

### Maurice River Township Land Use Board

The Chairman announced that this meeting was being held in accordance with Open Public Meetings Act of New Jersey.

Meeting: September 2, 2015

Present: B. Stowman, C. Thompson, A. Sarclette, J. Oliver, R. Chard, J. Carrara, R. Hoffman, G. Gross, J. Pflaumer, T. Imbaratto  
M. Benson, T. Cuviallo, C. Morrissey

Flag Salute

Motion to approve previous minutes Chard, 2<sup>nd</sup> Gross, AIF  
Carrara, Pflaumer, Sarclette, Hoffman abstained

#### Correspondence

- \*Application to NJDEP for authorization under a coastal general permit #5 for the reconstruction of a single family home damaged by Superstorm Sandy.
- \*South Jersey Gas, application to Pinelands. 15 miles of 24 inch natural gas main.
- \*SJ Gas Certificate of Filing from Pinelands
- \*Letter and Twp. Resolution to N. Graviano authoring preparation of a draft redevelopment plan for Lots 7, 8, and 18, Block 281 and Lots 33, 34 , Block 296
- \*Application to NJDEP, general permit authorization, repairs and alterations necessary to correct an existing malfunctioning individual subsurface sewage disposal system. 15 Broadway St, Port Elizabeth
- \*7/23/15 Letter from Pinelands to Atlantic Masonry
- \*Memo from Dixon Associates/C. Morrissey, compliance review of Atlantic Masonry
- \*8/18/15 letter to M. Benson from Atlantic Masonry with deed of restriction/easement
- \*Compliance review from Dixon Associates/C. Morrissey for Turner, Minor Subdivision
- \*From Pennoni Associates in reference to US Silica
  - \*7/28/15 to the Board, request regarding future water uses, emailed to Cuviallo and Morrissey
  - \*7/22/15 to US Silica, response action outcome, area of concern, 500 gallon gasoline underground storage tank, and 10,000 gallon #2 oil above ground storage tank
  - \*7/14/15 to NJDEP, groundwater biennial certification

Stowman questioned Sarclette and Oliver in reference to N. Graviano and the redevelopment plan. Sarclette explained.

Stowman commented on the SJ Gas Pipeline

Sarclette spoke about AC Elec upgrading poles on the power line, in the event the pipeline does not go through the will be able to carry more electric.

\*\*\*\*\*

#### Anchor Marina Resolution

Resolution #2015-07

Extension of temporary trailer

Motion to adopt Gross, 2<sup>nd</sup> Thompson, Carrara, Hoffman, Pflaumer abstained, all others in favor.

\*\*\*\*\*

Stowman asked if anyone was present in reference to the Swine Memorandum from the public as we will move it to this part of the meeting. No one was present, it will be kept on the agenda at the end.

\*\*\*\*\*

#### Whibco Application

Benson stated that Pflaumer, Hoffman, and Carrara had listened to the minutes from the July 1, 2015 meeting. Sarclette did not and was not present at that meeting.

Benson announced the application by reading the Public Notice.

Please take notice that Whibco of NJ, Inc. has applied to the Maurice River Twp. Land Use Board for amended preliminary and final site plan approval and bulk variances. The current application is an

### Maurice River Township Land Use Board

The Chairman announced that this meeting was being held in accordance with Open Public Meetings Act of New Jersey.

Present: B. Stowman, C. Thompson, A. Sarclette, J. Oliver, R. Chard, J. Carrara, R. Hoffman, G. Gross, J. Pflaumer, T. Imbaratto  
M. Benson, T. Cuiello, C. Morrissey

Flag Salute

Motion to approve previous minutes Chard, 2<sup>nd</sup> Gross, AIF  
Carrara, Pflaumer, Sarclette, Hoffman abstained

#### Correspondence

- \*Application to NJDEP for authorization under a coastal general permit #5 for the reconstruction of a single family home damaged by Superstorm Sandy.
- \*South Jersey Gas, application to Pinelands. 15 miles of 24 inch natural gas main.
- \*SJ Gas Certificate of Filing from Pinelands
- \*Letter and Twp. Resolution to N. Graviano authoring preparation of a draft redevelopment plan for Lots 7, 8, and 18, Block 281 and Lots 33, 34 , Block 296
- \*Application to NJDEP, general permit authorization, repairs and alterations necessary to correct an existing malfunctioning individual subsurface sewage disposal system. 15 Broadway St, Port Elizabeth
- \*7/23/15 Letter from Pinelands to Atlantic Masonry
- \*Memo from Dixon Associates/C. Morrissey, compliance review of Atlantic Masonry
- \*8/18/15 letter to M. Benson from Atlantic Masonry with deed of restriction/easement
- \*Compliance review from Dixon Associates/C. Morrissey for Turner, Minor Subdivision
- \*From Pennoni Associates in reference to US Silica
  - \*7/28/15 to the Board, request regarding future water uses, emailed to Cuiello and Morrissey
  - \*7/22/15 to US Silica, response action outcome, area of concern, 500 gallon gasoline underground storage tank, and 10,000 gallon #2 oil above ground storage tank
  - \*7/14/15 to NJDEP, groundwater biennial certification

Stowman questioned Sarclette and Oliver in reference to N. Graviano and the redevelopment plan. Sarclette explained.

Stowman commented on the SJ Gas Pipeline

Sarclette spoke about AC Elec upgrading poles on the power line, in the event the pipeline does not go through the will be able to carry more electric.

\*\*\*\*\*

#### Anchor Marina Resolution

Resolution #2015-07

Extension of temporary trailer

Motion to adopt Gross, 2<sup>nd</sup> Thompson, Carrara, Hoffman, Pflaumer abstained, all others in favor.

\*\*\*\*\*

Stowman asked if anyone was present in reference to the Swine Memorandum from the public as we will move it to this part of the meeting. No one was present, it will be kept on the agenda at the end.

\*\*\*\*\*

#### Whibco Application

Benson stated that Pflaumer, Hoffman, and Carrara had listened to the minutes from the July 1, 2015 meeting. Sarclette did not and was not present at that meeting.

Benson announced the application by reading the Public Notice.

Please take notice that Whibco of NJ, Inc. has applied to the Maurice River Twp. Land Use Board for amended preliminary and final site plan approval and bulk variances. The current application is an

amendment to a previous approval for resource extraction operations. Applicant now proposes to use a 101.64 acre portion of land, previously reserved for resource extraction, for agriculture. The properties are located on Weatherby Rd and Port Elizabeth-Cumberland Rd. and are known as Block 124, Lots 11, 12, 13 and 14 and Block 215, Lots 1, 2 and 3 and Block 216, Lots 1 and 2 on the Maurice River Township Tax Map.

