

The regular meeting of the Delaware Township Planning Board was held on the noted date, in the Delaware Township Municipal Building, 570 Rosemont Ringoes Road (County Rt. 604), Sergeantsville, New Jersey. Chair Rosalind Westlake opened the meeting at 7:31 p.m.

### PLEDGE OF ALLEGIANCE

All present recited the Pledge of Allegiance.

### STATEMENT

Chair Westlake read a statement noting that the requirements of the Open Public Meetings Act have been satisfied. Notice of this meeting was properly transmitted to the Hunterdon County Democrat, Trenton Times, and Star Ledger, posted on the Delaware Township bulletin board and filed at Town Hall; all on January 9, 2019.

### ROLL CALL

Present:	Class I	Joe Vocke
	Class II	Chris Cane
	Class III	Jamie Waltman
	Class IV	Joan Bailly, Dave Bond, Larry Coffey, Russell Crespolini, Kathy Katz, Rosalind Westlake
	Alternate	Ron Tyranski, Richard Macomber
	Liaison from	Chuck Cline, Caine Fowler
	ZBA	
	Advisor	
	Administrative Officer	Kathleen Klink
	Attorney	Steven Goodell, Esq.
	Engineer	<del>C. Richard Roseberry, P.E.</del> , not needed; report sent

Absent: shown by strikethroughs

### APPROVAL OF MINUTES FROM THE MEETING of June 4, 2019

Member Bond made a motion to approve the minutes from the noted meeting. Member Waltman seconded the motion, and members unanimously approved the minutes as written with abstentions from Members Cane and Waltman.

### Correspondence: BILL LIST

Members reviewed the Bill List, as follows.

#### Legal Bills: Parker McCay, P.A.

For Professional Services for General Planning Matters

Through July 31, 2019, #3099633	\$176.00
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Member Coffey made a motion to approve payment of this bill, Member Crespolini seconded the motion.

### **Roll Call Vote**

Aye: Vocke, Cane, Waltman, Bailly, Bond, Coffey, Crespolini, Katz, Westlake

Concurs: Alternates Tyranski, Macomber

Nay: None

Absent: None

Engineer Bills: Maser Consulting, P.A.

For Escrow Charges

51/5, Maximuck, #520409

\$197.50

Member Waltman moved to authorize payment of the noted bill from the appropriate escrow account. Member Bond seconded the motion, and members unanimously authorized payment, by voice vote.

CORRESPONDENCE - Old Business, NoneCORRESPONDENCE – New Business, to include Applications

Michelle Dempsey, Block 17, Lot 21 – boundary line adjustment from Block 17, Lot 18, Estate of Frank Schneider to Block 17, Lot 21; Block 17, Lot 21, after merger to have 4.961 acres; lands remaining for Block 17, Lot 18 to be 7.210 acres. Reviewed and recommended by combined Subdivision and Site Plan Review Committee on August 11, 2019.

Nicole Voigt was present to represent Michelle Dempsey, applicant. Ms. Voigt noted that proper notice has been provided.

Ms. Voigt explained that Ms. Dempsey is under contract to buy 2.503 acres from the estate of Frank Schneider. Ms. Voigt noted that the Engineer report from Engineer Roseberry recommended that the application be deemed complete. Members took a moment to review the waivers requested and agreed to by Board Engineer Roseberry.

Member Waltman made a motion to deem the application complete, with waivers, as recommended by Engineer Roseberry. Member Bond seconded the motion that unanimously approved by voice vote.

Ms. Voigt stated that the applicant does have larger maps to present, duplicates of those submitted with the application.

Michelle Dempsey was sworn in. She stated that she lives at 530 Sergeantsville Road. She stated that she is the owner of Block 17, Lot 21, and that she is under contract to purchase a 2.503-acre parcel from the estate of Frank Schneider. She noted that she has been under contract since June 7 for this purchase. She stated that she would use the added land for pasture for horses and animals that she currently owns.

Ms. Voigt read from the contract various sections that supplement the authorization by the owner for the application to be made.

Attorney Goodell stated that the Board wants to make sure the seller has completely agreed to this sale of property. He noted that the owner's authorization is acknowledgement for the application. He further noted that the contract goes into depth about the transaction. He noted that privacy concerns prevent the contract from being submitted.

