Zoning Hearing Board
Lower Saucon Township
Town Hall
February 20, 2012

MINUTES

The meeting was called to order at 7:00 p.m. by Chairman Jason Banonis.

Roll Call

Present at the meeting were Chairman Jason Banonis, Vice Chairman Ted Grigg, Secretary Keith Easley, and Board Members Lachlan Peeke and Austin Kunsman. The Solicitor, George A. Heitczman, was also present.

Minutes

The Board had before it for approval the minutes of the meeting of January 16, 2012. Mr. Easley moved to accept the minutes as submitted. The motion was seconded by Mr. Banonis and passed by a vote of 5 to 0.

Bills

The Board had before it for approval a bill from the Morning Call for advertising the meeting of January 16, 2012, the Court Reporter's bill for attendance at the meeting of January 16, 2012, and the Solicitor's invoice for the month of January, 2012. Mr. Easley moved to pay the bills as submitted. The motion was seconded by Mr. Grigg, and passed by a vote of 5 to 0.

Variance Appeal of Alex Patullo - Variance 03-10
Remanded by Commonwealth Court

The Solicitor gave a brief statement of the current status of this matter.

He noted that Applicant currently has a pending 48 lot subdivision under

review by the Township for this parcel. One of the components of that application would create a stand-alone lot of about 13 acres in size which would support the clubhouse facility which currently exists. No approvals have as yet been granted by either the Township Planning Commission or Township Council. The entire parcel contains approximately 160 acres of land and currently contains a now-closed 18 hole golf course, the maintenance structures, and the clubhouse facility.

The clubhouse facility has existed on this parcel for some time and proper permits have been secured during the life of it. Applicant proposes to split the existing clubhouse off of the parent tract and use it strictly as a banquet facility. The facility would be supported by a 13 acre parcel which contains the parking and septic systems. The Zoning Ordinance does not specifically define the proposed use. The closest definition that the Applicant contends is in the Zoning Ordinance is "Club, Lodge or Social Building (Private)."

At a prior hearing the Board approved a request for relief from two specific requirements under the "Club, Lodge or Social Building (Private)" regulations. The two requirements the Board granted relief from included allowing public use and allowing "for profit" operation.

The opinion of the Board reasoned that the request was neither a dimensional variance nor a change in use since the same use was being continued. The Board opinion concluded that the relaxed standards for granting of a variance that apply to a dimensional variance should be applicable. This decision was appealed by Objectors who are surrounding property owners, and subsequently affirmed by Northampton County Court of Common Pleas.

The decision of the Court of Common Pleas of Northampton County was appealed to the Commonwealth Court. The Commonwealth Court held that the relaxed standards of a request for a dimensional variance should not have been applied since what is present here is clearly a change in use. The normal standards for a change in use variance must be applied absent some other theory of relief. The Commonwealth Court remanded the matter back to the Zoning Hearing

Board for further consideration.

Applicant is now again before the Board seeking a variance from §180-111.4(2) to operate a banquet use at the existing facility. In the alternative, Applicant is seeking relief pursuant to the doctrine of vested rights / variance by estoppel.

Attorney Joseph Fitzpatrick again appeared on behalf of Mr. Patullo and Attorney Stephen Goudsouzian again appeared on behalf of the Objectors.

The parties agreed to, and the Board approved of, the incorporation of the entire record from the prior hearing into this proceeding.

Attorney Fitzpatrick called Mr. Patullo as his first witness.

Mr. Patullo is the owner of the property which comprises approximately 162 acres. He wishes to have the banquet facility as a separate use, to apply 13.4 acres to the banquet use, and to have the balance of the property available for subdivision into residential lots. No new building or structure will be needed to accomplish his purpose.

Mr. Patullo identified Exhibit A -1 as a permit issued on May 25, 1988, for a new clubhouse building. This permit was issued for the property, which is in an R-A zoning district, approximately a year after he purchased the property in 1987.

He identified Exhibit A-2 as a zoning permit dated February 28, 1988, permitting a commercial use including a restaurant, and reciting that the estimated cost was $500,000.

Exhibit A-3 was identified as a portion of the site plan showing the 13.4 acre parcel that he wishes to devote to the banquet facility use. He testified that at the present time the golf course had been closed for approximately a year and a half due to economic conditions. He testified that there is a maintenance building and a cart building shown on the south end of the parcel that is to be carved out. He stated there would be no demolition nor any construction on the site.

Mr. Patullo testified that the eastern side of the parcel has a steep slope

which slopes up and away from the banquet facility.

Mr. Patullo also testified that the property was properly posted to give notice of the current hearing.

He identified Exhibit A-4 as a set of photographs showing the property. In 1988 approximately $2 million was spent on building the clubhouse which is now to be a banquet facility. It comprises 2 stories with a total of 18,000 ft.^{2}, and could not possibly be converted to a residential use. It has always been a commercial use. Based upon his experience as a contractor he opined that it would cost approximately $250,000 to demolish the building.

When he purchased the property there was a small structure on it, which everyone referred to as the "chicken coop," which had a liquor license and which served sandwiches. He identified page 5 of Exhibit A-4 as a photograph showing the chicken coop in front of the new building that he built. This photograph was taken after the new building had been completed and prior to the chicken coop being demolished.

Mr. Patullo described each of the photographs of Exhibit A-4. Specifically, he noted that page 7 shows the portico which allows people to drive up and disembark without getting wet if it is raining, particularly useful for example for weddings; the photograph at page 8 as the cart room which is part of the clubhouse and is separate from the cart building; page 9 as the men's locker room shower, which is separate from the locker room and shower facilities for women; and page 10 as the walk-in refrigerator which comprises approximately 160 ft.^{2}.

Mr. Patullo testified that there are 2 kitchens in the structure which are both commercial kitchens. He identified page 11 of Exhibit A-4 as a photograph of the second-floor meeting and dining area with a dance floor. He noted that the lawful permitted occupancy is 450 people.

He identified page 13 of Exhibit A-4 as a photograph showing two large rooms in the structure that can be used for meetings, and the photograph on page

14 as a smaller room which also has a separate bar. He testified that all of the bar equipment is commercial grade.

Mr. Patullo identified Exhibit A-5 as a multiple sheet set of blueprints showing the clubhouse as it was constructed. The blueprints show the banquet room as 40' x 60' and one kitchen as comprising 35' x 21'.

He emphasized that this was a special purpose building specially designed for this use. He testified that everything was always disclosed to the Township and he relied upon the permits and the permissions that the Township issued throughout the years.

Mr. Fitzpatrick noted that the theories under which he was proceeding were the establishment of the right to a use variance, the possible existence of a pre-existing lawful nonconforming use, a theory of vested rights, and a variance by estoppel.

Mr. Patullo was then cross-examined by Attorney Goudsouzian. Mr. Patullo testified that when he purchased the property it was a golf course with the chicken coop. He then tore down the chicken coop and replaced it with a much larger building to expand and improve the use. He testified he did this of his own free will and for economic reasons. He testified that the new clubhouse serves the same basic purpose as the old one. He noted that Exhibit A-1 has a notation "new clubhouse building" and that the building also contained a pro shop. The clubhouse was an accessory use for the golf course, as shown by a letter from former solicitor Donald B. Corriere, dated July 24, 1978, admitted in evidence as a part of Objector's Exhibit-1.

On redirect examination Mr. Patullo testified that the Township saw the building plans before permits were issued, and saw that the structure had provision for meetings and banquets. On recross-examination Mr. Patullo testified that he had not tried to sell the property.

After discussion between counsel and the Board, Attorney Fitzpatrick moved to continue the hearing for decision purposes until the following month,

to be permitted 7 days to file a brief, and to allow Mr. Goudsouzian to have 7 days to respond. Mr. Banonis moved to grant the motion and the motion was seconded by Mr. Kunsman and passed by a vote of 5 to 0.

Variance Appeal of Michael & Tracy Kiefer - Variance 03-11

The Board then turned to the continuation of the Kiefer hearing. Mr. Kiefer was again represented by Attorney Brian Monahan, the Objectors by Attorney Victoria Opthof, and the Township by the Township Solicitor, B. Lincoln Treadwell, Jr. Attorney Monahan said that Attorney Craig Edwards, who represents the owner of the property, was unable to attend but had agreed that the hearing should proceed without him.

The parties agreed that the hearing would continue to address the Notice of Violation. Attorney Treadwell had sent a letter to the Board requesting that the notice of violation portion of the hearing be separate from the variance application as there are differences in the burdens of proof. Attorney Treadwell also argued that the Board does not have jurisdiction to hear the ACRE issues raised by Mr. Kiefer. The Board concurred that the Notice of Violation hearing should proceed first, and did not address the issue of its jurisdiction to hear the ACRE issues.

Attorney Monahan called Raymond Pichel who testified that he had lived next to the Kiefer/Helms property for 80 years. He lives at 4260 Lower Saucon Road on a property comprising 80 acres. Bull Run Creek runs through his property.

Mr. Pichel testified that he had known Glen Helms who died on February 10, 2004. He testified that the Helms farm was divided into 2 parts. Mr. Helms grew nut trees and was in fact president of the Nut Growers Association. The trees were mostly walnut trees but there were others. Mr. Helms had nursery trees that were taken by the state when Route 78 came through. He was not aware of whether Mr. Helms had ever run a business known as Pennsylvania Nut Nursery. He testified that Mr. Helms farmed and grew trees until he died. Mr. Pichel said

he never saw any money transacted for sales of trees. He testified he knows Mr. Kiefer, who he referred to as a tree farmer, and has no problem with his current use of the property. When Mr. Helms died there was an auction in which tractors and other farm equipment were sold. The property has less junk on it now and more trees.

Mr. Pichel referred to an aerial photograph, Exhibit T-9, and identified an area where tomatoes had been grown and where there was perhaps an acre of walnut trees. He stated that for 30 to 40 years tomatoes had been grown on the property. He said Mr. Helms farmed for a year after he stopped growing tomatoes and then sold the property to someone who occupied it before Kiefer did. He testified that he recalled trees being a foot tall when they had been planted. On cross-examination by Attorney Treadwell he testified he never saw Mr. Helms bring in trees from elsewhere.

Attorney Opthof brought out in cross-examination that there had also been peach trees on the property. She showed Mr. Pichel Objectors' Exhibit O-1, 2, 3, and 4 and he identified the lawn area shown on the photographs. He further stated that Exhibit O-5, 6, 7, and 8 showed the Helms house. He was shown a photograph of a tree trunk, Exhibit A-5, but did not know whether it was a grafted tree. He identified Exhibit A-6 as a photograph showing the Helms' barn and growing trees.

Attorney Monahan then called Francis Callery as a witness. Mr. Callery lives at 4287 Lower Saucon Road which is across the street from the Helms property, and approximately 200 feet from the entrance Mr. Kiefer is now using for access to the property. He said he had no complaints and considers Mr. Kiefer to be a good neighbor. He has seen approximately 100 balled trees on the property that have been there since Mr. Kiefer started his tree farm. He acknowledged that some of these trees appear to be dead.

Under cross-examination he testified that he has lived there 22 years. There were two Helms brothers, one of whom planted the nut trees. He never saw

trees actually being planted and never saw trees being sold.

At this point Attorney Monahan said that Mr. Kiefer is to be the next witness and his testimony is likely to be lengthy. The Board therefore decided it would suspend for the evening as it was then 9:30 p.m. Attorney Opthof requested that the Board consider giving the Kiefer hearing precedence at the next hearing date, and the Board agreed to consider doing so.

Old Business

There was no old business before the Board.

New Business

There was no new business before the Board.

Adjournment

There being no further business before the Board, Mr. Kunsman moved, seconded by Mr. Easley, to adjourn the meeting. The motion passed by a vote of 5 to 0 and the meeting adjourned at 9:30 p.m.

Respectfully submitted,

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George A. Heitczman
Solicitor

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