

Knowlton Township Land Use Board
Minutes
Tuesday, October 24, 2023

There was a regular meeting of the Knowlton Township Land Use Board on Tuesday, October 24, 2023. Clayton Taylor led the Board in the flag salute at 7:00 p.m. He announced that adequate notice of the meeting has been provided in accordance with the "Open Public Meetings Act" by publishing notice of all regularly scheduled meetings in the NJ Herald and Express Times-NJ Zone Edition, as well as providing said schedule in the Municipal Clerk's Office and the Township Website. A moment of silence was held for our Military Personnel serving in harm's way.

Roll call:

Present: Drake, Baley, Mathez, Mezzanotte, O'Neill, Smith, Starrs, Werner, and Taylor.

Absent: Mazza, Cuntala

Also Present: Attorney Gavan

Approval of Minutes:

The September 26, 2023 Land Use Board minutes were distributed prior to the meeting. A motion to approve with minor grammatical changes was made by Mr. Mathez and seconded by Mr. Baley. Chairman Taylor asked for a roll call vote to approve the minutes.

Roll call vote: Drake-yes, Baley-yes, Mathez-yes, Mezzanotte-yes, O'Neill-yes, Smith-yes, Starrs-yes, Werner-yes, Taylor-yes.

Adoption of Resolutions:

#23-001 Triplebrook RV & Camping Resort, LLC, Block 65, Lot 3

#23-002 Makarevich, Block 44, Lot 9

Chairman Taylor confirmed with Attorney Gavan these resolutions were not ready yet and will be done for the next meeting.

Old Business:

#23-003 JBar Pocono, LLC, Block 17, Lot 1 & Lot 2

Michael Selvaggi introduced himself as counsel for the applicant JBar Pocono, LLC. Block 17, Lots 1 and 2 located at 30 Decatur Street. He reminded the board this application is for a section 68 approval. Which, he said, is a fancy way of stating the use is grandfathered in. The burden of proof on the applicant is to demonstrate that prior to an ordinance being adopted or changed the property was functioning in a manner that is consistent with how it's being proposed or being used currently. At the last meeting Dave Hummel, Norman's brother, indicated that since the early 60's up until Mr. Hummel's death in 2010 it had been operating as a towing and motor vehicle repair shop. There was a gap between Mr. Hummel's death and Mr. Gentile's purchase. As discussed at the last meeting Mr. Selvaggi reached out to the previous owner, Jimmy Schlier, and spoke with him. He then put together a certification, or affidavit, which was taken under oath.

He also included a tax return. Mr. Selvaggi continued that what the certification shows is if there was a period of inactivity the question isn't whether it stopped being used. The focus is what the intent was behind that cessation of use. It was pointed out by Mr. Schlier that the use didn't totally stop; it was sporadic at best due to his health issues. Which ultimately lead to him selling it. Mr. Selvaggi said Mr. Schlier is available by phone if needed and could be called if the board wants to ask questions based on his certification. Chairman Taylor asked if any members of the board wanted testimony to go along with the certification. Ms. Starrs had a question regarding the submission of one year's tax return and asked if the taxes were paid every year. Attorney Selvaggi stated he was given all of them, but only sent the one due to the number of pages. He also said the tax return references activity for prior years and confirmed he paid all the taxes. Chairman Taylor noted seeing listings of property tax losses for prior years. Ms. Mezzanotte asked if there were other operations in New Jersey or just the one in Columbia. Attorney Selvaggi said this was the only one. Mr. Gentile, still under oath, stated he also purchased the Pennsylvania operation. Chairman Taylor asked if there were any further questions and if anyone wanted the attorney to contact Mr. Schlier. With no response, Chairman Taylor noted the call could be forgone. Mr. Selvaggi spoke regarding the task was to show continuous use that was never abandoned. Mr. Hummel's testimony at the previous meeting and Mr. Schlier's certification fills in the gaps and clearly the current owner has every intention to continue with that use. That's why he has made the investment to try and fix the property up and make it look better. So, he believes they have satisfied the criteria for a section 68. It is a preexisting non-conforming use as a towing and motor vehicle repair shop. Mr. Baley questioned the address not appearing on the tax return. Mr. Selvaggi referenced item #10 on Mr. Schlier's certification and noted this is the only property he operated a business out of in New Jersey. Ms. Starrs asked Mr. Selvaggi to address the topic of weight limits that were put in place prior to 10 years ago. Mr. Selvaggi said that may be another issue, it doesn't go to the non-conforming use certificate. That would be an enforcement issue for the municipality. It doesn't undermine the fact that this business has been there. It may pose issues with respect to how the business will operate. It's beyond the jurisdiction of this board to say you're not entitled to use it; it may impact how it's used. Attorney Gavan added it's not grandfathered, and it is not a zoning ordinance. Ms. Starrs asked for confirmation that the client understands that large semi-trucks are not allowed on that road and that could impact the business. Attorney Gavan stated the board may want to require a site plan review. Chairman Taylor asked what are the intentions as far as adding items to it. The zoning officer had noted in his letter the HVAC system. The site plan should also include lot 2, which is where the vehicles will be stored. Fence repairs were intended there and also a garage, which they will have to come back to the board for a site plan approval. Ms. Starrs asked if they would be willing to do the truck repairs at the Pennsylvania site and only repair cars at the Columbia site. Mr. Selvaggi replied this was getting into site plan considerations. The non-conforming use has been trucks and motor vehicles. Attorney Gavan said at the point of site plan discussions, he believes an appropriate condition could be the tractor-trailer issue in light of the weight limits on the road.