Ms. Voigt noted that the contract was signed on June 7, 2019 and that each page is signed and initialed by buyer and seller. The Executor of the estate, Darlene Schneider Ellis, is representing the seller. Ms. Voigt noted that Ms. Dempsey is under contract for 2.503 acres, an unimproved portion of the Schneider property. Ms. Voigt noted that there are many contingencies for the contract, including the

merger and all necessary approvals by the county. Ms. Voigt noted that the buyer will use best efforts to get approvals in a timely manner and that the seller will grant access to the property for the buyer and professionals and any other permitting authority.

Ms. Voigt read through some of the seller obligations written in the contract. She noted that at the seller's expense, the 2.503 acre parcel will be free and clear of all junk, trash, and other solid waste. She noted that there were provisions about back-owed taxes on the property, which the applicant has paid so that the application was able to be submitted. She noted that the buyer will be reimbursed for any and all damages related to the clean-up of the property, and reimburse for the taxes paid by the applicant.

Ms. Voigt noted that as part of the application, a copy of a County Board of Health notice of violation (NOV) was submitted. She noted that the contract specifically addresses this issue related to the 2.58 acres to be merged. She noted that the applicant asks that abatement of the entire property should not be a condition of resolution.

Ms. Voigt read the NOV, which is dated January 11, 2019. She noted that the seller is responsible for corrective actions, both for pre- and post-closing of the title. Ms. Dempsey noted that most of the accumulated trash is solid waste and tires. Ms. Voigt stated that the contract also requires corrective action for hazardous waste if any is found.

Ms. Voigt stated that the contract contains specific representations to that NOV. Ms. Dempsey noted that tires and vehicles have been stored on the 2.503 acre portion of the Schneider property. Ms. Voigt noted that the balance of the clean-up for the rest of the property is the responsibility of the Schneider estate.

Ms. Voigt stated that the attorney for the Schneider estate reported that the County has a grant program specifically for the removal of tires. Said attorney provided this communication via email. Said attorney further indicated that the County will be delivering a dumpster and that the estate has secured someone with a backhoe to load up the tires.

Attorney Goodell summarized what has been explained thus far. He noted that on a January 3, 2019 visit, the County Board of Health found solid waste violations that are found mostly on the Schneider portion of the property, not the proposed 2.503 acres to be merged. Attorney Goodell noted that there is a declaration from the Seller that the work will be done.

It was further noted that per the NOV, the violation concerns surface trash, with no knowledge of below ground materials. It was noted that a Phase I examination has been declined.

Ms. Voigt stated that the applicant has no knowledge of the Estate's affairs concerning environmental issues. She noted that the Estate provided a right to do inspections. She further noted that the application has attempted to work on the area that is to be transferred.

Ms. Dempsey stated that she purchased her property in 2008. She noted that on the portion to be merged, 2.503 acres, that there were trucks parked on this location. She noted that the trucks belonged to Stockton Fuel Oil Company. She further noted that this truck parking was discontinued about one month ago. She also noted that the majority of accumulated solid waste on the 2.58-acre portion has been located and removed. She noted that some items included vehicles, tires, misc. car parts, and

cinder blocks. She noted that on the 2.503 acre parcel, no drums and no containers full of liquid were found.

Ms. Dempsey stated that as of today, only tires remain. She noted that the other items were physically moved into dumpsters or onto the Schneider estate. She noted that most of the junk vehicles, etc. went to Kline's scrap yard. She noted that there was one bus on the 2.503 acre parcel that was moved to the main part of the Schneider property. She noted that inside that bus were mostly materials that were related to racing. Ms. Dempsey noted that she is not aware of what is going on with the rest of the property.

There was a discussion about the question of the need for further testing of materials on the property. Ms. Dempsey stated that she has been given permission to walk the 2.503 acres. She stated that she has been checking on this portion of the property for the past three months or so. She further stated that she has noticed the piles of solid waste are getting smaller and smaller, on the main part of the property.

There was a question about soil testing. Ms. Voigt stated that the sellers have agreed to indemnify for potential damage. She noted that the seller recognizes the concerns about the property and its past usage.

Ms. Voigt discussed the survey and noted the change that was made. The surveyor, Patrick Fatton, initially identified the building on the Schneider property as a barn. Ms. Voigt stated that the structure has been renamed as a garage and that the property line has been drawn so that the garage has a 50-foot setback. It was noted that septic systems for both properties have been located on the map.

