

The special meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:35 p.m., in Township Hall, Sergeantsville, New Jersey, as supported by the virtual meeting procedures via ZOOM.

PLEDGE OF ALLEGIANCE

STATEMENT

Chair Cline read a statement noting that the requirements of the Open Public Meetings Act had been met.

Both attorneys affirmed that each is satisfied with notice that was given for this special meeting on June 30, 2022.

ROLL CALL

Present: Buchanan, Emmons, Fowler, Gilbreath, Kenyon, Manley, McAuliffe, Warren, Cline

Absent: Kenyon, Warren

Also present: Board Attorney Goodell, Board Engineer O'Brien

MINUTES: June 9, tabled to the July 14 meeting

The minutes of this meeting were distributed on June 29. It was decided to table the minutes until a more thorough review can be made. The minutes will be heard on July 14, 2022.

MEMORIALIZATIONS – none

APPLICATIONS

Brant Switzler, Block 55, Lot 2, use variance approval requested for tennis training facility, continued from 04.29.21 special meeting; and regular meetings of June 10, 2021 and July 8, 2021; continued from special meeting of July 22, 2021; adjourned from November 11, 2021 and February 10, 2022 meetings; continued from the March 10, 2022, April 14, 2022 meetings, and special meeting of May 19, 2022.

It was noted that all testimony was completed by the applicants and the opponents as of the May 19, 2022 meeting.

Chair Cline noted that the Board will take Public Comment followed by legal summations. He noted that Mr. Simon would go first to be followed by Ms. Edwards.

All members of the audience were sworn in by Attorney Goodell at the same time. He asked all witnesses to rise, including the zoom members. All interested persons were sworn in. Chair Cline asked that all members state that each had been sworn in, prior to presenting an opinion.

Mr. Bob Gentry of 37 Sandy Ridge Road was present. He thanked all Board members for their time and attention to this matter. Mr. Gentry noted that his home was once a part of the original Henderson estate. He noted that there are five other properties in the neighborhood that were once a part of the estate. Mr. Gentry stated that he has given thought to both sides of this issue. He stated that he has been a business man for 52 years and is aware of the time and expense spent by the applicant for this proposal. He noted that as a business man and a realtor, the most important issue is location, location, location. Mr. Gentry opined that this proposal only benefits the applicant. He also expressed his concern that if approved, he questions what happens to the facility if the business fails. He opined that this is not the right location. Mr. Gentry stated that he worked with DTAA for six years on baseball fields, batting cages, fund raising, etc. He noted that when Dilts Park was donated to the Township, many neighbors objected to the change that would occur in the neighborhood once the Park became an active facility. Mr. Gentry noted that the decision of the Board will be hard. He asked the Board to vote to preserve the safety and quality of life in the neighborhood.

Toni Gentry of 37 Sandy Ridge Road was present and stated that she had been sworn in. She stated that she believes what her husband said but does not want to repeat it. Ms. Gentry stated that she is not opposed to physical activity. She noted that she and her husband are both physically active. She stated that she also worked on DTAA and with the Township Recreation Commission. She noted that there are two nearby indoor tennis facilities, one in Pennington and one in Clinton. Ms. Gentry stated that this is a rural agricultural road. She noted that the section in front of their house is only 17 feet wide, with poor drainage and no shoulders. She noted that the applicant's expert said traffic would increase by 100%. Ms. Gentry stated that she has had a dog killed on the road. She expressed her concern about parking lot lights. She opined that the Township has not been shown that this will benefit the community. She stated that she is against the proposal.

Janis Burenga of 35 Sandy Ridge Road was present and stated that she has been sworn in. She stated that her property is catty-corner from the proposed tennis facility. She stated that she and her husband went to Bucks County and came back because Delaware Township is home. She stated that her family has history in the Township as well; she stated that her grandfather was Dr. John Chamberlain, who practiced medicine in the 1900's and became known to many residents due to his medical practice. She noted that they moved to Sandy Ridge Road because of the rural nature and also because amenities are within a reasonable ride. She noted that her father was born in HoHoKus, which was once a rural area and is now built out. Ms. Burenga stated that the Board needs to protect the agricultural zone. She compared Delaware to Raritan Township and stated that she does not want to see that crack opened. Ms. Burenga stated that this is not a simple variance but a decision that could result in loss of property value and safety. She noted that approval would be an enormous transformation and precedent. She stated that she is against the proposal.

Mr. Tim Soltis of 9 Rittenhouse Road was present and stated that he had been sworn in. He thanked the Board for its service. He stated that he also lives in the A-1 zone and that his property is near Dilts. He opined that if the proposal is not allowed, the property will be developed with lots of houses. He opined that a development would have more of negative impact to the community. He opined that this proposal is not much different than an equestrian facility. He stated that he is in favor of the project.