Mr. Gentile spoke stating the other part of their business is specialized in oversize hauling. He said if you call the state of New Jersey, you can get an annual permit. Every super load that goes down Rt 80 that is over 14' 2" gets off that exit ramp and goes by their building and gets back on. Up to 400,000 pounds. The loads of concrete from the local road work, 500 loads a day, are going by the building. 60 to sometimes 100 trucks a day go by. His intention is not to harm the neighborhood or get anyone upset. He will only have 2 trucks there. He could call in an application tomorrow for 16' tall 200,000 pound and go right past the building. Ms. Starrs replied she is aware of the issue but does not believe it should be rubber-stamped just because there is a way around it. Attorney Gavan added it will be a condition of the certificate that they have to come back for the site plan.

Mr. Baley asked about getting receipts from Mr. Schlier to prove he used this specific property in New Jersey and no others. It was discussed again to call Mr. Schlier. Mr. Gentile said he did not have any other properties in New Jersey. Mr. Werner asked Attorney Gavan if the evidence presented was substantial enough. He confirmed it was. Based on the testimony it was never his intent to abandon the use and that is the standard they have to meet to continue. Attorney Gavan believes based on the certification taken they have met the standard. Mr. Selvaggi spoke regarding some of the cases he submitted in his letter. He noted the cessation of a business and the courts went back to what the intent was. The tax returns further support the idea that he did not abandon it because there was some activity. So, he believes it meets the standard under section 68 of land use law. Ms. Mezzanotte asked where on the tax return shows he did business at this location. Attorney Gavan discussed the tax return shows he did some business in New Jersey. The supplement testimony from his affidavit and the applicant states this is the only business owned in New Jersey. Property had to be purchased in New Jersey so a contract could be obtained to tow in the state of New Jersey. They are before the board to get the certification needed for zoning. Mr. Drake spoke regarding the fact the ordinance changed after the property was purchased and so they would be grandfathered in any way. Attorney Gavan stated they have met their burden. They should be granted subject to a site plan, so the municipality knows exactly what is going on there. Mr. Selvaggi said this certification should have been done when Mr. Schlier purchased the property. At that point the ordinance allowed this as a conditional use. If you are an owner under section 68 and the ordinance changes you have a year to come in and get the certification. But you are not barred if you don't meet that one year. The other thing that happens within that one-year period is the zoning officer has the power to issue the certificate without requiring an application being filed here. A prospective buyer can also file in anticipation of a purchase. But if you miss that one year, then you are obligated to come before the board.

Discussion was then open to the public. Sharon Valentine stated she lived in Columbia on Decatur Street in 2006 and she doesn't remember Mr. Hummel even doing business at that point. She had concerns regarding the environment, hours of service and lighting.

Chairman Taylor asked if there were any more comments from the board. Mr. Mathez said his sense is if you accept the certification there really is no choice in this. Ms. Mezzanotte feels the certification contradicts the testimony. Specifically, "his intent to do business there". She feels he intended to use the site as a P.O. box. After further discussion it was decided to call Mr. Schlier to testify. Mr. Selvaggi phoned him, and Attorney Gavan swore him in. He confirmed that the statements in his certification were true.

He stated he did not operate any other towing businesses in New Jersey. He was asked if all of the activity noted in the tax return he submitted was from the location in Columbia, New Jersey. He stated that some of it was for through tows. If a vehicle was picked up in Pennsylvania and it was towed through New Jersey, taxes had to be reported to New Jersey. Attorney Gavan asked how many vehicles in a year did he think he actually towed to this location. He replied not many, most were taken to customers' houses or to a dealership. They were not doing emergency towing at that time, just regular towing. Ms. Starrs asked for a clarification on "not many". Mr. Schlier stated maybe fifty. If it weren't for his health issues he would have done more. Attorney Gavan asked if he ever intended to sell the property and not continue to use it. Mr. Schlier stated they did have a sign up to sell the property, but no one really called about it. He did not hire a realtor. Although sporadic and not at full capacity, he did operate a towing business and motor vehicle repair place there. It was never his intent to abandon the use during his ownership. With no further questions, the call ended.

Mr. Werner made the motion to affirm the section 68 approval on this application and require a site plan showing what is there currently and any known intent of expansion. Ms. Starrs asked about adding a timeline to come back with the site plan. Attorney Gavan asked Mr. Selvaggi if it would be fair to ask the client to add 90 days and if you need more time write a letter explaining. There was discussion between Mr. Selvaggi and the board regarding adding the 90 days. Chairman Taylor asked Mr. Werner if he wanted to add the 90 days to his motion, make it longer or drop it. Mr. Werner asked if someone wanted to make a different motion. Chairman Taylor noted right now the motion is without a time limit is there a second on the motion. Motion was seconded by Mr. Mathez.

Roll call vote: Drake-no, Baley-abstain, Mathez-yes, Mezzanotte-yes, O'Neill-no, Smith-yes, Starrs-yes, Werner-yes, Taylor-yes.

New Business:

**#23-004 Quiet Valley Printing/Daniel Deroche/Deroche Truck Covers & Tarps, Inc.
Block 12, Lots 7, 8 and 9.**

It was noted the applicant did not notice in time and so this will be carried to the November 28 meeting.

Public Comment:

Chairman Taylor opened the meeting to public comment. Gene Makarevich inquired on the timeline for his approval resolution. Attorney Gavan apologized as he had not finished it time for the meeting. With there being no further comment, public comment was closed.

Other Business:**Post Approval Inspection Escrows**

Attorney Gavan said that this would be a part of the condition in the resolution that would say they have to pay their escrow for everything to do with the application. Then the board's engineer would make calls or site visits to see where they are at and report back. This wasn't our practice, but our engineer is willing to do it. We will change the conditions in our approvals. In the case of site-plans we will add a condition that they have to maintain an escrow for post approval work reviews. The professionals will get

paid from the escrow. We will tweak the condition in our approvals that talk about paying the bills to include post approval inspections for compliance.

The board asked about adding time limits, Attorney Gavan said that would require an ordinance. Discussion took place regarding the escrows which must be kept up. If we are aware there is no money in the escrow when the resolution comes up, the resolution wouldn't be approved. Attorney Gavan said the engineer should send reports on who he has followed up on. He will speak to the engineer on this. The engineer knows from being here exactly what was approved and what wasn't. When they are in the field, they look at things that weren't even brought up. They have the right to do small changes to the approvals or add things based on what they see in the field. Chairman Taylor said conditions of approvals have always been the responsibility of certain professionals. A common driveway agreement, the attorney would review. Certain things the secretary checks to see if they are done. Certain things the engineer makes sure are done. The problem is the inspection. When things aren't done there was never any money for that. Ms. Starrs asked if we can increase the amount of money that is currently required. Chairman Taylor said that would be an ordinance change. Attorney Gavan said the governing body should adopt a resolution requiring an escrow for all post approval inspections that may or may not be required. Discussion took place regarding the engineer checking on conditions put in place from some of the previous zoning board resolutions, specifically landscaping. Attorney Gavan said technically the applicant should not get a certificate of occupancy until the construction official in conjunction with the zoning official and the board secretary check off that all those things are done. Ms. Starrs summarized we can do this right away without a resolution or if we want to increase the amount of the escrow required that has to be done through resolution. Mr. Mathez said then the requirement of the C.O. would be that the engineer signs off on it. Attorney Gavan said when the engineer gets our resolution it will say that the board engineer will make compliance inspections. This would be for all site-plan applications. Chairman Taylor noted we do not have to do an ordinance change right now, we can just put the conditions in and collect from the regular escrow. Attorney Gavan said we will have to get a fair number for the additional from our engineer. If the applicant gets approval, we will let them know before the resolution is adopted you have to deposit x amount of money for post approval inspections. Ms. Starrs asked if we can make this effective today. Attorney Gavan confirmed. Mr. Mathez spoke regarding if the escrow is drawn down, the board secretary must notify the applicant. Then let who ever gives the C.O. know that until they replenish the escrow, they don't get their C.O. Attorney Gavan said in the resolution it will say that the board engineer must sign off. Further discussion took place on the construction department getting a copy of the resolution and checking off what was done and not give a C.O. if they weren't. They would check on the uniform construction code aspects of the resolution and other parts would need to be checked by the engineer. Attorney Gavan stated in the resolution right now it reads they are required to pay all fees associated with the application. Now there will be a new one on top of that that says they are required to put up the required escrow for post approval inspections for compliance. The engineer will come up with the amount. Once we get that we will put something together for the town council to adopt that we will now have in our fee post approval escrow for engineer review and compliance. Until then we will just work with the escrow account that is already set up. Mr. Mathez asked about notifying the township committee to explain what we are doing. Ms. Starrs said she would notify them at the meeting during public comment.