There was a discussion about the driveway access. It was noted that the County Planning Board will be reviewing this application. Ms. Voigt stated that the easement for the access to the Herman property has been submitted as well. It was noted that the Herman property is north of the Schneider property and is landlocked; the access to the Herman property is through the Schneider property.

Ms. Dempsey stated that she has no problem with a sight distance that may be required by the County because the property abuts a County Road.

No expert testimony was given by the applicant.

The Subdivision and Site Plan Review Committee reported that an inspection had been made on August 11, with the following members:

For the Planning Board: Russ Crespolini, Richard Macomber, Ron Tyranski

For the Environmental Commission: Kathy Katz, Kathy Klink

At this site inspection, members suggested that the label of barn be changed to accessory structure; it was noted that the label was changed to garage. Ms. Dempsey noted that she has no knowledge of the building ever being used as a barn and is only aware that it was used for vehicle repair. The Environmental Commission members asked that a suggestion be made that soil testing be performed in the area where the fuel oil trucks were parked.

The report from Engineer Roseberry was reviewed.

Comments, followed by applicant comments

1. The plan shall identify the location of existing septic system components to insure they comply with the state regulations for setback distances to the new property lines.

Shown on the map

2. The application indicates an existing violation regarding solid waste on Lot 18. Some of this waste will be situated on Lot 21 after the subdivision. It is our recommendation for the violation to be completely abated and an approval from the County Department of Public Safety be provided as a condition of approval.

Ms. Voigt suggested that the abatement be applied to the 2.58-acre section only.

3. Hunterdon County Planning Board approval is required.

An application has been submitted, to be reviewed on September 5, 2019. Ms. Voigt stated that the applicant agrees to sight distance requirements.

4. Metes and Bounds of both lots should be submitted to the Township for review and approval.

Ms. Voigt noted that these were provided with the application. Administrative officer Klink stated that she will send the copies to Board Engineer Roseberry.

5. The applicant shall pay the Tax Map Escrow fee of \$450 to cover the cost of revising the tax maps

Ms. Voigt stated that fees have been submitted and a map escrow was also submitted. She stated that the applicant agrees to any other costs beyond those submitted.

6. The applicant is exempt from grading and stormwater ordinances of the Township since no disturbance over 5,000 s.f. is proposed.

Nothing required.

7. The Township Environmental Commission provided a review memo dated 8/11/19. The Commission recommends a minor plan change and soil testing to determine if contamination exists.

It was noted that the Environmental Commission comment about soil testing was a suggestion.

It was noted that no variances are needed for this boundary adjustment and merger.

There was a discussion about modification to comment #2. Board Engineer Roseberry has recommended that the abatement for the NOV be done for the entire property. Ms. Voigt noted that the application is requesting that the abatement be cleared for the 2.503 acre portion without completing abatement for the entire property. Ms. Voigt noted that the abatement of the full property is already a condition of the title. She also noted that per the County, an approval for an NOV will not be done in a piece-meal fashion.

Attorney Goodell stated that it might be possible to bring this topic up when the application appears before the County Planning Board.

Member Coffey asked if the Township has liability on this issue. Attorney Goodell stated that the Township does not have liability. Member Coffey expressed his concern that the Board should wait for final resolution of the abatement.

Ms. Voigt stated that Ms. Dempsey is in no position to compel the abatement. She further noted that in this partial liquidation, the estate can receive some money which will help in this abatement process.

It was suggested that there could be a discussion with the County to see if they can be satisfied with the clean up on the 2.503 acre portion. It was further noted that the County is involved by providing the dumpsters for the tires.

Ms. Dempsey stated that she has been corresponding with the County Board of Health, via calls and at least one visit.

Ms. Voigt stated that there has been no solid answer. Ms. Voigt further noted that an email was received from the Schneider estate lawyer that the dumpster will be in place and then removed when the dumpster is full.

In response to a question from Member Katz, there has been no communication with County Health Inspector Vaccarino. It was suggested that a document could possibly be obtained noting that the 2.58 acres is remediated.

Attorney Goodell suggested that there could be a condition that until the NOV is remediated there can be no resolution. Ms. Voigt again noted that the applicant has no control over the Schneider property. Ms. Dempsey noted that the clean-up of the 2.503 acre portion is a part of the purchase. There was further discussion about the NOV being a condition of an approving resolution.

Chair Westlake stated that she is happy that cleanup has begun on this property. She further noted her concern about the resolution of the NOV.