The applicant also seeks the following variances and waivers:

\*To permit setback of 211' (Block 124, Lot 8), 60' (Block 124, Lot 9), 120' (Block 124, Lot 10), and) (Block 124, Lot 12) to adjoining properties where a setback of 500' is permitted under Ordinance Section 35-9.16.C.1. for a resource extraction use or a 30; setback is permitted under Schedule 2.1. of Section 35-5.2 for an agricultural use, whichever is determine to be applicable;

\*To permit no buffer area within the setbacks where such is required between a non-residential use and residential use or district by Ordinances Section 35-11.4D.1;

\*From site plan requirements relating to the scale;

\*From providing contours on the site plan;

\*From providing a current survey or a survey certification of the site plan;

\*From providing an updated environmental impact statement; and

\*From providing other state or federal permits, as these will be provided at a later time as a condition of approval.

The applicant further seeks such other variances and waivers as may be required as a result of recommendations to of the Board or its professional review staff.

At the July meeting the application was deemed incomplete. We will go through completeness first. Mr. Stowman spoke on the use variance and asked M. Benson about it. M. Benson stated it is in their new notice. It is treated as a D3 variance, the government officials that are members of this Board will have to recuse themselves. Mr. Sarclette, Mayor and Mr. Oliver, Committeeman, recused themselves and left the meeting.

Stowman asked the applicant if they had copies of C. Morrissey's report, the applicant stated that they had C. Morrissey and T. Cuvillo reports.

Mr. Hluchan stated they put into writing a description of what they are planning to do.

Whibco of New Jersey Inc.

September 2, 2015

Description of Preliminary Agricultural Activities for Site 1

Exhibit A-1

C. Morrissey went over his report, which is dated as 9/2/15. It is an amendment of his previous report to incorporate additional items that were submitted by the applicant, revised plans were submitted to satisfy the completeness issues raised at the previous meeting.

Waiver From

P2-Plan Scale, no objection to this waiver

P3-Site plan certified by a NJ licensed Land Surveyor. There is a long history of this project so they have not provided a full certified survey, they have provided pieces of surveys that make up this site plan.

They did update the plan up to August 6, 2015. There are some minor technical issues that he would ask to be addressed during compliance should they seek approval. There is some obscurity of the wording and should be more clearly legible, but it does not stop the Board from moving forward. There is one point of order, Lot 12 is not being shown as part of Site 1. Is it intended to be part of or not part of this application?

Mr. Hluchan stated that the Resolution from last time in paragraph 3 says that the Boards approval of a subdivision of Block 124 Lot 12 in 2012 allowing for the conveyance of 1/1 acres to Block 124, Lot 9 appears to require clarification on the plans of the resulting new property limits of Lot 12 and any resulting change in acreage of the Site 1 tract. Block 124, Lot 12 remains as a pre-existing non-conforming use and may continue as such.

Part of this was subdivided and conveyed to a neighbor. It will be identified.

Mr. Morrissey continued, he wanted to verify the site acreage. Site 1 was at one point identified as 386.25 acres, the plan now identifies it as 399.25 acres. That should be clarified and it should be identified on the plan.

Jessie Dougherty was sworn in.

Mr. Dougherty stated that the acreage shown as 399 is the correct acreage.

The plan that they have prepared does address what we are looking for, so there is no problem recommending that the waiver be granted.

P9-existing and proposed contours at two foot intervals. No objection to this waiver.

P24-circulation plans detailing access to and from the site. The applicant is proposing an agricultural use, we request that the applicant provide information regards to site entrance points on to the roadway, how they see the agriculture circulation going, concern is multiple trucks at multiple points onto the roadway. The other issue that was raised, whether or not they anticipate mining operations going through the agriculture site. If so where and how will that be accomplished.

Provided that is addressed to the satisfaction of the Board that will satisfy that requirement.

Mr. Hluchan spoke on Exhibit A1, he stated "This agricultural activity will not require any additional access drives or access points. The mining and agricultural uses of the existing access drives and points are compatible." Mr. Sjogren will elaborate on that in his testimony.

Mr. Morrissey stated he is satisfied with that based on what was discussed at the field meeting and how the operations will occur, he has no problem recommending the waiver be granted.

Mr. Stowman asked if the agriculture in A1, is there any change to the mining operation. Mr. Hluchan stated no.

#### P25-Natural Resource Plan

The Board has previously granted waivers from the requirement of identifying trees of 8" or larger provided the applicant identifies and protects any specimen trees that may be encountered on the site. This becomes a problem because the applicant has already cleared the area proposed for agriculture, the issue becomes moot. The Board could still grant a waiver from the areas that have not been cleared. If that's the case, the previous requirement in areas yet to be cleared be identified. The previous plan did not identify buffer areas, this plan does identify buffer areas. The only distance that is questionable, there is no delineation of the distance between Lot 9 and the proposed buffer limits. Mr. Morrissey believes it has been identified as a setback of 60 feet, it should be shown on the plan.

#### P26-Landscaping Plan

We do want to see what the agriculture use would consist of regarding planting material and it's harvesting as it relates to any negative impacts to the ground water of the pond. The applicant should in testimony address that.

Walter Sjogren, Wade Sjogren, and Ric Riccardi were sworn in.

Walter addressed the issue of rye grass and potential impact on the pond. He spoke on the summary, Exhibit A1. One of the key advantages of rye grass or cereal rye, it is very good at erosion control and also increases the water infiltration rate. Attached to the site plan, the last page, is a drainage area plan that shows the direction of the water. All water will be on site. There will not be a lot of water moving. Mr. Morrissey stated that would satisfy the landscaping requirement.

#### P29-Lighting Plan

Previously, resource extraction is a daytime operation. Granted unless it goes into nighttime operation on a regular basis that lights be provided for safety. Recommendation is to grant waiver with same condition.

P30-All required state and federal approvals for environmental consideration.

They have satisfied this requirement.

#### P31-Drainage Facilities

The applicant has provided additional information to the drainage plan.

Recommendation, they have satisfied any question regarding that.

#### P32-Environmental Impact Statement

The applicant should augment this item through testimony.

P35-Property Survey

If the Board is satisfied, Mr. Morrissey recommends the application be deemed complete.

T. Cuviallo commented that the area around Lot 12 that's in the PVC3 zone should be shown on the plan, the plan should delineate where the boundary is.

PVC3 does not allow agriculture.

Stowman commented on the EIS, it was done for Pinelands. He asked the applicant to give testimony that it was done for the whole property, which includes this application.

Mr. Hluchan made commented that the study was done for threatened and endangered species, specifically the Northern Pine Snake. He spoke on the report and the Pinelands Commission. As a result the Pinelands Commission has given them a no call up letter. They also advised them, that the work that was done for the study, the threatened and endangered species issue has been resolved going forward.

Mr. Horner, Pinelands, suggested that it would be ok to clear the property and use it as an agriculture use.