Ms. Barb Berardo of Sandy Ridge Road was present and stated that she had been sworn in. She stated that she does not wish to be here, and that she does not wish to be negative for the applicant. She stated that she has two children both of whom were physically active. She stated that her father had once been an athletic director. Ms. Berardo stated that she has been in the neighborhood for 23 years and does not want to see the neighborhood adversely impacted. She noted that the Township is not void of recreation or sports opportunity. She stated that the testimony given does not support the proofs needed for a use variance. She noted that the Hopewell tennis Club is 19 minutes away. She noted that she has taken her children to many facilities at which there were tennis pros and camps. Ms. Berardo stated that the proposal would be run seven days per week, 365 days per year. She noted that during one particular hour of lessons, there could be a total of 64 cars entering and exiting the facility. Ms. Berardo noted her concerns about the financial information concerning property values. She also noted that there should have been a market analysis, something that is done in real estate to accurately assess value. She noted that a busy road decreases value, location adds value to a home. She noted that realtors use guides to help determine added or decreased value to a property. Ms. Berardo stated that the proposal would have an impact on sales for the neighbors and the property owners who have much equity in their homes. She asked that the Board consider the diminished value this use would bring to the neighborhood and asked the Board to deny the use variance.

Ms. Cathy Pouria of Jurgensen Road was present and was sworn in. She stated that she is a member of the DTS Board of Education. She noted that for this meeting she is speaking as a Township resident and as a parent. She noted her children's ages, 9, 11, 14. She noted that her nine-year old was in the Saturday tennis program and loved the program. She stated that she understands the concerns of the neighbors. Ms. Pouria stated that she views the proposal as a benefit to young children and those who wish to stay active. Ms. Pouria stated that in her home area she has seen the impact of development and how over the course of thirty years, she saw old

homesteads get developed. Ms. Pouria stated that she thought this use is a creative use of the land, in a way to keep it out of development. She further noted that she thinks it is a positive statement about the Township that people want to come back and stay. She stated that she is in favor of the proposal. She also thanked the Board for its time.

Ms. Laura Hornby of 10 Locktown Sergeantsville Road was sworn in. She stated that she is strongly in favor of the proposal. She stated that she is thrilled to see a proposed use that fits with the Master Plan and is a way to keep younger residents here in the Township. She noted that it is difficult to afford to live on former farmland. She noted that there is a minimum income to maintain to qualify for farmland assessment. She stated that this is a realistic use when considering this variance. She also noted that farming is not a livelihood, it is no longer a common use. She noted that one cannot make a living from with no outside support. Ms. Hornby stated that every Tuesday she takes her child to a pole barn that is similar in appearance to the proposed barn. She stated that there is an instructor there to teach her child a sport just like the teaching being proposed in this use. She noted that the horse training facilities are indistinguishable in appearance and she noted that they picked the property closest to her house. Ms. Hornby noted that the pole barn for horse training has a big parking lot for cars, trucks and trailers. She also noted that there is adequate lighting as needed. She stated that a business plan should have been presented to show the proposal will be supported. She stated that the proposal will maintain the rural nature by copying the style of other buildings in the area. Ms. Hornby stated that the use can be approved without significant change to the land and with no substantial detriment to the zoning ordinance. She reiterated that it supports the Master Plan objectives in trying to maintain farmland and that it further allows the family to remain in farming on the family farmland. She concluded by stating that she is in favor of the project.

Attorney Goodell reminded the audience that proper decorum should be followed and that there should be no clapping.

Linda Helm Kraft lives on Lambertville Headquarters Road and was sworn in. She stated that she supports the proposal with reasons as expressed by the three previous speakers: Mr. Soltis, Ms. Pouria, and Ms. Hornby.

Ms. Kelly Peck of 110 Sandy Ridge Road was present and stated that she had been sworn in. She stated that her property is identified as Block 55, Lot 2.05. She noted that 440 feet of her backyard will border on the proposed tennis center property. She thanked the Board Members for their time. She stated that she was born and raised in Delaware Township. She noted that growing up in Delaware Township is a privilege, including horseback riding. She stated that she has lived in California and then in Texas. She stated that she moved back to Delaware township in December 2020. She also stated that she would have purchased a different home in Delaware had she been aware of this proposal at that time. Ms. Peck stated that the A-1 zone is for agricultural or residential use. She stated that there is beauty, nature, open fields, farms, privacy, and a country road. She stated that the Township Master Plan encourages a rural agricultural township. She noted that preservation adds to the property value. She noted that an approval puts every nearby property in jeopardy, as well as quality of life. She noted that property value will go down. Ms. Peck stated that a variance is about zoning and that once granted the protection of the zone is gone forever. She asked the Board to vote no.