Vice Chair Bond stated that clean-up on this property is a long-standing concern. He noted that the sale of the 2.58 acres could provide a money transaction that could assist the Schneiders in moving forward.

A suggestion was made that the County could revisit the NOV as two properties – the new property and the remaining property. Chair Westlake stated that something affirmative has to be done.

ZBA Liaison Cline asked if the contract can include the prohibition of parking for the Stockton Oil Company. It was noted that the oil trucks are no longer parked on the 2.503 acre portion of the property. Mr. Cline noted that the proposed merger makes the Dempsey property more conforming, while the Schneider property also remains as a conforming lot. He noted his concern about the septic location compared to the well location. He reiterated that Board Engineer Roseberry stated that no variances are needed.

Chair Westlake expressed her concern about the NOV on the rest of the property.

Ms. Voigt stated that the taxes have been paid on the Schneider property, those taxes were previously owed. Ms. Dempsey stated that the contract purchase price is \$20,000, minus the money paid for taxes, approximately \$3,700.

Member Katz noted that she has seen efforts to clean up this property. She noted her concern about the NOV for the whole property.

There was a discussion about corrective action. It was noted that there could be prompt removal of solid waste to a facility. It was also noted that hazardous waste should be removed by a hazardous waste firm. Ms. Dempsey stated that there are no drums or liquid containers in sight. It was noted that there has been no testimony from estate about how to clean up the property. Ms. Voigt stated that the clean-up of the property has been represented in the contract.

It was noted that February 6, 2019 is the date for the completion of the clean-up per the NOV. Ms. Voigt reiterated that the applicant is uninvolved with this NOV.

Member Bailly stated that she is concerned that the NOV does not have specific direction about the clean-up. She stated that the Board could wait to make a decision after there is a County resolution. It was noted that the County Department of Health needs to resolve this issue and that the County Planning Board may not care what the Department of Health decides.

Chair Westlake noted that the applicant is willing to take a risk of possible violations on the 2.58 acres. She also noted that Board Engineer Roseberry recommended that an approval wait for resolution of the NOV on the entire property.

A discussion ensued about the authorizing agency, and who it should be. It was noted that it could come from the Township Engineer, the Board Engineer or the County Department of Health.

Attorney Goodell reiterated that there is no risk for the Township. He noted that this is a land use Board and this is a land use issue. He noted that the land could be transferred with the NOV.

Ms. Voigt noted that the contract has provisions showing acknowledgement of the solid waste NOV and the estate's responsibility.

Attorney Goodell stated that if approved, the Board is confirming that the lot line is moving and the NOV is moving to a new property; where the NOV was once on the Schneider property, it will be on the Schneider property and the Dempsey property.

Ms. Voigt reiterated that the contract addresses those concerns about the solid waste. She noted that there is no liability to the Board.

Attorney Goodell stated that the applicant can prove to the Board that the 2.503 acres portion is clean. It was noted that a condition could be placed requiring the removal of the NOV. He noted that if this condition is impossible, the applicant will have to return to the Board.

It was also noted that the vote could be delayed until more information has been provided by the County.

ZBA Liaison questioned what the County Planning Board response might be. Attorney Goodell noted that the County Planning Board is mostly concerned with the County Roads.

There was further discussion about approving the application with a condition that the violation could be deemed satisfied on the 2.503 acre portion. Ms. Dempsey stated that she would agree with that.

Chair Westlake asked that Board Engineer Roseberry review the map to satisfy comment #1, concerning the septic systems.

Member Bailly asked about the contract date which was signed on June 7, 2019.

Vice Chair Bond opined that the Board Engineer noted that he finds the subdivision acceptable. Mr. Bond noted that he sees no reason for the applicant to come back. He further stated that he feels that the Board is going too far with requirements for the property that is remaining on the Schneider side.

There was a discussion about what conditions could be place on an approval for this application, as follows, per the Board Engineer's recommendations:

Comment #1 – review the septic placement

Comment #2 – determination of NOV status on the 2.58 acre portion

Comment #3 – revision of payment, as needed

Member Bailly moved the approval per the discussion. Member Waltman seconded the motion.

**Roll Call Vote**

Aye: Vocke, Cane, Waltman, Bailly, Bond, Coffey, Crespolini, Katz, Westlake

Concur: Alternates Tyranski, Macomber

Nay: None

Absent: None

**CORRESPONDENCE – non-application**

- Township Committee request to review maintenance language for Conservation and Drainage Easements, Appendix I and II, proposed ordinance change; to be reviewed by the Ordinance Review Committee
- Zoning request – possible typographic errors to be changed as such, and NOT as a proposed ordinance change for 230-25C

It was noted that the A-1 zone was left out of this section, Permitted Modifications and Exceptions.