Benson stated a completeness motion would be to grant waivers for P2, P3 (with condition that Lot 12 be clarified), P9, P24, P25 (and specifically identify the specimens remaining in the areas that have not been cleared), P26, P29 (with condition that it is in reference to daytime operations only), P30, P31 (with condition that the flow across the agriculture be directed to the pond), P32, and P35.

Mr. Morrissey stated on Lot 12, the final limits on the plan should be clearly identified.

Applicant is in agreement.

Mr. Imbaratto asked a question which was unclear on the recording. Mr. Pflaumer asked how we vote on something that is already done?

Discussion on what we are voting on, Stowman and Benson stated that we are only voting on whether there is sufficient information in the application to move forward. Cuviallo made comment to the same.

Carrara asked about wetlands on the eastern part of the property, 200' buffer. Mr. Morrissey stated that the application initially proposed to promote agriculture in the wetlands buffer, the revised plan have taken that area out so they are no long encroaching into that wetlands buffer.

The applicant agreed, they are not doing in any agriculture in any wetlands or wetlands buffer.

Carrara asked with the other wetlands there is a 300 ft buffer and she wanted to know what the difference is? Mr. Morrissey stated that Pinelands sets the buffer and it is important to know that they did go to Pinelands and provide an environmental impact statement, and Pinelands gave them approval to mine up to the limits that they are proposing agriculture.

Motion for completeness Carrara, 2<sup>nd</sup> Thompson, All in Favor on Roll Call Vote.

\*\*\*\*\*

#### Approval Portion

Mr. Morrissey stated that it was addressed as previously 101 acres of clearing, on the revised plan it is 74.70 acres of clearing.

Cuviallo stated that the applicant is here tonight because they need a site plan amendment. They are looking to amend the site plan that showed 200 and 500 foot setbacks and buffers. They want to amend that plan to do agriculture activities in their future mining areas. In the past, there was a forestry plan in the future mining areas. That did not involve clearing the land or doing any agricultural farm. The applicant has decided to now do agriculture by growing rye. The ordinance does not allow more than one use on a property. There are some exceptions, forestry and agriculture are both exempt. So, it is not inconsistent with the Ordinance and not inconsistent with past practices that they have done. There are different impacts from forestry to agriculture so they have to come in to amend their site plan. And

to amend their site plan to change the buffers and setbacks along the residential property lines. The ordinance does permit mining as a conditional use. A conditional use is allowed if you meet certain standards that are in the ordinance. They are not meeting the standards that relate to the setbacks and buffers along the property line of non-mining uses. So, it is considered a D3 Use Variance. It is not a use variance because it is not permitted. It's because you are changing one of the conditions to accommodate the agriculture, reducing the setbacks and buffers the Board approved relative to the mining operation. When you have a D3 Variance, you're looking at a different standard, you are not looking at the fact that the use is on the property. The standard of review of a D3 Variance is that the site can accommodate the activity as proposed without any detriment to the surrounding area, the site will continue to operate as is intended under the Ordinance without substantial impairment and impact given the reduced buffers. It is not an outright use Variance. Can the site accommodate the impact from the reduced buffers and operate as intended under the code. The agriculture is a permitted use, there is a historical double use on the property. Forestry didn't impact the site plan like agriculture will. The applicant did receive approval from Pinelands for the EIS, they did clear the property, but it was not in any violation of any environmental T & E studies through the Pinelands Commission, it is an area that would have eventually been cleared for mining. They do require an additional Variance (D3) to allow clearing in excess of 20 acres next to an existing mining (wet pond) operations. They will have to provide testimony that the clearing has no detrimental impact on the site and will continue to operate as intended under the Ordinance. They are providing the 200 ft setback and buffer along Weatherby Rd. The only issue is along the residential lots to the west of the property. The distances do need to be clarified.

Special Reasons: They still have to demonstrate they are promoting some purpose of zoning under the MLUL. There are various purposes of zoning under the MLUL they can address. They do not have to show suitability, but they do have to demonstrate that other purposes of zoning are being advanced and their plan should be prepared to address that. Then you balance the purposes and the benefits against the impacts and how the site functions.

Benson asked Cuviallo to address the existing site plan that has the buffers laid out.

Two Years ago the Board did review the application to reduce setbacks and buffers in relation to a haul road. The Board at that time did deny the buffers. This application is to accommodate the agricultural use and the future mining operations that will occur in the same area.

Benson also asked Cuviallo to address the 500 ft and 200 ft buffer issues and the fact that the approved 2011 site plan contained 500 and 200 ft buffers.

Our ordinance requires a 200 ft buffer to any property line and a 500 ft buffer to any residential or non-resource extraction related use which is in existence the date the permit is issued. The plan that was approved by the Board showed a 200 ft buffer and a 500 ft buffer. She also gave the definition of buffers in our Ordinance. The plan that was approved they had 200 ft along Weatherby Rd, the 500 ft is proposed to be reduced down to 211 ft. The buffer that is proposed on this plan is to consist of the existing vegetation that will remain in the 211 ft.

The Board has to determine if that 211 ft meets the definition of a buffer and provides the protection to the adjoining properties.

Mr. Hluchan stated they are not changing any aspect of the mining operation. Everything that was approved is still in effect. All that they are doing is taking the area that was reserved for future mining, clearing it, and using it for agriculture for rye grass. In Resolution 2013-12 (approval of mining) in paragraph 7 it says "the areas within site 1 denoted on the plans as Future Permit Areas are specifically excluded from the application, are not, at this time, permitted for active mining and are shown on the plans for reference purposes only." That is the area that is not yet approved for mining, but they are proposing for agriculture. The only way to do that is to clear the area and plant whatever they are growing, which will be rye grass. Mr. Hluchan spoke on the discussion at the last meeting with Mr. Benson, he stated that he believes they should not need any Variances, they have agreed to disagree and have applied for those Variances and are here asking for that approval tonight, without prejudice to

their position that they do not need Variances. There will be three witnesses and he went over what each one will be testifying to.

Mr. Walt Sjogren spoke on Exhibit A1 and what the agricultural plan is. The site has always been actively managed in a farming activity. Previously it was under woodland management forest stewardship plan. Not only this site but also on other sites, they manage their forest. They are managing about 7000 acres. After looking at site 1, they determined the best use for the property now is to plant rye grass or rye cereal. To do that they had to clear the trees. In the first 5 year cycle, their plan is to plant rye grass or rye cereal. It is a good ground cover to use, the benefit is that once planted you will have erosion control pretty quickly. There will be an improvement in increased water filtration.

Mr. Benson asked in terms of soil erosion, would there have been soil erosion occurring with the trees in place, would that have been an issue?