Mr. Steve Wilbur of 142 Sandy Ridge Road was present and stated that he had been sworn in. He stated that he loves tennis and that he grew up playing tennis and played into adulthood. He stated that he moved to Delaware Township because of the open space, that this is the core reason he and his wife moved from Hopewell Township. He stated that this is a quiet road and that it is very peaceful. Mr. Wilbur noted that the Master Plan focuses on preserving farms. He noted that a training center makes sense if it is located in the right location. He noted that the community cannot risk the potential precedent that would be set if this use is approved. He noted that such an approval would undermine the Master Plan and such a decision could really change things. Mr. Wilbur further stated that he does not see this proposal as the legacy of a fourth-generation family. He asked the Board to vote against the proposal.

Mr. Karl Darby of 17 Sandy Ridge Road was present and stated that he was sworn in. He reminded everyone that we are all neighbors. He noted that this piece of property is under farmland assessment and not generating much money in taxes. He noted that the proposal could generate higher revenues. Mr. Darby stated that from 1999 to 2014, his wife took care of the tennis courts at Dilts. He noted that her first assessment was that the courts are the wrong size and should be bulldozed. He stated that he is in favor of the project.

Mr. Tony Berardo was sworn in. He stated that he lives at 11 Sandy Ridge Road. He stated that he has support for the Switzlers and Brant. He noted that this decision is more about guidance. He noted that per the zoning ordinance, §230-3B, as follows, the goals and concepts of the Master Plan for this zone:

- (1) Maintain a viable agricultural economy by encouraging farm development and by conserving open space for agricultural purposes.
- (2) Plan development location and density to respect the environmental limitations and the historic and cultural character of the areas involved.
- (3) Encourage development in areas having available infrastructure.
- (4) Promote the conservation of energy.
- (5) Provide for retail uses to serve the residents of the municipality.

Mr. Berardo stated that it is hard to see where these goals are being met. He stated that he is against the project because it seems to be in direct conflict with all of these goals. He stated that there did not seem to be credible evidence that the facility will fill a need. He stated that he heard the testimony about Mr. C. Brant Sitzler's experience with previous tennis facilities in North Jersey. Mr. Berardo stated that his father led three championships with Westfield High School and that after that he acted as a consultant for a tennis facility. Mr. Berardo stated that when he discussed this subject proposal with his father, his father was unaware of any facility in a rural area. Mr. Berardo stated that he also has an issue as a homeowner with the testimony of the traffic expert. Mr. Berardo stated that the width of Sandy Ridge Road at his house is 17 feet. He expressed his concern about a precedent being set for a commercial use in the A-1 zone. He stated that he is against the proposal.

Mr. John Weingart was sworn in. He stated that he lives at 79 Rittenhouse Road, on the corner of Sandy Ridge Road and Rittenhouse Road. He stated that he likes to play tennis. He noted that 1982, he wanted to oppose the development of the Dilts Park. He noted that the similar reasons are being given here that were given then, when the park was opposed. He stated that he understood the fears of traffic issues. Mr. Weingart stated that he is in favor of the proposal.

Mr. Alex Jeyschune of 50 Stone Signpost Road was present and stated that he was sworn in. He stated that he has been a property owner in Delaware Township since 1978. He thanked the Board for their work. Mr. Jeyschune stated that he has never seen anyone work as hard as Brant has to meet a goal. He stated that he is 200% in favor of Brant and the project. He noted that the traffic issue has a "hole" due to the number of increased trucks on the road since the pandemic; trucks for Fedex, UPS, Amazon. He noted that 9-foot roads are seeing these trucks every day. He further noted that horse facilities impact traffic as well. Mr. Jeyschune discussed sending Delaware kids elsewhere. He stated that he is of the philosophy that DT takes care of its own. He stated that he was on the Board of Education that for many years held responsibility for DT kids. Mr. Jeyschune stated the Brant will provide an opportunity for kids to get good instruction in a DT environment. Mr. Jeyschune stated that the barn is consistent with the Master Plan, as is a residential development; he further noted that he opposes a residential development. Mr. Jeyschune stated that he is favor of the proposal to provide kids with an opportunity to be exposed to a sport and sports training that could be life changing.