Attorney Gavan will reach out to the engineer to get an estimate on a figure. The amount shouldn't be too high, but enough that they would want the remaining escrow back. Chairman Taylor asked and there was no further discussion on the escrows.

Lighting Ordinance:

Mr. Smith noted from the previous meeting they intended to meet with the new zoning officer for his comments, but they couldn't make contact with him as he has been too busy with the transition. There was discussion on Mr. Werner's comments he submitted, and he feels it comes down to what the zoning officer feels he can enforce. He also feels in reading over the existing ordinance some of the verbiage is more stringent than what we are proposing. But if the previous zoning officer couldn't enforce it, he doesn't know how you could enforce a lesser ordinance. There being no further discussion on the lighting ordinance, Chairman Taylor asked if there were any general comments from the board.

General Comments:

Mr. Drake spoke about when the board re-evaluated the master plan. There was a summary of recommendations, one of which was to consider designating Columbia as an area in need of rehabilitation. He continued he doesn't know if Columbia needs rehabilitation, but Columbia needs protection. Especially considering the traffic that is coming from both directions and seems to have no end in sight but to increase. One hundred trucks a week is a low estimate for what goes through the town. This is not just because of the construction happening on Route 46, there are regular offenders. They go 40 to 50 miles per hour through town. He feels someone will get hurt. He continued; the applicant who previously spoke confirmed that he sees 100 trucks go by a day. Mr. Drake feels the residential village needs protection. Mr. Mathez recalled that at one point the Township Committee considered making Decatur Street one way. Ms. Starrs said that would have needed DOT approval because it is attached to Route 80 and there is a state law or maybe federal law that says any road that is attached to Route 80 is considered an emergency bypass. Chairman Taylor said there is really nothing this board can do, that is something that would go to the Township Committee. Mr. Drake said there is an ordinance there that is broken 100 times a day. There was discussion on State Police coverage and self-policing. Attorney Gavan spoke about another municipality that hired the sheriff's department to patrol certain areas of concern. Ms. Starrs said the committee had considered hiring the Blairstown Police Department, but it didn't go anywhere because of the cost involved. Mr. Drake spoke regarding traffic pattern changes which Attorney Gavan said would require the DOT.

Ms. O'Neill brought up the truck stops on Route 46. She said they are all conducting illegal parking businesses. They charge \$14 to \$17 a day and have a contract signed to only buy gas from them. One business has a banner stating they have available truck parking. Chairman Taylor said if it is a violation of their site plan that they got upon their approvals it would be a zoning violation.

Bills:

Chairman Taylor asked if everyone looked over the bills. There was a motion to approve the bills by Ms. Mezzanotte. Motion was seconded by Mr. Baley. Roll call vote: Drake-Yes, Baley-Yes, Mathez-Yes, Mezzanotte-yes, O'Neill-yes, Smith-yes, Starrs-yes, Werner-yes and Taylor-Yes

Closing discussions then took place regarding the order of roll calls. The board recalled the previous board secretary taking roll calls based on who made the motion and second. The new board secretary stated that she has been doing roll calls alphabetically adhering to the Municipal Clerk statute.

Attorney Gavan then spoke regarding tonight's resolution. He said he would require in the conditions, unless you tell me not to, that it be filed with the clerk as a chain of title for the lot. This is something in his opinion that should be done more often in land use. This person got an approval for something that down the road someone else may rely on. It should be clear what it is based on and if there is a site plan requirement. This way if the property is to be sold it would be in the title search. So, if this site plan gets approved, we will file that also and it becomes part of the record of the land. Because sometimes what can happen over the years is records can get lost or destroyed. This is something he is starting to do in a lot of his towns because certain approvals should be kept with the record of the land.

Adjournment:

A motion to adjourn was made by Ms. Mezzanotte and seconded by Ms. O'Neill all were in favor. The meeting was adjourned at 8:40 P.M.

Respectfully Submitted:



Doreen Apgar,
Board Secretary