Mr. Sjogren stated that they have to obtain approvals from Cumberland County Soil District, they have to prepare a plan that they approve, that they accept what is on the plan. When it was forested, they presented the plan and it was approved. Agriculture is exempt. At the request of the Board, we have supplied the Board a drainage program that shows the elevation and where the water will be flowing. A normal farmer would not have to do that. But, we have supplied the information. The engineer will testify that the water will stay on site. The chief crop that will be planted will be rye grass or cereal rye. They will be using typical farming equipment, baler, tractors, mower, bale wagon, motor vehicles, and implements. The activity will not require new access points. They will be using the current gate off of Weatherby Rd. As needed they will use herbicides and/or fertilizer and that will follow best management practices.

Mr. Stowman commented that one of the reasons for the diagram and the water flow, we wanted to look at road safety and nearby property safety.

Mr. Pflaumer asked how long will they farming this before they start mining.

Mr. Sjogren stated that they have approval to mine 1A, 1B, 1C and 1D. All the other sites listed are D-H, when we come back in for the renewal, July 2016, we will show you where we will be going. He stated even with woodland management, that they manage the area, when they decide to mine it, it reverts back from farming activity to be mined.

Mr. Pflaumer asked if next year they will consider mining the agriculture part?

Mr. Sjogren stated maybe, it depends.

Mr. Imbaratto stated that Mr. Sjogren a couple minutes ago something about 5 years that you expect to implement this. Now it's July possible.

Mr. Sjogren stated that the first 5 year cycle of agriculture will be primarily rye grass or cereal rye. After 5 years when the soil is at a condition for other type of agriculture products, they will make a decision then. Rye grass/Cereal rye will naturally create more nitrogen.

Mr. Stowman questioned, the applicant has a 5 year agriculture plan, as they come before the Board for future mining request it could be in part of that 74 acres. Mr. Sjogren stated yes.

Mr. Hluchan stated that is dependent on the economy.

Mr. Sjogren stated right now they are mining areas 1C, 1B on the eastern side of the plan. 1E and 1F are not currently approved. Mr. Stowman asked to clarify, in the next application you will be including in the application 1E and 1F, which could overlap uses, mining and agriculture? The mining is future in these areas and has not been approved.

Mr. Morrissey asked about the desiltation pond, if it was part of the mining operation? Mr. Sjogren stated yes, it has always been there, it is 8 acres.

J. Carrara questioned what happens when they start mining and they pile all the ground up from the agriculture, all the fertilizer that has been added to the soil will go into the ground. Is there any plan for that? There was a discussion on the fertilizer. Mr. Sjogren stated it is like round up, you can plant grass two weeks after you use it in your yard.

Ms. Carrara asked, in the end, you would like to have a mining pond encompassing the entire area? Mr. Sjogren stated yes. He also stated, today we are asking for a buffer for their agriculture activity. There was a discussion on the 2016 renewal.

Mr. Morrissey questioned the waiver for a variance for a reduced buffer for the agriculture use at this time, but then they will come back and ask for the same buffer, aren't you putting the Board in a catch 22? Mr. Sjogren stated no, we are asking for the reduced buffer for agriculture. When we come back with the renewal application, we will give testimony and put on our case, and the Board will vote at that time. Mr. Hluchan stated this application is only about agriculture, we are not seeking a buffer for anything else. If they come back for mining in those areas, it will be dealt with at that time.

Mr. Benson spoke on buffers, he questioned if they felt that because they are doing agriculture they felt those buffers do not apply? Mr. Hluchan stated that is true. Mr. Benson asked how they address the existing site plan, they had no objection to, it had certain conditions which included buffers at that time were to mining, that site plan is what governs the mining. How is it that you can explain that goes away, simply because you are going to plant rye grass or rye cereal? Mr. Hluchan stated because agriculture is a permitted use, whatever happens in the future they will deal with. Ms. CuvIELLO stated that could mean they will not get approved for mining in future permit H, G, and F. You could come in to the Board, by amending the site plan for agriculture, you do not necessarily have the right to mine the areas because you have changed the site plan. Mr. Hluchan stated he disagrees.

Mr. Benson asked when does it become mandatory for the Board to do away with its existing site plan approval and the buffers in order to accommodate farming, when right now there is something that controls the property, being the site plan? Mr. Hluchan stated it governs the where the mining was approved and stated he read from the resolution that stated other areas were not approved for mining. Mr. Benson stated that was in there to limit someone from encroaching in those areas, the area not to be mined is part of the site plan. Stowman stated that if the buffer is gone, it is hard to put that back, that is an issue that we deal with when we are trying to protect the public.

Mr. Benson asked if their position is that their desire to become farmers trumps the site plan approval? Mr. Hluchan stated no, that is why they are here.

Ms. Carrara stated a second use of agriculture does not negate the first use of mining? Stowman stated that is correct.

Mr. Benson stated this is a little more that coming in with a farming application. Mr. Stowman asked which use is most important to you? Mr. Hluchan stated they both are. The applicant does not want to vacate mining, so the Board has to consider conditions for the mining, even if they are doing another use in the meantime.

Ms. CuvIELLO stated that when you read the plan and see that a future area is not approved, it does not mean it is not approved for the use, but the detailed site plan is not approved to be mined. But, it is still approved for the use, part of the overall plan for the mining operation, so if you wish to add agriculture, you can do so, but you still have to maintain the comprehensive plan and standards that relate to the mining. You don't have the right to go to 30 feet because agriculture is a permitted use, because you have a comprehensive plan for the mining with buffers and distances. The applicant is here to change that.

Wade Sjogren stated the reason they are here is because they are presenting something that they believe is fair and reasonable. They are trying to find a resolution to competing uses that is acceptable to the Board and the neighbors.

Mr. Dougherty presented Exhibit A-2, Site Photo Exhibit. He went through the plan and explained where each photo was taken from and pointing in which direction to show the visual impact from the property lines. From Lot 8 it is 362 feet from the nearest structure, from Lot 6 it is 534 feet from the nearest structure. It does represent the whole 74 acres.

Discussion on visual impact and noise impact.

Mr. Imbaratto asked, if they were to get the buffer they are asking for, 211 ft, how close are they able to get to the property line? CuvIELLO answered they cannot get any closer than the 211 ft if that is what is approved, and it is in reference to the agriculture.

Stowman asked the site visit committee, concerning Weatherby Rd, what was the feeling on what you could see at 200 ft from Weatherby into the clearing, if you were standing on Weatherby could you see any of the clearing? It was pretty heavy, you could get a glimpse occasionally.

Mr. Imbaratto commented that they cleared 100 ft without the Board knowing, what would stop them from clearing more than they are approved for. Mr. Benson stated a condition in the approval.

Mr. Wade Sjogren stated that if it is approved as a vegetative buffer with the trees to be kept, they will abide by it. If they ever wanted to change that they would come in to the Board to get an approval.

