

**BOROUGH OF FOLSOM
PLANNING/ZONING
BOARD OF ADJUSTMENTS
MINUTES**

January 20, 2016

The meeting was called to order at 7:05 PM.

SALUTE TO THE FLAG

CERTIFICATION: Adequate notice of this meeting has been given in accordance with the Open Public Meeting Act pursuant to Public Law 1975, Chapter 231. Said notice has been advertised in The Gazette and Atlantic City Press and is posted on the bulletin board showing the time and place for the meeting.

Mr. Coombs swore in the following:

4 Year term – 2019

Joe Pino (Class IV)

Joel Spiegel (Class IV)

3 Year Term – 2018

John LaPollo (Class II/Environmental Commission)

2 Year Term – 2017

Claude Jones (Class IV - Alternate II)

1 Year Term- 2016

Charlie Arena (Class III)

End Of Official Tenure

Mayor Lou DeStefano (Class I)

Members Present: Charles Pitale, Joe Pino, Glen Smith, Ron Esposito, Joel Spiegel, John LaPollo, Lou DeStefano, Dave Cappuccio, Charlie Arena, and Michael Veneziano, Claude Jones

Others Present: Solicitor: Jorge F. Coombs, Esq.
 Board Engineer: Vince Polistina, PE, PP
 Board Secretary: Susan Carroll

Nomination and Election of Officers:

The floor was opened by Mr. Pitale .

A motion was made for the nomination of Charles Pitale (1 year term) for Chairman by Mr. DeStefano and seconded by Mr. Pino. There were no other nominations. Ayes – all. Nays – none.

A motion was made for the nomination of Joe Pino (1 year term) for Vice Chairman by Mr. Esposito and seconded by Mr. Pitale. There were no other nominations. Ayes – all. Nays – none.

A motion was made for the nomination of Jorge F. Coombs, Esq. (1 year term) for Board Solicitor by Mr. LaPollo and seconded by Mr. Pino. There were no other nominations. Ayes–all. Nays–none.

A motion was made for the nomination of Polistina & Associates (1 year term) for Board Engineer by Mr. Smith and seconded by Mr. Esposito. There were no other nominations. Ayes – all. Nays – none.

A motion was made for the nomination of Polistina & Associates (1 year term) for Town Planner by Mr. LaPollo and seconded by Mr. Pitale. There were no other nominations. Ayes – all. Nays - none.

A motion was made for the nomination of Joel Speigel (1 year term) for Non-recording Secretary by Mr. Pino and seconded by Mr. Esposito. There were no other nominations. Ayes – all. Nays – none.

A motion was made for the nomination of Susan Carroll (1 year term) for Board Secretary by Mr. Pitale and seconded by Mr. Pino. There were no other nominations. Ayes - all. Nays - none.

APPROVAL OF MINUTES:

A motion was made by Mr. Smith and seconded by Mr. Cappuccio to approve the minutes of November 18, 2015. There was a roll call vote with ayes all and three abstentions.

MEETING DATES FOR 2016

A motion was made by Mr. Pino and seconded by Mr. Esposito to approve the meeting dates for the year 2016. There was a roll call vote with Ayes – all. Nays - none.

RESOLUTION 2016-01: A motion was made by Mr. Pino and seconded by Mr. DeStefano to approve and designate the Atlantic City Press and Gazette as the official paper for the Borough of Folsom Planning and Zoning Board. There was a roll call vote with Ayes – all. Nays – none.

DECISION RESOLUTION:

01-2016 Application # 08-ZB-2015 - Brian Swope, 1524 Mays Landing Rd., Folsom, is seeking a C-Variance for the height and size of a 24' high - 60' x 40' pole barn at Block 1602 – Lot 1.

A motion to adopt the Resolution was made by Mr. Cappuccio and seconded by Mr. Esposito. There was a roll call vote with Ayes – all and two abstention.

OTHER BUSINESS:

Mr. Pitale made the Hazardous Mitigation Plan announcement. Mr. LaPollo stated there were no new updates and it was still in the review process with FEMA and the State. A question arose as to if the Plan was mandatory with the State. Mr. LaPollo explained, FEMA and the State require us to have a plan. We can pay to have it done ourselves or we can participate in the County plan. We are required to have one for FEMA re-imbursement for declaration marks. Mr. Pitale explained, if we do not have a plan then we can't make a claim.

OTHER BUSINESS:

Mayor DeStefano advised the Board Members Council denied or voted no to vacate 4th Road for the Ferris Application. The road remains Borough property. They did not vacate it.

Mayor DeStefano also introduced and welcomed Ryan Krueger as part of a newly formed advisory committee.

