

**READINGTON TOWNSHIP
BOARD OF ADJUSTMENT MEETING
December 9, 2014**

The Meeting was called to order by Chairman Denning at 7:35 p.m. stating that the requirements of the Open Public Meeting Law have been satisfied. The Meeting had been duly advertised.

Members present: Marygrace Flynn, Diana Hendry, Joanne Sekella, Britt Simon, Richard Thompson, Michael Denning

Also present: Michael Sullivan, Planner
Roger W. Thomas, Attorney

Members Absent: Meredith Goodwin, Keith Hendrickson, Patrick Ryan

MINUTES:

A Motion was made by Ms. Flynn, seconded by Ms. Sekella, that the Minutes of November 20, 2014 be approved as amended. Motion was carried with a vote of ayes all, nays none recorded. Ms. Hendry abstained from the vote.

VOUCHERS:

A Motion was made by Ms. Flynn, seconded by Mr. Simon, to approve the vouchers as circulated. Motion was carried with a vote of ayes all, nays none recorded. Mr. Hendry and Ms. Sekella abstained from the vote.

PUBLIC HEARINGS:

Roger Furstenburg

B. 52, L. 1.15

Interpretation of Ordinance 148-50B & 148-69

Present for Applicant: Roger Furstenburg, Applicant

Mr. Furstenburg (the "Applicant") purchased the property in 2002 from Tom Lyons who had previously applied for and was granted a two (2) lot subdivision. With the approval of the subdivision and variances, the deed included a stream corridor easement with a restriction prohibiting agricultural use. Mr. Furstenburg advised the Board of Adjustment (the "Board") that the property had been used agriculturally for approximately one hundred (100) years. The Applicant referenced Readington Township's Land Use Ordinance §148-50B in that it allows for pasture controlled grazing of animals in accordance with the conservation practices approved by the Natural Resource Conservation Service ("NRCS"). He requested that he be permitted to continue to use the stream corridor to graze horses. He further advised the Board that Mr. Michael Palmquist, New Jersey Department of Environmental Protection, notified him that the

State required a fifty (50) foot conservation easement; whereas Readington Township had restricted this property to a two hundred (200) foot easement.

Attorney Thomas confirmed with Applicant that he was aware, upon purchasing the property, of the restriction.

Mr. Furstenburg agreed, but felt that the ordinances did not specify the restrictions at that time.

Ms. Sekella referred to the Planning Report submitted by Clarke Caton Hintz, dated December 1, 2014, wherein agricultural use is defined and specifies the grazing of any or all such animals (see page 4 of the Planning Report). The deed for this property specifically restricts agricultural use. Applicant was advised that his request should be heard before the Readington Township Planning Board.

There seemed to be some confusion as Applicant thought that was to whom he was applying.

Attorney Thomas clarified the matter at hand and advised that the Board was to review this matter as an appeal from a denial from the Zoning Officer. The Readington Township Zoning Officer (the "Zoning Officer") issued Applicant a violation, and the Board must determine if the violation is to be upheld.

Ms. Flynn inquired if Applicant recalled attending a Planning Board meeting as indicated in the minutes of September 10, 2001; as he would have firsthand knowledge of the restrictions set forth in the deed. Mr. Furstenburg did not recall whether he was in attendance.

Ms. Hendry inquired as to whether the prior owner, Mr. Lyons, grazed horses and whether or not Applicant brought his own horses to the property.

Mr. Furstenburg advised that the property was a subdivided farm, and he kept the horses that were there prior to his purchase.

Members of the Board referenced the Zoning Officer's correspondence, dated September 27, 2013, indicating a complaint had been filed as to Applicant's mowing of the conservation easement, removal of trees and installation of fences in the conservation easement. The letter asked Applicant to cease activity in the conservation easement. Inquiry was made as to whether Applicant continued to mow the property after he received the notice.

Mr. Furstenburg confirmed that he had continued to mow the easement. He was seeking permission to continue to graze animals on the property. He explained that to properly graze, grass should be maintained at a height of approximately four (4) inches.

