the milling activities that are permitted or specifically referenced in your Woodland Management Plan are consistent with the activities that you are currently conducting?

“The activities that are mentioned in our plan indicate our interest in employing a portable sawmill and we are currently doing so. Our concept with our Forest Management Plan is to improve the health of the forest and in employing the portable mill, what we are able to do is to add a value to a commodity that is not typically there...and...the portable sawmill is just as common as a chainsaw in terms of harvesting and producing the material.”

Attorney McManimon asked a few follow up questions of Mr. Fiscor including whether or not he believes his plan needs to specifically provide that he can operate a sawmill. Mr. Fiscor said no but noted that his plan does and that it does not limit the amount of milling that can take place. He then asked if the plan limits the number of trees that can be harvested from his site. Mr. Fiscor noted the harvesting is limited through “quantitative analysis.” He explained that an inventory of his property was done and formulas were used to derive the capacity of the forest that can be used to produce timber materials. He clarified that he would not be able/permitted to harvest every tree on his property.

It was noted that the portable sawmill was first used in August 2009 and there is a device on the mill which keeps track of how many hours the mill has been in operation. Mr. Fiscor indicated the mill has been operated for less than 100 hours since he bought it, new.

Attorney McManimon asked how Mr. Fiscor came up with his Woodland Management Plan. He indicated he and Mr. Alpaugh spent time walking his property, inventorying the forest and discussing short and long term goals and objectives. He was asked how he harvests the timber and Mr. Fiscor explained that Mr. Alpaugh identifies the trees to be harvested and then the tree is taken down utilizing rigging ropes, chainsaws and skid equipment. Mr. Fiscor noted that prior to purchasing his portable sawmill he used an “Alaskan Mill” which utilizes chainsaw heads rather than a band saw.

Les Alpaugh came forward and identified himself as George Lester Alpaugh. He was sworn in and his resume was marked as **Exhibit A-2**. The Board accepted Mr. Alpaugh as an expert to provide testimony on this application in the field of forest management in New Jersey including but not limited to the preparation and interpretation of forest management/forest stewardship plans. It was noted again, that Mr. Alpaugh was the author of Mr. Fiscor’s 2001 -2011 Forest Stewardship and Woodland Management Plan.

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Attorney McManimon asked Mr. Alpaugh what the term woodland management means. He explained it is the care of a forested tract of land and the activities that take place on it to be a good steward and to keep it sustainable and healthy. He asked for some examples of woodland management activities. Mr. Alpaugh noted: Tree planting, timber stand improvement, creating access trails, implementing wildlife management practices and harvesting trees for product.

Attorney McManimon asked how trees are harvested for product. Mr. Alpaugh said you must use a chainsaw. He commented that 100 years ago a portable sawmill in the Sourland Mountains was very common but as motor vehicles improved permanent mills were set up. Trees were cut down and trucks took the logs back to the mills. He said now properties are getting smaller and portable mills are becoming more popular again.

Attorney McManimon asked Mr. Alpaugh specifically about Mr. Fiscor's Woodland Management Plan. He said that he does not include the use of portable sawmills in everyone's plan but it was included in Mr. Fiscor's plan as a goal. He said the first step in creating a plan is to fulfill the State guidelines and then to include additional items/goals as appropriate to meet the needs of the specific property.

Attorney McManimon asked Mr. Alpaugh to explain what types of Woodland Management Activities he believes the plan contemplates. Attorney Lakind objected from the public saying that the plan is what it is and that would be like the writer of a statute coming in and testifying as to what it means. Attorney Waterbury indicated she would normally agree with Attorney Lakind except for the fact that Attorney McManimon did establish that Mr. Alpaugh is the author of Mr. Fiscor's specific plan and in this case his testimony is appropriate. Mr. Alpaugh commented that Mr. Fiscor's plan is unique because it includes forest restoration. He remarked that he has a lot of trees that were left by the former property owner because they have no value for timber. He stated the plan includes activities such as: Forest improvement cutting, harvesting the culls and forest restoration work.

Attorney McManimon asked Mr. Alpaugh if he believed a Forest Management Plan must specify each individual Woodland Management Activity that may be engaged in. Mr. Alpaugh said no and explained that the plans set goals and objectives but don't necessarily state how each one may be achieved. Attorney McManimon asked if he had an opinion on whether or not Mr. Fiscor can utilize certain equipment in the course of performing his Woodland Management Activities based on his plan. Mr. Alpaugh said yes and Attorney Lakind objected again from the public. Mr. Alpaugh commented that the use of the portable sawmill is a Woodland Management Activity and is consistent with Mr. Fiscor's plan.