Mr. C. Brant Switzler stated that he is the father of the applicant, husband of the property owner. He stated that he was sworn in. Chair Cline stated that Mr. C. Brant Switzler had already given testimony and that it is not proper to hear his statements at this time.

Ms. Edwards stated that Brant, the applicant will not be making a statement and felt that a statement could be issued by Mr. C. Brant Switzler. Mr. Simon stated that both parents have testified as part of the proceedings. Mr. Simon stated that his client is not testifying for the good of the application. Mr. Simon also noted that both parents signed on as owners of the application, making them subject to cross examination.

Board Attorney Goodell agreed and noted that both had given prior testimony and that both had been cross-examined.

Jes Stahl of 38 Dunkard Church Road was present and stated that she was sworn in. She noted that a commercial use was recently approved in the A-1 Zone, when the Board of Adjustment granted a use variance. She noted that for this Dunkard Church Road approval, the property is in the A-1 zone and the commercial use happens in a barn. She noted that this property is farm assessed. She also noted that there are dozens of other properties that have commercial uses in practice. Ms. Stahl stated that she does not see how this is different. Ms. Stahl noted that the applicant does not know farming, but does have a skill set as a tennis instructor. Ms. Stahl noted that when her father passed away, she and her two siblings took over the farm, with one sibling who is a farmer. She noted that without that farmer, they would probably have had to sell the farm. Ms. Stahl noted that farming is much work and that there is not agricultural support of farming in the immediate area. She noted that for tractor parts, one has to travel to Lancaster, PA. Ms. Stahl referenced the Dunkard Church Road approval, which happens on a property with a road that is 14 feet wide. She noted that this approval did not ruin the A-1 Zone and was approved with about 15 conditions. She noted that all of those conditions help to keep such a use more conforming to the area. Ms. Stahl noted that Delaware Township is a result of all of the hard work of farmers and those who keep farming in place. She stated that she supports the application.

Ms. Laura Darby of 17 Sandy Ridge Road was present and was sworn in. She read from notes that she wrote. She stated that she worked with the Township Recreation Tennis program from 2006 to 2014. She stated that she lives close to the subject proposal. She stated that she is in complete support of the proposal. She noted that tennis is a lifelong sport and her 79-year old parent still plays tennis. Ms. Darby stated that Van Dolah Stables is an operation of similar size with outside lights and parking. She noted that for bigger events, parked vehicles can be found on the side of the road. She stated that she feels that this is a way to support sustainable agricultural farming instead of having a major subdivision.

Ms. Ravenna Taylor of Lambert Road was sworn in. She stated that she also owns property on Lambertville Headquarters Road. She stated that she has sympathy for nearby owners. She stated that she is concerned by the impact such an approval would have on zoning. She stated that she sees the issues with traffic, added noise, building noises and lighting. She noted that the road could be widened. She stated that she is not against tennis but is concerned with zoning, and creating and enforcing zoning differences. Ms. Taylor stated that the wisdom of the planners was to create the best zones to preserve the best soils. Ms. Taylor stated that it has not been demonstrated how this proposal will benefit the community. She further noted that it has not been established that the proposed use is not detrimental. Ms. Taylor noted that there has been no business analysis and that testimony was given that this is to be an elite facility. She noted that the applicant has no record of running such a business. Ms. Taylor noted that the building could be used commercially as something else if the proposed business fails. Ms. Taylor noted that vacant commercial properties are available. She reiterated that Delaware Township is deeply committed to preservation. She affirmed her opinion that such an approval sets a precedence of commercial use in a residential zone. Ms. Taylor stated that he hopes the applicant is successful in the right location. She stated that for the future of farming in Delaware Township, she opposes the application.

Zoom participants

Mr. Steve Walker was present. He stated that he lives on Sandy Ridge Road and was sworn in. He stated that he was present at all seven meetings. He stated that he is uncertain that the traffic testimony was accurate. He noted that the width of the road at his mailbox is 15 feet. He also noted that traffic is a safety hazard compared

to horse facilities and even the traffic flow to Dilts Park. He noted that the Dilts Park traffic is seasonal. Mr. Walker stated that he feels the proposal would disrupt the quality of life in the neighborhood and asked the Board members to vote no.

Ms. Diana Loria was sworn in. She stated that she lives on Lower Creek Road near the Covered Bridge. She thanked the Board members. She stated that she loves the area she lives in. She noted that Lower Creek Road is a popular road with lots of visitors, which increased during the pandemic. She noted that she that she welcomed people on Lower Creek Road and noted that there are kind and wonderful people in our community. She noted that human beings are lively and interactive. Ms. Loria stated that she supports activities for the youth and that tennis is a lifelong pursuit, one that she herself wants to take classes for. She stated that she knows the family and that the property is beautiful. She stated that she feels the proposal will be tastefully done and done with respect. Ms. Loria stated that she supports open fields, farming, and small businesses. Ms. Loria stated that she is in favor of the project.