Due to the matter at hand, Mr. Sullivan reviewed the former stream corridor ordinance (§503.2) and compared it to the current ordinance (§148-50B). He also reviewed and compared the Readington Township and State definitions of agriculture; the State definition is typically used as it is more accurate. That being said, grazing of animals and keeping of horses constitutes an agricultural use. The deed, dated July 9, 2002, identifies that §503.2 applied, with an exception

prohibiting agricultural use. The minutes from the minor subdivision approval (September 10, 2001) state that there will be a conservation easement along both lots that will exclude agricultural use. Since that was the subject of a previous Planning Board approval, any modification of that approval would be a new application, reviewed by the Planning Board. At this time, Applicant is violating the terms of the approved subdivision.

Ms. Sekella questioned the Board's discussion regarding grazing, if the violation is about mowing. Attorney Thomas confirmed that if Applicant is going to graze animals, he must also mow.

Mr. Thompson inquired about the number of horses currently on the property.

Mr. Furstenburg advised that when he purchased the property there were ten (10) horses; but he currently has only one (1). In correspondence received from Jill Ott, NCRS, she advised Applicant that his property can sustain three (3) horses.

Chairman Denning inquired about the size of the property and the percentage impacted by the easement. Mr. Furstenburg estimated about one third of his six (6) acres is impacted.

Chairman Denning inquired about whether this type of easement is enforced on agricultural use. Mr. Sullivan informed him that agricultural use is permitted in the current stream corridor ordinance.

Mr. Sekella question why the words "with the exception that no agricultural use shall be permitted" was added to the subdivision approval.

Ms. Flynn advised that it was added in order for the stream corridor to remain in its current state, and not become degraded. According to the September 10, 2001 minutes, there were several variances obtained in exchange for this concession.

Several members confirmed that the request before them was narrow. The decision to be made is based on whether or not the summons issued to Applicant is valid.

Chairman Denning advised that if the Board supports the Zoning Officer, Applicant's next step is to go before the Planning Board to address the deed restriction.

Mr. Simon advised that an agreement was made with the Municipal Prosecutor that this issue be brought before the Board prior to the Court date.

Mr. Sullivan pointed out the rationale as to why the stream corridor is two hundred (200) feet. At the September 10, 2001 hearing, Mr. Lyons' professionals requested a retention basin waiver and use of a septic field farther from the house; among other items discussed. The Planning Board believed that the conservation easement should maintain the original vegetation, and asked for a restriction indicating no agricultural use in the easement. Mr. Lyons' attorney suggested a compromise, calling for a two hundred (200) foot easement. It was agreed to by the parties that there would be a deed restriction indicating no agricultural use in the stream

corridor easement in exchange for the granting of several variances, and a waiver for storm water calculations.

PUBLIC COMMENTS

Derek Dandurand – 130 Stanton Road – stated an issue observed by Applicant’s neighbor and inquired about a course of action. Mr. Dandurand also asked about the specific violation before the Board.

Attorney Thomas instructed the Board not to address Mr. Dandurand’s first request as they did not have jurisdiction. He did advise that a summons was issued by the Zoning Officer on June 14, 2014 for mowing in the stream corridor and conservation easement in violation of §148-50B.

A Motion was made by Ms. Sekella, seconded by Ms. Hendry to uphold the decision by the Zoning Officer with regard to violation #1022-SC-004210. The motion was carried with a vote of all ayes, nays none recorded.

A Motion was made by Mr. Simon, seconded by Mr. Thompson, to make recommendations to the Municipal Prosecutor and Court that this matter be referred to the Readington Township Planning Board prior to the disposition in Court. The motion was carried with a vote of all ayes, nays none recorded.

A Motion was made by Ms. Flynn, seconded by Ms. Sekella, to permit Attorney Thomas to correspond with the Municipal Prosecutor on behalf of the Board with regards to the matter at hand. The motion was carried with a vote of all ayes, nays none recorded.

ADJOURNMENT:

A Motion was made by Ms. Flynn, seconded by Ms. Sekella to adjourn the meeting. The motion was carried with a vote of all ayes, nays none recorded.

The meeting was adjourned at 8:29 p.m.

Respectfully submitted,

Rebekah Harms
Board of Adjustment Secretary