Attorney McManimon read from page 12 of Mr. Fiscor's Woodland Management Plan saying, "Additionally as Mr. Fiscor's capacity and knowledge grow it may be possible to utilize some of the larger diameter culls by engaging a portable sawmill owner to saw fencing or other rough boards for use on the farm." He asked if this provision limits Mr. Fiscor to using the portable sawmill only to produce fencing or rough boards for use on his farm. Mr. Alpaugh said no and commented that when he drafts plans he writes in general parameters and if he was to write that sentence again after this public hearing he would say "*such as* fencing or other rough boards."

Attorney McManimon requested a 5 minute break. The Board took a break from 8:58 PM – 9:15 PM.

Chair Cunningham noted that this meeting will likely not conclude this evening and suggested the Board stop taking testimony at 10:00 PM and carry the public hearing to next month's 9/14/10 meeting.

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Attorney McManimon and Mr. Fiscor agreed to grant the Board an extension of time to hear their application through 9/30/10. It was noted that no additional public noticing will be given.

The application was opened to questions and comments of the Board Members. Ms. Schroeder asked if 10 trees are cut down each month, how long does the activity actually take—2 days—the whole month? Mr. Fiscor explained the activity is sporadic. He noted that some activity may last 2-3 days in a row then cease for a few days and commence again. He said they work from about 8:00 AM to about 3:00 PM or 4:00 PM with breaks in between for lunch and to provide the equipment with downtime and fuel.

Ms. Gardner asked Mr. Fiscor if he expects to increase the portable sawmill usage. He indicated that he believes the machine would be utilized in approximately the same capacity and not really increase. He noted he has a limited number of trees on his property and the work involved is governed by the availability of the timber.

Mr. Gavzy asked Mr. Fiscor how many trees he has on his property that can be harvested. Mr. Fiscor couldn't provide a number. He commented that he has just over 36 acres of land. Ms. Binder asked how many trees are identified to be harvested at any one time. Mr. Fiscor explained that land allotment is done in 1 – 2 acres per harvest. She asked how the finished product is transported off of the property. Mr. Fiscor said he owns his own truck which is the equivalent of a car carrier—a flat bed truck that does not require a CDL license. He said his truck(s) are registered with the Federal Department of Transportation with a DOT number and the weight of his truck(s) is below the threshold to require a CDL license.

Ms. Binder asked what the horsepower of the sawmill is. Mr. Fiscor indicated he thought it was about 62 horsepower and noted cars have 300 horsepower.

Ms. Gardner asked if anything other than planks are milled and what the maximum diameter of timber is that can be milled. Mr. Fiscor explained that the sawmill has a 24" maximum diameter capacity and he noted they mill anything within that 24" diameter. It was noted that the milling operation is a 12 month a year operation depending on the weather.

Ms. Binder asked for clarification on when the sawmill is actually used. Mr. Fiscor said it is used during the day and typically not on weekends.

Zoning Officer Richard McManus came forward and was sworn in. He identified himself as the Township's Zoning Officer. Chair Cunningham asked Mr. McManus the following questions:

1. Have you visited Mr. Fiscor's property?

"Yes."

2. Do you recall when and how many times you have visited the property?

"I have visited the property 6 times to stop and observe the activity on it. I must have been in that neck of the woods and looked at it another half dozen times."

3. Did you observe the applicant's milling operations prior to issuing your Notice of Violation in February?

"The first time I went there was the second or third week of September of last year. I had received a complaint from Mr. and Mrs. Jones about the activity on the property which was followed by an email description of the activity and some photographs taken by Mr. Jones. When I went to the property nobody was actively working at the moment but there were trucks and lumber and finished wood and scraps much as had been depicted in the photographs. The second time I went there was in late October early November when Mr. Jones had left a phone message that the activity was continuing. Again I observed nothing being done at the time but trucks, lumber, waste—in positions that wood was being sawmilled. I went there again...to observe in late February...and everything was snow covered. I went again twice in April and May in response to telephoned or emailed complaints to the Township that activity was continuing. When I went to the site...it was not continuing at that moment—there were trucks and lumber...positioned as if the sawmilling had been going on and the last time I went was this afternoon. Again...there was a flatbed truck backed into the property, the sawmill with a tarp over it, behind that—piles of scrap wood, piles of partially cut lumber, a small bulldozer type vehicle...and a cart on the site."

4. Were you present during the applicant's testimony this evening?

"Yes." It was noted that Mr. McManus heard the answers Mr. Fiscor gave to the questions Chair Cunningham had asked him and that the answers Mr. Fiscor provided comport with Mr. McManus's own observations. Mr. McManus said, "The Notice of Violation is a warning that enforcement action can follow. In East Amwell it is required of the Zoning Officer, prior to taking enforcement action...and it's quite explicitly designed to resolve matters rather than to proceed with litigation."

Mr. McManus commented that there have been discussions on this matter since last November. He remarked that the issue had come before the Township Committee in January 2010 and he had taken it upon himself based on his mediation and dispute resolution training that he would issue the second NOV as a means of offering Mr. Fiscor three different options to perhaps resolve the matter.

Attorney McManimon asked Mr. McManus if he had taken the photographs he referenced in his testimony. Mr. McManus commented that the photographs were given to him by Mr. Jones. It was noted that Mr. Jones had indicated to Mr. McManus that the photos were taken sometime in September 2009. Attorney McManimon asked for a description of what was depicted in the photographs. Mr. McManus explained there was a picture of a flatbed truck with timber, a picture of finished wood planks, a picture of scrap wood and a picture of partially cut logs.

Attorney McManimon clarified that the NOV which was issued in September 2009 was based on Mr. Jones's complaint. Mr. McManus explained that he went and took a look at the site to see whether or not the photographs and information he was provided with was consistent. Attorney McManimon clarified that the basis for issuing the NOV was related to the importation of wood from offsite. Mr. McManus said the violation was based upon the language contained in Mr. Fiscor's Forest Stewardship and Woodland Management Plan stating that the sawmilling activity was "for use on the farm" which applies to wood coming in and being taken offsite. Mr. McManus commented that the complaint was originally over noise and truck traffic and the NOV was to get him to conform to the language in his Woodland Plan.

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Attorney McManimon asked what changed between the issuance of the September 2009 NOV and the current February 2010 NOV. Mr. McManus explained that it seemed that all discussions between the parties involved had stalled and it appeared to be the appropriate moment to offer alternative ways for Mr. Fiscor to resolve the issue.

Attorney McManimon asked Mr. McManus if he had concluded that based on the language in Mr. Fiscor's plan on pages 12 and 13 that the use of the sawmill to process wood that was eventually taken offsite was beyond the scope of his plan. Mr. McManus replied that it was beyond what was said in the plan.

Attorney McManimon clarified that Mr. McManus had observed the Fiscor property 6 times and asked if he had ever come onto the property. Mr. McManus said he observed from the edge of the road where the Forest Stewardship sign is and made observations from the Jones's driveway which is directly across from the access point of Mr. Fiscor's operation. He explained he could easily view the property from the apron of Mr. Jones's driveway. He noted he could see a flatbed truck, wood piles, partially cut timber, the portable sawmill machine and a cart. He indicated he viewed the Fiscor property from approximately 40 feet away.

A motion by Paul Gavzy, seconded by Sherrie Binder to open to the public was unanimously approved.

Attorney Arnold Lakind, representing Grey Jones came forward and asked for clarification of Mr. McManus's background. He also asked Mr. Alpaugh for clarification on the definition of culled trees and undesirable trees and asked how long it took for a Woodlands Management Plan to be drafted. It was noted plans take approximately 3 days to draft—one day of field time and two days to write and edit.

Natalie Ross of 151 Mountain Road came forward. She was sworn in and noted that her land is contiguous to Mr. Fiscor's property. She remarked that he is conducting a commercial enterprise and earning money in a residential area. She commented that if the Board allows him to continue his operation they will be setting a precedent for all other Mountain Road residents to establish sawmilling activities. She said she has lived on Mountain Road for 60 years and it has always been a residential area. Ms. Ross also expressed safety concerns for the large trucks traveling on such a narrow road.

Scott Berger of 172 Mountain Road came forward. He was sworn in and indicated he lives just west of the Jones's property. He expressed concerns with noise and traffic but indicated his primary issue is with property value. He remarked that while he applauds Mr. Fiscor's stewardship, the operation is unsightly. He also noted that he has witnessed the loading of a bobcat machine onto a flatbed truck one Saturday night in the winter.

Diane Griffith of 109 Mountain Road came forward. She was sworn in and expressed concern with Mr. Fiscor's ability to sustain his income without importing wood from offsite. She also remarked on the difficulty to maintain regeneration with all of the deer in the area. Ms. Griffith also questioned whether or not wetlands are present on the property and if so, if there is buffering.

Mr. Fiscor commented that there is a creek that bisects his property and that he observes the wetlands through the State issued Federal Management Practices and through the Rainforest Alliance. He explained the property is audited and falls into a high threshold for environmental consideration and the wetlands are not encroached upon. Mr. Fiscor indicated he can "manageably harvest" material on 34 of the 36 acres of his property. With regard to the deer sleeving Mr. Fiscor commented that under recommendation by a

State Forester he utilizes the multi-flora bush in order to provide buffers for his tree seedlings. He explained that he has been able to sprout and promote sassafras which is a starter tree that crowds out the multi-flora rose and he now has stands of ash and oak appearing. Mr. Fiscor noted that the reason he chose not to use deer sleeves is because the netted sleeves end up in the deer's antlers and he doesn't like the aesthetics of the plastic tubes and netting on his property.

Ms. Griffith remarked that it will take Mr. Fiscor decades to regenerate trees and again questioned whether or not he can sustain viable production off of his 34 acres. Mr. Fiscor noted that the forest is sustainable because he has species and rotation of trees within the forest canopy. He also commented that utilization of the portable sawmill allows him to derive a greater economic benefit from his harvest because the wood produced through the mill generates high value with less activity. Mr. Fiscor said the important thing to remember is that he has a farm on Mountain Road and he conducts forestry management on his farm. He said his business involves timber commodities and he has a portable sawmill that he can easily take to other properties if he needs to. Mr. Fiscor remarked that he has a woodshop facility in Pennsylvania that provides income from wood products and his Mountain Road farm is only a portion of what he does.

John Hyland of 152 Mountain Road came forward. He was sworn in and said he lives close to the Fiscor property and also has farmland assessment. He wanted to know the basis for Mr. McManus issuing the violation. Mr. McManus again repeated that the only use of the word sawmill was in conjunction with cutting wood "for use on the farm" and the scope of Mr. Fiscor's activities go beyond that. Mr. Hyland continued asking if the wood produced with the sawmill can only be used on Mr. Fiscor's property and not sold. Mr. McManus noted that the plan clearly states "for use on the farm." Attorney Waterbury remarked that while Mr. Hyland may not be happy with Mr. McManus's response, he has answered the question several times. Mr. Hyland commented that Mr. McManus's answer was "circuitous" and he said he finds it disturbing that he made the determination that he did since one of the requirements of farmland assessment is that you sell your product. Attorney Waterbury remarked that the issue the Board of Adjustment has to decide is whether or not the activities Mr. Fiscor is conducting as they have been described this evening are within the scope of his Woodland Management Plan. Mr. Hyland's final comment was that he believes it's unreasonable to expect a woodland plan to specifically contain every piece of equipment that may be used. He said the plans are designed to be goal oriented, not specifically detailed.

Grey Jones of 170 Mountain Road came forward with his Attorney Arnold Lakind. He was sworn in and noted that he lives directly across the street from Mr. Fiscor's property. He referred to a photo of which he only had one copy. Since Attorney Waterbury indicated that this would need to be supplied to all parties and marked as an exhibit, it was the consensus of all parties to carry the public hearing until the Board's 9/14/10 meeting (at 7:30 PM) at which time Mr. Jones will continue his testimony. It was noted again that no further public noticing will be given.

Old Business

There was no old business matters listed on the agenda.

New Business

There was no new business matters listed on the agenda.

Comments of the Board Members

There were no comments made by any of the Board Members.

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Attorney Comments

There were no comments made by Attorney Waterbury.

Open to the Public

A motion by Gael Gardner, seconded by Sue Posselt to open to the public was unanimously approved. No one from the public came forward to comment. A motion by Kendra Schroeder, seconded by Sherrie Binder to close to the public was unanimously approved.

Adjournment

A motion by Paul Gavzy, seconded by Sherrie Binder to adjourn was unanimously approved.

The meeting adjourned at 10:33 PM.

Maria Andrews, Administrative Officer