Mr. Benson stated the Board is thinking that a whole lot of the site was cleared without approval of the Board. The Board is looking at as a mining property subject to an existing site plan.

Mr. Wade Sjogren stated that the area that was already approved for mining that had trees on it, that was cleared. Pinelands said no further mining could occur until the Threatened and Endangered Species study was approved. They had a point when they were about 6 months till they were out of new mining area. They had done the study looking for Pine Snakes, they found one snake. They then did a full site study, all of Site 1. After doing the study, Pinelands said they were then free to clear what was approved under the previous certificate. Their understanding was that they were authorized to clear because agriculture was exempt. They look at it as a forested area, going to a cleared area. They did all the necessary studies, they wanted to demonstrate they were not harming any protected species.

Mr. Benson asked if one of the purposes behind this was to not have to deal with threatened and endangered species, once cleared you do not have to deal with habitat for those species. They answered that the guidance from the Pinelands was to clear. Mr. Wade Sjogren stated they do plan to mine in the future but they won't do that until they come before the Board.

Mr. Wade Sjogren stated that the 211 ft is a vegetative buffer. They want to maintain a vegetative buffer so if the times comes that they come before the Board to mine those areas, they believe the 211 ft buffer is adequate.

Mr. Benson asked what they will do with the product of the agriculture? They will sell it. There was a discussion on how the farming will work, if they will sharecrop, contract, lease, etc.

Mr. Pflaumer asked if they has a soil test or perc test on the property. Mr. Walter Sjogren stated they are not required to do a perc test on the property. He stated on the plans they show where the ground water is. It has quickly re-vegetated already. Mr. Riccari spoke on the soil on the property. There was a discussion on what had already grown there under the trees, the soil does support growth. They are going to plant the correct amount of seeds, use best practice for the best yield.

Mr. Gross asked if the clearing that is there now is that at the 211 ft or is there more proposed clearing? There is more proposed clearing. Mr. Morrissey went over the plan and explained where the clearing was and what is being proposed. He stated they still have about 400-450 feet of the 500 feet buffer.

Mr. Dougherty stated the surveyed line shows the existing tree line as it stand today, from the property line ranges from 420 to 375 feet. Along Weatherby is 200 ft.

Ms. Carrara asked about the future permit on 1H, does that refer to future mining? They answered yes. She asked if in the agriculture area, they would want to mine in the future. Mr. Wade Sjogren stated that there would be a different application and they would come before the Board, but ultimately their application would include expanding the mining pond.

#### Special Reasons:

Ric Riccardi listed his credentials. The Board accepted him as an expert witness.

The area of the farming operation is Block 124, Lots 11,13, and 14. Approximately 101 acres of agriculture use, 74 of those acres has already been cleared.

Mr. Benson asked if they are planning on going beyond the 74 acres? Mr. Riccardi stated 74 acres has been cleared and there is additional areas to be cleared.

Stowman asked for clarification on the numbers.

Ms. Cuvillo stated the plan states that the proposed area to be converted to agriculture is 74.7 acres. The applicant requested a few minutes.

The Board made a motion to go on a 5 minute break.

**\*\*Break\*\***

Mr. Stowman announced the meeting resuming.

Mr. Dougherty clarified the acreage. Currently 63 acres are cleared. The entire proposed area to be cleared is 74 acres which would bring it to the 211 foot buffer.

Mr. Riccardi went over some of the environmental conditions of the area. The soils are predominately a sassafras sand. There are some wetlands soils, they are staying out of those areas and maintaining the buffers around that area. The vegetation is mostly an oak pine, the ground cover is mostly low bush blueberry, huckleberry, and saplings of pitch pine. It does create a screening buffer along Weatherby Rd and the residential properties (Lots 8, 9, and 10). Both of those are critical because what is being developed is upland soil types, they are satisfying the public good criteria. In terms of Land Use, the Whibco site is a mining operation and the Board is aware of future mining areas. The area to the west is a residential community. The area to the south is mostly open woodlands except for the freshwater wetlands. The area to the north is the Whibco processing facility. The zoning, the project site is in a Pinelands Conservation Zone where mining is a permitted conditional use, also spoke on the Ordinance, it permits one principal use and it does exclude agriculture. The project is 74 acres will be formed, approx. 62 has already been cleared. They are requesting a D3 Variance because there is a deviation from the site plan approved previously. Specifically the encroachment into the buffer and the clearing of greater than 20 acres next to a mining pond. They need to satisfy the negative criteria.

\*They need to demonstrate their will be detriment to the public good, demonstrate that the project will not impact the adjacent properties or damage the character of the neighborhood.

\*Will a project impair the intent and purpose of the zoning ordinance?

Mr. Stowman stated in reference to the other D3 Variance, clearing more than the 20 acres, still is needed, even though it has already been cleared.

Negative Criteria:

Detriment to the public good—the intent is to plant rye grass within the 74 acres. The typical nuisances will (noise, smells) will not be a problem with that type of agriculture.

If it was developed as a strictly agriculture use it would 50 ft. front yard, 30 ft. side yard, 50 ft. rear yard setbacks. They are maintaining a 211 ft. setback along Lots 8, 9, 10. He stated it is well documented through the South Jersey area that buffers of 200 ft. and setbacks of 500 ft. will more than adequately serve to minimize noise and sedimentation from farming activity.

There is a 211 ft setback that will be maintained according to the Ordinance. Mr. Riccardi went through the exhibit A2 and described how the ordinance is satisfied. He stated the 200 ft. setback to the property line is satisfied. They believe the 500 ft. setback to be satisfied as well. Lots 9, 8 have agreements with the Sjogren's to allow development up to the property line. It is 100 ft. to the property line of Suzanne Dilks, and 0 ft. to the property line of Lafferty. Lot 10 is within the Ordinance. The only one he feels is in conflict with the 500 ft. setback is Lot 6.

Ms. Cuvillo stated Mr. Riccardi is indicating that it is a 500 ft. to the residential use. He is reading the Ordinance where it says 200 ft. from the property line and 500 ft. from the residential use.

Mr. Riccardi continued the 500 ft. setback is being maintained to the property line of Lot 6. Lot 8 has an agreement with the Sjogren's to permit development within 100 ft to the property line.

They stated that they do have documentation of the agreement with the property owners.

Ms. Carrara stated is disagrees with our Ordinance, regardless of what the agreement with the property owner is.

The agreement that was sent by Mr. Hluchan to the Board was marked at A3.

The agreement is with Lafferty and Suzanne Dilks.

Ms. Cuvillo stated the purpose by entering these are to demonstrate and assist with the negative criteria analysis to the surrounding property owners, it doesn't change the Ordinance.