Mr. Pitale Welcomed all of the new Board Members.

The floor was opened to the public.

Mr. Ben Pagano, 2201 14th Street, Folsom addressed the Board. He thanked the Board and congratulated the Board Members on a new start for a new year and was sure they will do an excellent job.

He commented on Ferris. He understood the right-of-way was not vacated and added the Planning Board gets its authority from the Health & Welfare of New Jersey. He informed the Board there is water two (2) to three (3) feet deep in the right-of-way. It is an issue which needs to be looked at because someone could drown there. It is standing water and when it rains there will be much more than that. It is part of the excavation on 4th Road. A couple hundred yards.

Mr. Pagano thanked the Board once more. And returned to his seat.

Mr. Pitale thanked Mr. Pagano and asked Mayor DeStefano what is the process now since it (4th Road) is not vacated. Mayor assumed it was up to them (Ferris) if they want to pursue legal action. He asked the Solicitor for his opinion. Mr. Cappuccio asked if the town will go after them (Ferris) for damages to 4th Road.

Mr. Coombs responded it is an option and asked if we have heard anything other than since November (2015). Their attorney was looking in to possibly presenting something. They withdraw the application so all is quiet at the moment. If you would want to pursue them for the damage to 4th Road, you would probably have to hire an expert to get in there or consult with our Engineers to determine the issue and what the amount truly is and whether the amount is worth litigating over. It is tens of thousands of dollars perhaps hundreds of thousands of dollars. At that point it would be up to vote and perhaps institute something. It is something we will have to look at this year.

The question was asked if Ferris will come back to the Planning Board or if they will need to go back to Council for their next step if they decided to come after the town.

Mr. Polistina responded from the Planning Board standpoint, we react to people filing Applications. They filed the Application and it has been tabled before the Planning Board. There is not a whole lot for the Planning Board at this point until they come back before the Planning Board. It is up to them on the Planning Board Application. There are no other mining. They have no permit right now to do anything there.

In terms of the right-of-way, it is a Borough right-of-way. If the Borough wants to take action related to the excavation of the right-of-way, it would be incumbent upon the Borough, Council, and Mayor to do that. It may be something to be looked at and certainly 4th Road has been excavated and it is the deepest part of the pit. There is standing water within the limits of 4th Road to the extent there is concern about the public health, safety and welfare and something happening to somebody in the pit. The Borough may want to take some action. It would actually be at the Council level not the Planning Board.

Mr. Esposito asked if the Borough had the right to force them (Ferris) to restore it (4th Road right-of-way). The way Mr. Polistina understood it to be in terms of the Borough's rights in the right-of-way was the Borough has those rights in order to facilitate vehicular access along 4th Road or 13th. The Borough would need to say they want you (Ferris) to fill it back in and create the slopes necessary on each side so we can build the road. It would be related to the Borough wanting to improve the road. It is an absolutely substantial number to restore it, but it is not only the 50 foot wide right-of-way. It is all of the material to make the safe slopes on the side of the right-of-way.

Mr. Cappucio asked how low they (Ferris) dug if it was 20 feet or 30 feet. He explained at one time it was high bed dirt and they would come in with fill a pit for as long as I could remember. I have been here for fifty some years.

Mr. Polistina explained, the maximum in the area where the standing water is 30 feet. Just from recollection. It is an area not all that large where they went that deep, but it is significant enough where there is a lot of standing water. We are waiting at the Board level for them to reappear. The Board tabled the Application and had many comments. One was to go to the Borough Council to see if they could get the road vacated. They did that, but were unsuccessful. Now they are going to have to deal with the fact the Borough right-of-way remains if they came back.

Mr. Cappuccio asked if the Borough still held the bond and how much the bond was worth. Mr. Polistina explained, there is a bond for somewhere in that range \$130,000.00. There are two bonds. One was to cover a restoration for the over excavation they currently did. They over excavated private property. They now have tried to restore. There are two separate bonds. One is specific to the over excavation on the private property which has already occurred and one to cover all of the restoration required after they are done the mining operation.

Mr. Cappuccio inquired if they repaired the over excavation of all the properties. Mr. Polistina answered they have worked on it. It was one of the things Borough Council did. They got an Approval in 2012 and there was a 2 year period where they did little to nothing. Ferris came back to the Planning Board in 2015 and wanted to renew the permit, but because Ferris never addressed what they were told to do in 2012 and until they addressed the previous comments the Planning Board was not in a position to grant an Approval. From the time the Planning Board tabled them and for the next two months in advance of trying to go to Council and get the right-of-way vacated, Ferris did try to restore some of the areas which were over excavated on private property and the 200 ft. buffer which is supposed to be around the private property. They also made some efforts to restore some of the area. They have done something related to that. It was never completed, but they did do a lot more in the three or four month period after it was tabled at the Planning Board than they had done in the 15 years that Mr. Polistina had been on the Planning Board.