Mr. Rich Mason was sworn in. He stated that he is new to Delaware Township, at 892 Sergeantsville Road. He stated that he is grateful to have moved in to the Township in December 2020. He stated that he moved from the Pennington area, and watched how Pennington farms were broken into housing developments. He stated that he barely knows the applicant and is not invested in either side. Mr. Mason stated that the Township could become a place where farms get broken into tracts with million-dollar homes. He stated that the Township is a wonderful mix of farms and houses. Mr. Mason stated that the tennis center is a potential solution to maintaining farms. He noted that commercial uses are not as black and white as mentioned and that some uses do mix in, if designed to fit into the rural character. He noted that conditions can be laid out to protect the neighbors. Mr. Mason noted that the other option would be a housing development to raise money for the purchase of another site for the subject, proposed use. He noted that one does not know any future land owners in a development. Mr. Mason noted that there have been good arguments on both sides. He opined that a cleverly designed facility that fits into the community might be more acceptable than the unknown of how it could be chopped up. He likes that creative ideas are being encouraged. Mr. Mason stated that he is grateful to be heard and is in support of the project.

Ms. Kristin McCarthy of Brookeville Hollow Road was present and was sworn in. She noted that seeing both sides makes this a difficult decision. She stated that she appreciates the time and attention the Board has given to this matter. Ms. McCarthy stated that the comparison between a private commercial venture is not equivalent to a public venture. She noted that the proposal is for the A-1 Zone, for private use and not open to the public. She stated that many people have spent much time on DTAA. She stated that this proposal does not have the same public benefit. Ms. McCarthy stated that it has not been shown how this private commercial enterprise is a use that is valid enough to benefit the public. She noted that with equestrian facilities, the foundation is that the use is an agricultural use, while tennis is not. She stated that all should be clear that this is a private enterprise, not open to the public, with a financial wall to climb over.

Joy Stocke of 102 Sandy Ridge Mt Airy Road was sworn in. She stated that she has lived on this corner property for 25 years. She noted that Sandy Ridge Mt. Airy Road is a feeder road from Route 202. She noted that the pandemic created more traffic. She noted that traffic is terrible when there are horse shows. She noted that this is an agricultural use that makes money. Ms. Stocke stated that the Switzlers are trying to preserve a farm of this size. She stated that they are a family of teachers. Ms. Stocke opined that this a way to creatively comply with the ordinance. She further noted that having open creativity could enable younger residents to move in and keep farms active. Ms. Stocke stated that she is in favor of giving the proposal a chance.

Tom Peck of 110 Sandy Ridge Mt Airy Road was present and was sworn in. He thanked the Board for its service. He stated that he grew up in Hunterdon County. He stated that he works in Texas in an area where the homes are packed together very densely, with very little privacy. He noted that there are no commercial uses in residential zones. He stated that he and his wife are lucky to live in Delaware Township, in a beautiful country

setting. He noted that the quiet area allows his family to enjoy this quality of life. Mr. Peck stated that the tennis center will alter the quality of life that exists. He noted that there will be increased light pollution and decreased property values for all. Mr. Peck stated that he is a business owner and entrepreneur and that he is not against Switzler. He questioned Mr. Switzler's business operating skills with this idea of building in the middle of nowhere. He noted that the proposal could be in a commercial area with much better access and public sewers. Mr. Peck stated that the subject location is not a good location for a commercial use. He stated that horse facilities and tennis centers are not comparable. Mr. Peck stated that he would prefer to see a development and notes that this proposal only benefits the applicant.

Ms. Dalia Hoffman was sworn in. She stated that she lives directly across the street from the proposed project. She stated that she wishes Mr. Switzler the best. Ms. Hoffman stated that her concern is the impact on Sandy Ridge Road and the neighbors. She stated that she felt that the traffic study was done in the height of the pandemic. She described the roadway as 17 feet wide where the facility is proposed to be. She noted the large puddle that is often found at that location. She noted that the road has much use for walking, biking, and walking dogs. Ms. Hoffman stated that she is concerned about the lighting in winter. Ms. Hoffman stated that equestrian facilities are agricultural uses that are not found on 17-foot wide roadways. Ms. Hoffman stated that she is concerned about the construction equipment and traffic for this building. Ms. Hoffman stated that she was born and raised in Hunterdon County and questioned the need for this facility. She noted that last year's class from DTS to Hunterdon Central was 33 students. She stated that she is not sure that this program is needed to benefit Delaware Township kids. Ms. Hoffman stated that once the protection of the A-1 zone is gone, it is gone. Ms. Hoffman stated that she is opposed.