Mr. Riccardi continued, they recognize the Board can pose stricter setback standards and he spoke on the comprehensive management plan. The 200 ft setback is permitted under the Pinelands Commission. Many municipalities do have 200 ft setbacks for this type of operation. The buffer is a little larger than 211 ft, in addition to the wooded area that will be maintained, there will a slight perimeter from the wooded area to the service roadway that will constructed around the perimeter. There will be some slopes, it will be 230-250 ft.

Mr. Stowman asked about the service road that is on the perimeter, is for agricultural use? Mr. Riccardi stated yes. Mr. Hluchan stated they are not proposing any road at this point. He stated what Mr. Riccardi is talking about, is if and when the mining is approved there may be a road way.

Mr. Riccardi stated spoke on the mining operation. It is a wet mining operation. He stated buffers of 200 ft limit the decibels of trucks, reduce airborne sediment to migrating off site. And important factor is the elimination of the haul rd, with that is comes less traffic on that segment of the road. Mr. Hluchan stated he is talking about the road that was denied, he stated Mr. Riccardi is comparing the 200 ft buffer to mining but there will not be mining at this time.

Mr. Riccardi stated relative to the criteria that you cannot disturb more than 20 acres, which is specific to the mining operation not to the agriculture use. But, when the farming is done, there will be stabilized vegetative cover around the pond, which he believes is the basis for that standard being imposed in the Ordinance. He also stated you cannot have an agricultural operation without clearing trees.

Mr. Stowman stated even though normally agriculture will be clearing, the Board still has to deal with the 20 acre limit, if we don't deal with it there is still an infraction. If the Board does not give a Variance to that, there will be an infraction on the mining side. Mr. Riccardi stated there position is that would be addressed when the mining application is submitted. Mr. Stowman stated, no, it has already been cleared, Mr. Benson added it was cleared to the extent of 74 acres, which could be a violation of the 20 acre. Mr. Hluchan stated they have not been issued any violation, he also stated that clearing was done for agriculture and not for any mining purposes. Mr. Benson stated that is understood, but it is a question of can this agriculture magic wand be waived and do away with what the Board may consider an existing site plan that governs the site.

Mr. Riccardi stated the distinction is that if you have a mining operation, you clear more than 20 acres you have 20 acres of exposed soil that creates erosion, etc. In this instance, that area is not going to be left barren and exposed, there will be a cover of hay 365 days of the year.

Mr. Hoffman asked if they have a timeline when the vegetation will be planted and it will prevent the erosion?

Mr. Walter Sjogren stated they are waiting for the final approval. If they get the approval they will plant this year, this fall.

Mr. Morrissey stated that the soil erosion requirements have temporary vegetative cover requirements. What would you plant to make the soil non erosive, to maintain temporary vegetative cover. The applicant stated rye grass. Mr. Morrissey stated that rye grass is what you are required to plant under soil erosion standards.

Mr. Riccardi stated the uses that are here are conditionally permitted in this zone, there is not a major change in the zoning. It is also allowed by the Pinelands Commission. The project will not change the character of the surrounding residential areas. The immediate adjacent properties, there are agreements. Lot 6 satisfied the setback standard. Relative to the areas to the east and north. They are wooded open areas. This will not change at all the character of that area.

He touched on Atlantic Masonry, they got approval from the Board for 100 ft setbacks. This applicant is proposing double that. He feels this project will satisfy the intent and purpose of the zone.

Mr. Hluchan asked what type of operation is Atlantic Masonry, Mr. Riccardi stated it is a mining operation similar to Whibco. They were approved for a 100 ft with a 3 ft berm. This applicant is proposing a 211 ft setback. Mr. Riccardi stated that it is similar to a 3 ft berm out there do to how the earth was moved.

Mr. Benson asked Mr. Riccardi to address special reasons. How is the promoting the purposes of zoning. Mr. Hluchan stated it is promoting the purposes of zoning because it is zoned for agriculture. The test for a variance for a conditional use is different than a standard use variance because it is the use is already conditionally permitted. Mr. Benson stated that there is any law that states that special reasons do not apply to a standard variance. Mr. Riccardi stated he does not feel that it does not apply. Mr. Benson stated that it is a D variance so special reasons do apply. Mr. Riccardi stated that relative to the

one lot affected, they are providing a 500 ft setback to that property. Lots 8 and 9, there are agreements.

Mr. Benson stated that the general purposes of zoning are set forth in the Ordinance, and the first would encourage municipal action to guide the appropriate use of development of all lands in the state to promote the health, safety, morals and general welfare. You are applying for a D3 variance to eliminate the buffer, how does that deviation promote that purpose of zoning.

Mr. Riccardi stated he will reiterate the fact that the property owners adjacent to the site have agreements.

Mr. Benson stated they decide for whatever reasons to allow development up to their property line, how does that promote general welfare?

Mr. Hluchan answered, according to the Cox book, and the Supreme Court case, Coventry Square vs. Westwood Zoning Board of Adjustment. The court declared that imposing on conditional use variance applicants the same burden of proving special reason as would be imposed on other applicants for other use variances is inappropriate and does not adequately reflect the differences between prohibited uses seeking entrance into a zone in which the governing body has decided not to allow them and conditional uses which the governing body has decided to allow in that zone on certain conditions. Put another way, in so far as the governing body has determined that the use is compatible with the zone and that location of the use in the zone meets either local or regional needs, that portion of the site suitability test ought to be deemed satisfied. That is why he said we do not need to satisfy the special reason criteria as you would in a normal use variance. Ms. CuvIELLO stated, she does agree you do not have to deal with site suitability but you do have to show that the site can function the way it was intended to function. So, you have to go to the purpose in the district, what that purpose was for, are you still able to satisfy what that purpose of that district standard was without negatively impacting it. Mr. Riccardi stated he felt that he addressed that, the research he found said 200 ft is more than adequate to reduce noise, airborne sediment, providing buffer and aesthetics. 200 ft is adequate in achieving that.

Mr. CuvIELLO said if you relate that back to the purpose of zoning, as they relate to promoting health, safety, and general welfare, providing adequate light, air, and open space.

Ms. Carrara stated that the pictures were taken in the summer, it will be different in the winter. Mr. Riccardi agreed that it will be more visible in the winter. He stated there is pitch pine growing there.

Mr. Hluchan stated it is twice the buffer approved for Atlantic Masonry.

Mr. Stowman stated each application the Board has to deal with has it's own details that the Board has to deal with. We have to deal with each site with what is going on. Each application stands on it's own.

Mr. Morrissey questions the studies that Mr. Riccardi looked at. If they were the same studies the Pinelands used to come up with the 200 ft buffer, Mr. Riccardi stated no, he can provide them to the Board. Mr. Morrissey asked if it was fair to say that the Pinelands would come to the same conclusion if they had a 200 ft buffer. Mr. Benson asked if they have anything from Pinelands that states that they feel their waiver or lack of concern of the 200 ft buffer would be binding on the Board. Was there anything from Pinelands, when they said go ahead and clear, which they were intending that this Board and the previous site plan could be impacted. Is there any correspondence or anything that would explain your belief that since Pinelands said to clear, it was ok to do that without consulting the Board. Mr. Hluchan stated that they did not realize at that time that the Board would require site plan for agriculture. Mr. Stowman stated one of the reasons for the 500 ft that is in the Ordinance from residential, there was a lot of safety issues there. That was one of the reasons that Maurice River went to a stricter footage. Maybe the question should be, does reducing it down to the 211, what would you do to protect someone who lived in that residence?

Mr. Walt Sjogren stated he read the minutes when Atlantic Masonry got their approval. He commented on the berm, a 3 ft berm with vegetative cover would address all the issues. The Board commented that it was a very small portion of the site. Mr. Walt Sjogren stated that all sites are distinct, on Whibco's site, they have a guard service, the operations are running 24/7. Most of the areas have video cameras. Whibco also participates with other mining companies, at the schools, with "Get out, stay out." (The

dangers of swimming in a mining pond.) The Board decided at Atlantic Masonry, is not have a dredge, but they will have wet mining. Mr. Benson stated it is getting far away from where we need to be and the Board understands the applicant's position. Mr. Wade Sjogren stated if and when they come in with a mining application proximate to the buffer areas, he assumes there will be things discussed like a berm. When they come in to mine that area, they need to address the issues, but that will be as part of a specific mining application. They are now 2000+ feet from 1B. As they get closer, they are in agreement that they would have to deal with footage. Mr. Hluchan stated they are only at this time, proposing agriculture, where the Ordinance says a 30 or 50 ft setback. They are proposing 211 ft. Mr. Riccardi has concluded his testimony at this time.

Mr. Wade Sjogren gave an overview of Exhibit A3. He stated that to be a good neighbor you consult with the neighbors on how you will operate. One way to do that is through a written agreement, it avoids confusion and misunderstanding. With respect to the western property line on site 1 they have an agreement dated Oct 16, 2011, between Whibco Inc, Whibco, NJ and Jack Lafferty Sr (Block 124, Lot 9) and Suzanne Lee Dilks (Block 124, Lot 8). In 2011 they reached an agreement with them, paragraph two talks about setback waiver; he spoke on 2:a:ii of the agreement. He stated it is a very specific setback agreement in regards to mining. He stated on July 9<sup>th</sup>, Wade and Walter met with Jack Lafferty, Sharon and Jeremiah Dilks. He said they were very clear and they are here and can speak directly. The bottom line of the meeting was that they wanted to Whibco to be 500 ft from the property line of Sharon and Jeremiah Dilks, Lot 6. They have an agreement with Suzanne Dilks that says 100 ft, they heard the concern. They went back to the drawing board and drew a line that is 500 ft from their property line. That is how they came up with the 211 ft. That is 500 ft from the property line that Sharon and Jeremiah share with Suzanne. It is 211 ft is over twice what Suzanne agreed in writing, it is over 500 ft to the property line that Suzanne shares with Sharon and Jeremiah, and Whibco will also leave the trees there. And also hearing the concerns of the LUB, considering of the all of those factors, to accomplish something that each party can live with, Whibco came up with a 211 ft of vegetative buffer from Suzanne Dilks property line. He stated he does understand that the Board is not bound by private agreements. When the time comes that they come in for a mine plan that shows extraction in the close vicinity to the property lines, they would have to meet the requirements at that time. For now they are very far away from that area.

Mr. Pflaumer asked who presented this agreement to Suzanne Dilks. Mr. Wade Sjogren stated it was not him. The agreement was prepared by their lawyer. He stated he believed that it was Mr. Lafferty and others. Mr. Pflaumer asked if Mr. Lafferty gained any property if they signed off on this. Mr. Sjogren stated he already received property. Mr. Pflaumer commented that they had Mr. Lafferty present this and it would be advantages for him to have it signed. Mr. Sjogren spoke on the value of water front property, so having an ultimately, assuming approvals, lakefront housing. Mr. Pflaumer asked why someone from the company did not present this to Ms. Dilks and why did they use Mr. Lafferty. Mr. Sjogren stated they did not use Mr. Lafferty, they were working with him. He also stated that Jeremiah was also involved in the process of reviewing the agreement. His understanding was that Jeremiah, Jack and maybe others were there when it was signed. Mr. Pflaumer stated his concern is that Mr. Lafferty gets some property at a very good price if he gets her to sign it. Mr. Wade Sjogren stated that Mr. Lafferty needed some of their property, you try to find a solution that works best for all concern. They chose to be good neighbors, work that out. Subdivide the property, looked at it and said what they were gaining in consideration for that is an agreement for a setback reduction.

Mr. Benson asked about having lakeside/pond side views, what was the consideration for Ms. Dilks. Mr. Wade Sjogren said to ask her that. He again spoke on the agreement. All of them agreed that there was valuable consideration and there were promises to that effect.

The applicant's testimony is complete.

Mr. Gross asked if they were clearing, why not the last 11 acres? They want to clear 74 acres but only cleared 63 acres. Is there a reason they did not do that part? Mr. Wade Sjogren stated that with the communication going back and forth, whether there was agreement legally or not, it was clear that the LUB wanted to preserve the buffers so they shut it down and come in and do what was requested.

Ms. Carrara asked Gross if they have been sited, he stated no, we knew they were coming here.

Motion to open public hearing Hoffman, 2<sup>nd</sup> Gross, AIF

Mr. Benson announced the public hearing, if anyone would like to ask questions or has comments, come up state your name and be sworn.

Jerry Dilks, Sharon Dilks, and Suzanne Dilks were sworn in.

Mr. Dilks commented that they did not say they were fine with 500 ft from their property, what they did say that if they bought Suzanne's property and you used it for your use, you would have to be 500 ft from their property. He stated they sent Jack Lafferty over time again to pressure Suzanne into signing the agreement. He stated he did talk with them over the phone and said she would not sign something that saying she will never hold them accountable for anything, which was in the first one they wanted her to sign. It went back and forth, she would get very upset, and finally she signed the agreement so that it would stop, now she is sorry that she ever signed. She is here to say that. He stated they would like to see them take it back to 500 ft since it is no longer 500 ft. He has no problem with them farming. The Board has said it should be 500 ft in residential; that is what they want. He lived there 50 years, he wants what buffers are supposed to be, since they have de-forested it, it is louder than it was. Not enough to complain but it is louder. The 500 ft buffer does help. You can see they are clearing from his house. Because of the nature of those trees, the larger buffer is necessary to cut back on the noise. When you wake up a 5 o'clock you hear the mining going when the windows are open. He does not want that to get worse as they get closer and remove more trees. As far as Waivers, they flooded the Dilks property back in the 70's. So, he would caution the Board to look at these things. He doesn't want to deny them what they want to do but is asking the Board to do due diligence.

Suzanne Dilks spoke, she stated that back in 2011 she was not well versed in buffers and zones, she has learned more since then. She apologized for signing the letter. What she read in the letter she thought was legal, she did not realize it was supposed to be greater than that. She had done that to help Mr. Lafferty. Basically, she got nothing from signing it. It was strictly to help him out. The agreement was given to her brother, they sat down with her sister in law, she thought she was doing something ok and there would not be problems down the road. She stated she did not ask for anything out of this.

Mr. Pflaumer asked what relation is Mr. Lafferty? Suzanne stated he is a cousin.

She stated since she has heard that the buffer is 500 ft, she is ok with that, having them farm within that 500 ft, and from her back yard she can see stripped land. So, it has some impact, she gets the sun a lot quicker in the morning that she had in the past. She is fine with the 500 ft buffer. From what she has heard this evening they have gone beyond that 500 ft, what will stop them from going further without bringing it before the Board first? In regards to the agreement, she did not speak with Whibco at all.

Mr. Pflaumer stated just to be clear, do you want the 100 ft setback? She stated she wants the 500 ft setback.

Mr. Stowman asked if any of the three had kids? Sharon and Jerry stated they have a grandchild on the way.

Sharon Dilks stated she was also at the meeting with Wade and Walt, they felt they were very clear, if they purchased Suzanne's property they would require the 500 ft. She stated she does walk Weatherby Rd, you can see right through to where they are at. She stated she can hear it from her house. She shared that at the meeting that she can hear the "beep, beep, beep" in the morning, not enough to complain about it. She does disagree that there is already a 3ft berm in the woods, buffer, or setback, she does not see it. Mr. Pflaumer asked her early in the morning is the noise a lot louder since they removed the trees? She said it is louder, she said anyone is invited to come to their house, sit on the back porch, have coffee and hear it, she included Whibco in that invitation. Mr. Gross asked if a vegetative berm would make a difference with the clearing that exists right now? She stated she doesn't think a 3 ft berm would make a difference. She said keeping the 500 ft would be great. The other thing is that they are talking about farming and forestry, trees were not being planted during the forestry. Nothing has been replanted where the road was started.

Stowman asked the applicant about the 3ft berm that was mentioned, that was referring to Atlantic Masonry, that was not on Whibco property. Mr. Riccardi stated he did mention that there is a 2-3 ft berm that was created when the earth was moved. Mr. Stowman stated the site visit did not look at anything like it was a berm. Mr. Walt Sjogren stated the question was asked and Jessie stated it look about 3 ft, it is not a constructed berm, just incidental to the forestry.

The applicant stated they do not have any questions for the Dilks.

Mr. Lafferty was sworn in. He stated he is here tonight to support the Whibco application and asked if the Board had any questions of him. There were no questions.

No other members of the public came forward.

Motion to close public hearing Carrara, 2<sup>nd</sup> Thompson, AIF

Mr. Hluchan summarized by saying that the applicant is seeking agricultural use which is a permitted use and a 211 ft buffer, the variance on the 20 acre clearing, he commented you cannot do agriculture without clearing.

Benson reiterated what the application was. They are seeking an agricultural use approval. It has to be acknowledged the Ordinance does permit agricultural use. The question is whether the agricultural use as proposed can be imposed on this property given the circumstance that there is a current site plan that establishes conditions on the property that could be incompatible with the proposal that has been made, as a result of the existing buffers and restrictions on the property that were imposed as a result of prior of approvals. It is for the Board to consider granting or denying the buffer relief and to determine in the first instance if the Board is in agreement that the agriculture use is permitted or required, and should we amending our site plan to permit the agriculture use as applied to. And whether or not to grant a buffer relief.

Stowman asked if the Board could make a motion that deals two different issues, D3 Variance (20 acre issues) and then the buffer issue. Could the Board make a motion to deal with the variance and then have a different part of the motion that deals with the buffer issue? They want to continue mining, but they also want to start agriculture.

Benson stated the application is calling for a permission to amend the site plan to permit agricultural use on that site as reflected on the proposed amended site plan. The relief from the 20 acre provision since obviously the 20 acre provision would be inconsistent with the agricultural use. They are asking for relief from the buffer requirement. Going from a 500 ft buffer to a 211 ft buffer. They are maintaining the 200 ft buffer as it exists. They call it a setback, we call it a buffer.

Carrara commented that while they are asking for agriculture, they also have on the plan "future mining." She went on to say that you could approve the agriculture, impose the 500 ft and require them to replant the buffer.

Stowman stated if the mining goes on and the Board eventually approves E, F, G, and H, then the clearing would be down to the spot now. So, when you think of remediation, you could say the 63 acres or what is needed to go back to the 500 ft buffer.

Imbaratto asked if you can amend the site plan with the 211 ft restriction? Benson stated they are doing just that. It will be a condition.

Other options were discussed.

C. Thompson stated he would like to see 500 ft.

Gross asked, can we approve the farming up to the 500 ft buffer?

The Board commented that agriculture is not a problem. Could the last portion of the buffer reclaim itself back to the 500 ft buffer?

Discussion on how and what the Board will approve. The Board will have to allow the 20 acre exception for the agriculture.

Benson stated we could grant modification to the site plan, grant the 20 acre exception and retain the 500 ft buffer without reclamation.

C. Morrissey stated they would have to stabilize the exposed area.

The question came up, is it 500 ft to property line or residential use? T. Cuviallo stated we have always went to the property line.

C. Morrissey stated they can plan try grass to stabilize and they should mark it. They will have to fix the site plan. Eventually the pine and oaks will grow back.

Motion to consider after Board discussion by Benson

- 1) Modification of existing site plan to permit agriculture as described by the applicant of rye grass.
- 2) Relief granted of the 20 acre limitation in the Ordinance, for the purpose of agriculture use.
- 3) Re acknowledgement of the 500 ft buffer to the property line without reclamation.
- 4) Stabilization Process which would include use of top soil to stabilize the ground
- 5) Staking of the 500 ft buffer line on the western side by the residential

Motion made by Chard, 2<sup>nd</sup> Carrara, All in Favor on Roll Call Vote.

\*\*\*\*\*

Swine Memo will be tabled to the next meeting.

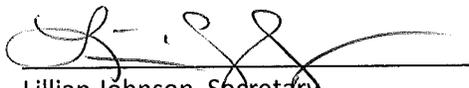
Motion to table Chard, 2<sup>nd</sup> Gross, AIF

\*\*\*\*\*

No public present for comment

Motion to adjourn Chard, 2<sup>nd</sup> Gross, AIF

Respectfully Submitted,



Lillian Johnson, Secretary