Mr. Cappuccio asked if it is legally feasible for the Borough to take dirt from the Ferris property to fill up the low spot. To raise it up two or three feet to make it more drainable. Mr. Polistina answered, the bonds cover certain improvements. They are identified in estimates as far as what is covered. In this case because it was a restoration bond for the one and then at the end a restoration bond most likely does not cover going back in and restoring the right-of-way with material.

Mr. Cappuccio suggested the Borough making the restoration on its own. Mr. Polistina responded, the Borough could try, but didn't know the bond knowingly recovers specifically the material that was in 4th Road. It was related to planting trees making sure the slopes were appropriate after the work was done. The Borough could try, but unless it is specifically identified in the bond it will be difficult. The bond is from an insurance company. The Borough will expend money in any case because insurance companies are designed to drag it out as long as possible because the longer insurance companies keeps money in their bank the more money they are making for their shareholders. It will be a long, protracted, difficult process if it is the decision that is reached. He thought it is a Borough Council (decision). After the Planning Board grants an Approval, they have to comply with their Site Plan Approval. Then it is a Borough Council function, so then bonds are posted to Borough Council. The Site Plan is turned over and the improvements are inspected by the Municipal Engineer as opposed to the Planning Board Engineer. In this (Borough's) case it is the same person, but it is really a Municipal function at this point as opposed to a Planning Board function.

Mr. Pitale repeated Mr. Cappuccio's question can the soil from that site be used to re-establish the right-of-way. It would compromise another area. Mr. Cappuccio added, he was not suggesting to bring it back up to 30 feet, but raise it up enough to get rid of the standing water.

Take at least 2 feet of dirt from a high spot that hasn't been mined. Mr. Coombs stated it is on their property. Mr. Cappuccio added then we would have to sue them. Mr. Polistina stated it may eventually happen. The Borough would do a Certification stating Ferris has not complied. The Borough would do a Resolution compelling the Bonding Company to comply. The Bonding Company most likely is not going to do anything. The Borough would have to sue the insurance company to go after the bond. Most likely it will result in litigation, but not in all cases. Sometimes there is a decent insurance company with decent representatives that understanding will come in and do it. Most of the time with insurance companies it ends up in some type of litigation or at least the threatening of litigation. It has to get that far before they will actually respond. Mr. Cappuccio asked if they (Ferris) would just walk away from it and leave a mess. Mr. Smith stated if it becomes too expensive and Mr. Coombs added it is always a possibility. Mr. Smith suggested if it is a restoration bond then 4th Road has to be part of the restoration at the existing grade or the original grade to do the restoration properly. Wouldn't it (the bond) be covered under the restoration to get it back to where it is supposed to be. Mr. Polistina answered the mining plan, the area of 4th Road, even though they never got it vacated, was shown at that elevation. The plans approved by the Pinelands Commission and the Planning Board showed the elevation they had created out there. They never did the step where they got the right-of-way vacated. They never had the rights to do it and just getting an approval by the Pinelands Commission or the Planning Board doesn't grant rights to start digging in the Borough right-of-way. They needed Borough action in order actually do the work in the Borough right-of-way. Mr. Smith questioned if the restoration plan is outside of 4th Road and not inside 4th Road. Mr. Polistina answered it is the whole thing, but the bond covered the plan. The plan showed the elevation of 4th Road now. They (Ferris) was trying to prove Pinelands approved Planning Board Approval, but it doesn't matter.

Mr. Pitale inquired if the Council was looking into the matter at all as far as a legal standpoint. Mayor DeStefano replied Council voted to not to vacate the road and is waiting for Ferris to move.

Mayor DeStefano mentioned there was action at the Porretta property. Mr. Pitale noticed it was cleaned up. Mayor stated it looked like somebody might be in there and didn't know if they were given the Approvals to be in there and there was a sign up on the building. Mr. LaPollo stated they have the Board Approvals. Mayor DeStefano asked if they complied with everything. Mr. LaPollo stated they complied with all the things. As far as Porretta is concerned he complied with everything he needed to comply with. Mayor asked if they got a sign permit for the sign they put on the building, but he did not.

There was no other business for the Board.

The next scheduled meeting will be February 17, 2016 at 7:00 pm.

Meeting adjourned at 7:26 pm.

Respectfully submitted,

Susan Carroll, Board Secretary