Ms. Vaughana Feary of 20 Sandy Ridge Road was present and was sworn in. She stated that she is the grandmother of Brant Switzler. She noted that she enjoys Delaware Township and has respect for all who live on Sandy Ridge Road and in Delaware Township. She stated that she believes the applicant has tried to address all concerns. Ms. Feary noted that one of her most pleasant experiences was meeting other grandparents at Delaware Township School, many of whom are DT residents. She noted that most families don't want their children to leave. She noted that maintaining farms presents financial difficulties. Ms. Feary noted that one cannot afford to buy commercial property. She noted that if Brant goes elsewhere, the property could be broken up with more houses and less rural nature. Ms. Feary asked the Board to allow the variance so that her grandson and other younger people can stay in the community. Ms. Feary stated that she is in favor of the proposal.

Ms. Liza Price of 66 – 68 Upper Creek Road was present and was sworn in. She noted that she has seen indoor arenas for equestrian businesses in barns with space for 33 horses. Ms. Price stated that if the Board does not approve the use, a development could occur instead. Ms. Price stated that she is very emotional about this proposal and supports it.

Mr. Ed McLaughlin of 14 Cemetery Road was present. He stated that he was sworn in. Mr. McLaughlin stated that he is opposed to this zoning adjustment and hopes the Board will decline it. Mr. McLaughlin stated that how many generations of family on a property has nothing to do with this request. He stated that the zoning rules should not be varied for one family's profit-making venture. He stated that nothing has been shown as to how this proposal benefits the public good. Mr. McLaughlin stated that there are plenty of properties out there for this proposal. He stated that the proposal does not meet the threshold for being granted. Mr. McLaughlin stated that the Board should decline the request.

Ms. Lauren Soltis of 9 Rittenhouse Road was present and was sworn in. She stated that she supports small local businesses and is in support of the approval of this application.

End of zoom participants

Ms. Janeen Wheaton of 7 Covered Bridge Road was physically present and sworn in. She stated that her husband grew up in Delaware Township and that his family has been here since the 1970's. She stated that Delaware Township is a rural community. She stated that her husband would have liked to have had a facility like this when he was growing up. Ms. Wheaton stated that the Township wants to protect open space. She noted that the Wheaton farm is protected. Ms. Wheaton gave the opinion that adding two tennis courts in a barn does not harm the rural status of the property. She questioned what happens to farms in areas of no economic growth. Ms. Wheaton stated that she supports the proposal.

Chair Cline closed the public comment period.

There was a five-minute break.

Chair Cline reopened the meeting and asked for the legal summaries to be concise. He noted that both legal summaries will be heard tonight. He noted that Attorney Goodell will give the Board its charge on July 14, to be followed by the Board's deliberations.

Mr. Rob Simon was present. He stated that he has been representing Valerie Tucci of 21 Sandy Ridge Road. He thanked everyone for coming, participating, and providing the Board with an opportunity for an informed decision. He noted that Ms. Tucci hired an attorney and a planner because she felt that it was essential for someone to defend the rural agricultural nature of the Township with professional input and guidance to the Board. Mr. Simon stated that this proposal is not in the best interest of the Township. Mr. Simon stated that this issue is not about tennis. He noted that both he and his father play tennis.

Mr. Simon stated that the variance cannot be granted because it only promotes the applicant's personal use, as stated by the applicant himself. Mr. Simon noted that the applicant's dream is irrelevant under the MLUL. He noted that this model of a tennis facility is before the Board and should have no regard to finances, considering the involvement of the family's land. Mr. Simon noted that there has been no discussion about preservation, nor any discussion about selling land and putting the proposal elsewhere. Mr. Simon stated that it is clear that if the applicant was not the son of the property owner, there would not be an application before the Board. He further noted that the family has been very supportive of their son which has nothing to do with the decision of this Board. Mr. Simon noted that enthusiasm for the applicant has no bearing on this issue. He further noted that there is nothing to prevent the applicant from this "dream".

Mr. Simon noted that the use variance request is for a use not permitted in the A-1 zone. He noted that the proposal includes a two-bedroom, two bath apartment which is not permitted as an accessory use to a prohibited use in the A-1 zone. He stated that the building is not permitted in the A-1 zone. He noted that the proposed apartment was compared to a COAH accessory unit, that is accessory to a single-family residence.

Mr. Simon reminded the Board about the Medici case as referenced by the objector's planner, Mr. Peter Steck. Mr. Simon stated that the Board will be instructed by Board Attorney Goodell. Mr. Simon stated that per Mr. Steck, this is the most disruptive type of use variance case. Mr. Simon reiterated Mr. Steck's statement that Mr. Steck is not aware of any such proposal having been granted anywhere in New Jersey. Mr. Simon reiterated Mr. Steck's planning opinion that grant of a use variance which is an exception to the zoning scheme should only be granted in very exceptional cases that warrant use variance relief. Mr. Simon further opined that such a granting impairs sound zoning and should not be granted if the use only advances the purposes of the property owners.

Mr. Simon stated if the use is approved, the use goes with the land forever. He noted that there is no guarantee that the property will remain in the family. Mr. Simon reviewed the use variance request proposal, one for the accessory apartment, one for the principal structure, one for the principal use. Mr. Simon stated that this means that three Medici-type use variances are needed.

Mr. Simon stated that this proposal was presented as a bifurcated application. He noted that there was a discussion at the beginning of the application about this issue. Mr. Simon argued that the site plan requirements are vital to the use variance request. He noted that this lack of information was shown in the testimony. Mr. Simon stated that the applicant has never made an application for subdivision relief, but only presented a concept plan.

Mr. Simon noted that there have been discussions about the amount of land to be preserved, but that no engineered plans were submitted. Mr. Simon stated that it was noted that the applicant's family will preserve 37 acres of land, which includes land on another property and not just the subject property. He noted that no notice was given to property owners within two hundred feet of that property. He further noted that this should not be part of the application. Mr. Simon also noted that the conceptual subdivision shows the creation of a non-conforming flag lot.

Mr. Simon questioned why at no time did the applicant ever propose to move the facility further back from Sandy Ridge Road. He noted that the applicant did not provide any justification as to why the proposal could not be moved further away. He noted that there is nothing on the record to that point. Mr. Simon reminded the Board that the proposal includes a proposed one-acre subdivision, on which will be a single-family home. Mr. Simon noted that the applicant's planner testified about an eight-lot subdivision concept plan on the subject property.

Mr. Simon stated that the bifurcation created some questions due to the lack of detail. He noted that nothing was proposed about the parking areas with exposure to pedestrian traffic. Mr. Simon stated that there is a concern about a parking lot entirely made of geopavers. He questioned if a waiver from the ordinance is needed for a lack of asphalt. Mr. Simon discussed the lighting, which would have been shown on a site plan.

Mr. Simon discussed headlight visibility as vehicles exit the facility. He stated that the Board has heard from a number of residents as to the width of roadway being very narrow. He noted that the proposal will have an impact on active use for joggers and dog walkers, and others who use Sandy Ridge Road, which has been characterized as a scenic roadway. He noted that the proposal would change the character of the roadway. He noted that no parking or traffic counts from any other facilities were shown, resulting in a lack of comparison.

Mr. Simon noted that the discussion about existing training facilities are for those that are largely in urban areas. He reiterated that no one is aware of a tennis facility on a farm on a rural lane with the added components. He questioned the concern about the business should it fail.

Mr. Simon discussed comparison of this facility to an equestrian facility. He noted that a tennis facility has no relationship with farms and that equestrian facilities are supported by ordinance and Master plan guidelines. Mr. Simon noted that no traffic studies were done of any horse facilities to compare to the proposed use. Mr. Simon noted that the proposed use will operate all year round contrary to typical agricultural uses.

Mr. Simon stated that the applicant needs to show positive and negative criteria, per MLUL 7:D-1, for three use variances. Mr. Simon stated that undue suffrage of the property has not been shown if the use is not granted. He noted that the use should serve the general use criteria and/or show particular suitability. Mr. Simon noted that Mr. Steck referenced Price vs. Himeji, a case that showed the peculiar use suitability of a property. Mr. Simon opined that the suitability of this proposal needs site analysis. He reiterated that the applicant must show that this chosen property is suited to this use.

Mr. Simon reiterated that single family homes are expressly permitted in this zone. He noted that the first purpose of the MLUL is to develop a property for permitted uses to promote the public health, safety, morals, and general welfare. Mr. Simon stated that for the purposes of building a tennis facility, there is no difference

between this land and any other farmland in the Township. He also noted that there had been no investigation of other properties. Mr. Simon reiterated Mr. Steck's statement that not every town needs every type of use.

Mr. Simon stated that per the applicant's testimony this facility is intended to be a high-end facility. He stated that no proof or competent evidence was given that there is a need for this proposal; one example that he noted could be based on school enrollment. He stated that no information was given about private recreational needs. Mr. Simon stated that there has been zero showing that this site is particularly suited to this use.

Mr. Simon reiterated that there is no idea about preservation and that there is no evidence that the property will be subdivided. He noted that there has been no assessment of open space funds that may be available, including for that of a conservation easement. He noted that the difference in preservation between the subject proposal and an eight-lot subdivision is 7 acres. Mr. Simon noted that with a prohibited use, granted by a use variance, there will be land that cannot be used in an accessory way.

Mr. Simon discussed the issue of creating a substantial detriment to the public good or the zoning ordinance. He noted that everything concerning this proposal is foreign to permitted uses in the area. He noted that homes will be adversely impacted. He noted that the burden of proof is the applicant's and further noted that there can be no substantial detriment with enhanced proofs. He opined that it is impossible for the applicant to meet enhanced proofs.

Mr. Simon noted that the Master Plans are not being promoted, for preservation, for the municipality, for the County, and for the State. He noted that if this approval is granted, anyone can have a commercial use that does not meet the ordinance requirements. Mr. Simon summarized by stating that the applicant has not met the burden of proof for the positive criteria, nor for the negative criteria for the multiple use variances needed. He stated that the proposed location is not an appropriate spot for this use and that there is no public benefit. Mr. Simon opined that the facility should not be constructed, operated or used on this property.

Ms. Edwards, attorney for the applicant, stated that she is 20-year veteran in land use. She thanked the Board for the long road this has been. She stated that this is an experienced Board, with much tenure.

Ms. Edwards stated that Mr. Simon presented that there is only one decision that the Board can possibly make. She opined that Mr. Simon was hired to tank the application. Ms. Edwards noted that there is much gray involved in this application. She opined that there is a basis in law and fact that can be heard to make this decision. Ms. Edwards noted that the Board has heard from many members of the public who support the application. Ms. Edwards urged a yes vote on the application, accepting the challenges raised by members of the public. She further noted that conditions of approval can be applied to an approval. She again thanked the Board for its time.

Chair Cline closed the meeting to the public. He noted that on July 14, the Board will meet and Attorney Goodell will provide the Board with a charge about what to consider and what not to consider. He noted that the Board will deliberate in open and provide reasons to approve or not approve, and then take a vote.

Chair Cline thanked every member of the public, present and online. He noted that many members have taken notes on those comments.

Planning Board Update: Liaison Cline

Liaison Cline reported that the Planning Board is closer to the completion of the Reexamination of the Master. He noted that an application is on the agenda but that it may be deemed to be a major subdivision instead of a minor subdivision.

Correspondence

Administrative Officer Klink reported that the GTG application will continue at the August 11, 2022 meeting and that there is another application for the September 8 meeting.

Bill List

Bill List: Legal Services – Parker McCay, P.A.

Zoning Board Matters

Through May 31, 2022, #3148220	\$238.00
--------------------------------	----------

Member Gilbreath made a motion to approve payment of this bill. Member Fowler seconded the motion.

Roll Call Vote

Aye: Buchanan, Emmons, Fowler, Gilbreath, Kenyon, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Warren

Bill List: Legal Services – Parker McCay, P.A.

Escrow Charges

4/10, King/Hummler, #3148217	\$17.00
55/2, Switzler, #3148218	\$493.00

Bill List: Engineering Services – Van Cleef Engineering Associates LLC

Escrow Charges

23/6, GTG Builders, #3935016-1	\$697.50
55/2, Switzler, #3935008-13	\$254.00

Member Emmons made a motion to approve payment of these vouchers from their respective escrows. Member Fowler seconded the motion that was approved by voice vote.

There was a discussion about alternates, and who should be voting for the Switzler application. Attorney Goodell noted that an alternate vote only counts if someone is not eligible to vote. He noted that a concurring vote lodges into the record what an alternate's opinion is.

There was a discussion about the Open Public Meetings Act, related to virtual and in-person meetings. Chair Cline expressed a concern about not being able to continue a meeting if there is an error concerning the virtual meeting information. He noted that the Township Committee runs in-person meetings. Attorney Goodell stated that the Township Committee is almost exclusively a legislative body, where the Zoning Board is a quasi-judicial body, like a court in which the members are assessing witness credibility. He noted that the virtual platform is one that allows people to see the witness.

Board members discussed the issue. Most members were of the opinion that virtual meetings are the "way" of the future and felt very comfortable with the hybrid meetings.

Adjournment: 10:30 p.m.

It was moved, seconded and carried to adjourn at the noted time.

Respectfully submitted,

Kathleen E. Klink, Administrative Officer