Attorney Goodell stated that even if the error is a typographical error, there has to be an ordinance amendment to change the language and add the A-1 zone.

Member Coffey made a motion to recommend this ordinance change to the Township Committee. Member Bailly seconded the motion which was adopted unanimously by voice vote.

**COMMITTEE REPORTS**

**Scheduled Committee Meetings**

Subdivision and Site Plan Review Committee - second Wednesday, 7:00 p.m., as needed per applications submitted. *Member Bailly to report.* Members: Bailly, Crespolini, Katz  
Reported in the Dempsey-Schneider application

Agricultural Advisory Committee – first Tuesday, 7:00 p.m.; *Member Coffey to report*

Members: Bond, Coffey; non Planning Board: Bench, Novak, Sawatzky

Member Coffey reported that there is progress on preservation talks for the Curtis Farm.



Open Space Committee – third Wednesday, 7:30 p.m., except January 14 and February 11;  
*Member Coffey to report.* Members: Coffey, Bond, alternate Westlake  
No meeting

**Non-Scheduled Committee Meetings, please give me notice for proper newspaper notification**

Master Plan Committee – *Member Westlake to report*; members: Coffey, Katz  
No meeting

Ordinance Review Committee - *Member Coffey to report*; members: Katz, Westlake  
Member Westlake noted that the Committee will be meeting to discuss maintenance language for conservation and conservation-and-drainage easements.

Quarry Compliance Committee – *Member Bond* (Board Representative)  
Member Bond noted that the quarry is closed and that there will be no inspection for 2019.

Stormwater Management Committee – *Member Waltman*  
Nothing to report

**LIAISON REPORTS**

Board of Adjustment – second Thursdays, 7:30 p.m., *Liaison Cline*  
Liaison Cline reported that there was no meeting in August.

Liaison Cline also noted that in the appeal of the Cellco denial, the judge ruled in favor of the Delaware Township Board of Adjustment, and the Township. He further noted that it has been more than 45 days since the decision was rendered; therefore the second appeal time period is now over.

Environmental Commission – third Wednesdays, 7:30 p.m., *Liaison Katz*  
Liaison Katz stated that the EC met in July, but not August. She noted that the Commission is working on a website page, just for the Environmental Commission.

Liaison Katz noted that the well testing dates have been announced. She noted that the testing is sponsored by Raritan Headwaters Association. She noted that RHA will do a presentation on September 18, to help residents understand all of the options available. She noted that kits would be sold that night, as well as the following: September 21, 24, 25.

Member Bailly asked about remediation information. Liaison Katz reported that RHA does provide remediation fact sheets when a test result prompts such an action.

Liaison Katz noted that the return date for the kits is September 26.

Liaison Katz reported that the Shredder Day is September 14, 8 am to 11 am.

Administrative Officer Klink reported that the River Clean Up is on September 21 and asked members if they would consider being leaders for the clean-up. She asked that they contact her, if interested.

Historical Advisory Committee – second Wednesdays, 7:30 p.m., *Liaison Cane*

Liaison Cane noted that there have been continued talks about the sidewalks in Sergeantsville and the historic home on Route 29. Liaison Cane further noted that the repairs and renovation on the Covered Bridge should begin in the Spring.

Shade Tree Commission – fourth Thursdays, 7:00 p.m., *Liaison Coffey*

No meeting

**Meeting opened to the Public for Comments or Questions**

Liaison Cline is a member of the Penn East Committee. He noted that since Penn East has filed with NJDEP the Pipeline Committee has been meeting and will meet again. Liaison Cline also noted that for those in near the pipeline, it may be good idea to get their wells tested. He noted that the residents would then have a baseline of information before the pipeline goes in, if it does.

Attorney Goodell noted that Hopewell Township is litigating against FERC. He noted that the decision about water permits will be considered at the DC circuit on October 4.

**Meeting opened to the Board for Comments or Question**

Attorney Goodell noted that the Verizon application started in 2015 and was not decided until late 2018. He noted that such is the difference between the Board of Adjustment and the Planning Board.

NEXT MEETING: October 1, 2019

ADJOURNMENT: 9:15 pm

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

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer