PEQUEA TOWNSHIP
ZONING HEARING BOARD
Minutes of – January 9, 2012

The members of the Pequea Township Zoning Board met on January 9, 2012 at 1900 hrs. The meeting was called to order by Chairlady Johns. Supervisor Porterfield introduced new board member, Robert Mellinger, who will join the board pending completion of a financial disclosure form and approval by the supervisors

Members Present:
Jackie Johns, James Haines, Mark Meyer, Robert Mellinger, Tom Haas

The minutes were unanimously approved following a motion by Mark Meyer, seconded by James Haines.

Officers were appointed.
Chair-Jackie Johns
Vice Chair-Mark Meyer
Secretary-Tom Haas
Board Attorney-David Wagenseller

Following a brief executive session, the Bitts hearing continued from November 7, 2011. Attorney Crosswell requested continuing the hearing until after February 2012 to which Attorney Miller agreed. The board decided to proceed as the hearing was postponed in December, it was publicized for tonight and parties were present. The Township Zoning Officer was not present.

Attorney Crosswell continued eliciting testimony from Mr. McSherry, the township engineer, regarding zoning non-compliance by the Bitts. Attorney Miller objected questioning relevance. Attorney Crosswell stated that the Bitts may claim "vested rights", which if several tests are met; the permit could be reinstated, zoning violations as described by Mr. McSherry would occur to the detriment of the community. Mr. Wagenseller, the board's attorney, advised allowing testimony to continue.

Mr. McSherry's testimony included:

1. The infiltration bed is inadequate. Half of the required size.
2. There was no sedimentation and erosion control plan as required by the Lancaster County Conservation District.
3. Earth moving that occurred did not comply with DEP regulations and is not in compliance as of today.
4. There was no posting of 6 Pine Lane on November 4, 2010.
5. On November 8, 2010, Mr. Bitts said the use of the proposed structure was to get semi tractors off of the street.
6. The dimensions of the proposed structure are consistent with commercial use.
7. The impervious area exceeds the permissible 25%.
8. The 6 Pine Lane is a developable lot.

Following a short break, Mr. Emerich, a party, asked for the definition of impervious, stated the dirt pile was the fault of the board and said the property was posted when the work began. Following questioning by Attorney Crosswell, he said no properties in the subdivision have a pole barn, that he has a two car attached garage and that he has no objections to the proposed structure.

Mrs. Johnson, a party, testified the proposed structure looks like a commercial building. She and her husband have concerns about the safety of children if the commercial use is permitted. Neither approves of the structure in a residential district and wish zoning regulations would be enforced. Following questioning by Attorney Crosswell, Mrs. Johnson testified to seeing 18 wheelers at 4 Pine Lane in the past. She stated that the building would "stick out" and devalue the area.

Following questioning by Mrs. Johns, Mr. Bitts stated a prior commercial trucking operation ceased in 2006 following notification by the Township.

Mr. McSherry was then questioned by Attorney Miller.

1. He agreed 4 Pine Lane is a mature lot.
2. He did not see a construction permit prior to November 4, 2010.
3. The infiltration bed was not reviewed prior to issuing permit.
4. The impervious area of 28.5% differs little from the allowable amount which is only 20% in areas of no public water and sewer.

Upon redirect by Attorney Crosswell, Mr. McSherry testified the person requesting a permit is responsible for sedimentation and erosion control. Attorney Crosswell then stated there are two parts of the hearing. The permit was issued in error and do the Bitts have the right to keep the permit?

Attorney Miller requested Mr. Hindes, the former zoning officer be available for testimony. Attorney Crosswell said it will be discussed with the supervisors.

Attorney Miller elicited testimony from Mrs. Bitts who responded:

1. A storage shed was removed in preparation for construction.
2. Walnut and cherry trees (38) were removed.
3. The "dirt pile" is topsoil which would have been spread.
4. The pole barn was discussed with Mr. Hindes on August 10, 2010.
5. No written or verbal ordinances were received with the application.
6. Mr. Hindes was informed the location of the project was 4 Pine Lane, not 6 Pine Lane.
7. The permit was picked up by Mr. Bitts or the contractor in October, 2010.
8. The Bitts were unaware of a problem until notified by Supervisor Groff, who mentioned compensation.

Attorney Crosswell wished to strike the compensation issue from testimony. Attorney Wagenseller said culpability of an owner is an issue in "vested rights". Attorney Miller said money spent is an issue and Attorney Wagenseller recommended the testimony be allowed. Mrs. Bitts testimony continued stating the contractor was paid $19,000.00.

Attorney Crosswell questioned Mrs. Bitts about the deeds, subdivision plan, elevation of the lot, removal of the existing shed, dates of earth moving, tree removal, meetings with Mr. Hindes, and size and use of the proposed structure. Mrs. Bitts said the building was to be used for storage of lawn tractors, cans and a large train collection in boxes. Attorney Crosswell asked how the number and size of the overhead doors related to a train collection. She replied her husband would need to be asked. She testified the revocation notice was delivered November 8, 2010 and word was stopped. She also stated the permit was posted in a window at 6 Pine Lane and at 4 Pine Lane when obtained. Always in both places.

Attorney Miller questioned Mrs. Bitts about the deed transfer. Mrs. Bitts stated the application was truthful, she does not own a truck and that trains, cans and mowers were to be stored in the pole barn. A shed was removed in preparation for the new building.

Attorney Wagonseller requested the board not vote until he has an opportunity to prepare information for the board concerning "vested rights".

Attorney Miller elicited testimony from Mr. Bitts.

1. He is employed as a truck jockey.
2. Last owned a heavy truck in 2007.
3. Spoke with Mr. Hindes twice prior to obtaining a permit.
4. Mr. Hindes had no problem with the pole barn.
5. Asked about the use, Mr. Bitts said it was for train storage.
6. Never aware of non-compliance until November 8, 2010.
7. Work began the weekend after the permit was issued by removing trees for two weekends.
8. There was no prior communication before the "Cease and Desist Order" which Mr. Hindes said occurred. Mr. Bitts said he "sat there and lied".
9. Supervisor Leaman was called and requested prices stating he needed to consult an attorney to which attorney Crosswell objected.
10. There was no lie or deliberate misrepresentation on the application.
11. Was not aware of an appeal to the permit.

A bill for $19,000.00 of unrecoverable expenses was sent to the township at which time attorney Crosswell said the expenses are recoverable because the lot is developable.

ZHB member Mr. Meyer questioned the timing of the payment to the contractor pointing out the bill stated payment due at completion of the project. The bill states payment was made October 14, 2010 before completion of the project when the permit was issued.

The Board adjourned at 22:10 with the hearing scheduled to continue February.6 2012 at 19:00 hrs.

The hearing was recorded by Michelle Parke court reporter.

Respectfully submitted,

Tom Haas

Tom Haas

SIGN IN

2012-01-09 Zoning Hearing Board Reorg + Meeting

Elaine Jones
Richard Jones
Robert Porterfield Chair BOS
Jack McSherry PE
Richard M. Emerick Jr
Thomas Brown
Jan + Wyatt Batts