

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

February 17, 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.

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

**Members Absent:** Glen Smith, John LaPollo

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

**APPROVAL OF MINUTES:**

A motion was made by Mr. Joe Pino and seconded by Mr. Cappuccio to approve the minutes of January 20, 2016. There was a roll call vote with ayes all.

**APPLICATION: FERRIS ASSOCIATES**

Application # 06-ZB-14 – Linda Bloomfield, 111 N. Ocean Ave., Seaside Park, N. J. is seeking to renew a permit for resource extraction for the Ferris Associates properties – Block 1101 – Lots 3, 4, & 5; Block 2004 – Lots 3, 5; and Block 2201 – Lot 4. The parcels are located along 13<sup>th</sup> Street on both sides of 4<sup>th</sup> Rd. in the Borough of Folsom.

The Application was tabled at the March 2015 meeting and continued at the April and May 2015 Meetings.

In June 2015 a Motion was made by Mr. Smith and seconded by Mr. DeStefano to have the Ferris Application re-notice the public when they have a definitive date and cause to come back and further their Application before the Planning/Zoning Board. A roll call vote was taken with Ayes all and one Abstention.

Tom Darcy represented the Applicant Ferris Associates. He updated the Application for the Board. Ferris received a Certificate of Filing from Pinelands in February 2015 to renew the two year

resource extraction permit. An Application to the Board was made and there was a public hearing in March of 2015. There was a full presentation at the time and the Application was deemed complete, but there were outstanding issues the Board Engineer and Board Members had about the Application. The Application was tabled at that point. Ferris went through a series of onsite inspections with Vince Polistina the Board Engineer. There was additional information submitted to the Board and Mr. Polistina's office as requested to get back to the Board to finish up the Public Hearing and to have the Resource Extraction Permit renewed again. An issue was raised about the status of 4<sup>th</sup> Rd. and 13<sup>th</sup> Street. They are dedicated roadways. Dedicated by a developer back in the late 1800's, but were never accepted by the Borough of Folsom as public streets. They have never been maintained or formally accepted by the governing body. Some of the mining limits for this site include portions of the right-of-way. It has been that way since 1986. A question was raised about the status of these streets. The Applicant was directed to the governing body to have them make a determination of what the status was. The Applicant requested the governing body vacate those streets and made a formal application of it. In the process of preparing the Application, several documents were discovered which were very pertinent to the Application.

The first document found was the Planning Board in 1992 had made a recommendation the streets be vacated and the Applicant make an application to the governing body. At that point the resource extraction permit was renewed. Some evidence was found in the private files of Ferris, the Attorney for Ferris at the time had reached out on two separate occasions by letter and asked concerning the street vacation process. We did not find any resulting street vacation by the governing body. The clerk made a thorough search of the Ordinances, Minutes of the governing body, and meetings throughout that time and found no evidence. Even though the Planning Board recommended the streets be vacated it in 1992, there was no evidence. The Applicant made a formal Application to the governing body to get the streets vacated. The governing body declined to vacate the streets. They are still dedicated, but unaccepted right-of-ways.

The second document found in connection with the street vacation request was from the Pineland Commission. In 1986, when the original Application was submitted to the Pinelands Commission for Resource Extraction Permit under the Comprehensive Management Plan, not by Ferris, but by their predecessor. At the time the Mayor and governing body wrote a letter to the Pinelands Commission. They indicated they supported the application and supported the mining operations. Mr. Darcy quoted from the letter dated May 19, 1986; Mayor Gandolfi was the Mayor of Folsom said, "We find the operation of the gravel pit is a pre-existing use dating back many years. It was never abandoned. We find further there will be no necessity for SMD to make Application to our Planning of Zoning Board for any site plan approval or use variance due to its preexisting nature. We trust that your development approval is all that will be necessary to continue the operation of the gravel pit." The mayor said in the letter. "Please consider this letter as the Borough of Folsom's approval of the Resource Extraction Operation of SMD Inc. on the block and lot numbers concerned. That is clear written evidence the Borough of Folsom approved the mining operation for this facility and within the right-of-way of 4<sup>th</sup> Rd. Even though 13<sup>th</sup> street is within Ferris's property there are no mining operations which take place there. There is a small section of 4<sup>th</sup> Rd. on which mining operations have been done since 1986 and are going to continue in accordance with the proposed plan.

The question the Board or the Board Engineer had about the status of the streets is 4<sup>th</sup> Road is a

paper street and the Borough of Folsom in 1986 approved resource extraction permits within the right-of-way and has been renewed over the course of time at various points for the past 30 years. The Applicant was simply continuing and asking the Board to reaffirm once again the same Approval the Borough of Folsom governing body, the Mayor approved in 1986, the Pineland Commission has continuously approved for those 30 years, and at various points in time this Board has approved also.

Mr. Darcy acknowledged the previous operator, Ted Ellsworth, did not re-apply to the Board on the type of regular basis which he should have done, but there is a history of Approvals of this facility over the past 30 years.

Mr. Darcy felt the issue was resolved and came back to the Board and asked to renew the Permit as the Planning Board has done numerous times over the past 30 years in accordance with not only the Pinelands Comprehensive Management Plan, but also the local Ordinance Chapter 200-55. There was such a gap in time since last year's Application and also because there were new members on the Board it was suggested by the Board Solicitor to do a concise but thorough re-presentation of the Application.

He ran through the Completeness Requirements. The Application was deemed complete back in March of 2015 subject to two things;

- 1.) The soils map. It was submitted to Mr. Polistina's office shortly after the meeting.
- 2.) Confirmation of the Performance Guarantee, the Bond would renew. It was submitted. The Bond is current up until July 2016 and it is an automatic renewing Bond. It is not something anybody has to be concerned about or deal with. The bank itself will automatically advise Ferris Associates and the Borough the Bond is renewing on an annual basis. There is information in the Application package.

Mr. Pino thought there was a legal issue which was unresolved. He wasn't sure permission to continue was automatic in terms of surrendering rights on the paper road as suggested. He felt the issue should be addressed before going through a long and involved presentation because such a big issue was unresolved. He questioned if it was an issue to be addressed at this Board meeting. Mr. Darcy didn't think it had to be. It was his opinion the governing body acted on this in 1986. He asked Mr. Pino if he had a copy of the letter. Mr. Pino acknowledged he had the letter, but read it differently than Mr. Darcy did.

Mr. Cappuccio asked if the letter was to a different company, SMD and if it transfers automatically to a new company if he brought the property. Mr. Darcy answered it relates to the property itself. Mr. Cappuccio stated the letter relates to the people who owned it (the property) then (in 1986). According to it (the 1986 letter) it relates to SMD.

Mr. DeStefano thought it was stated the road was vacated, but Mr. Darcy explained he did not say the road was vacated and apologized. Mr. DeStefano clarified and explained that Mr. Darcy used the words, "The Board recommended or approved it, but the Board in 1992 did not approve it. The Board in 1992 recommended you appear before Mayor and Council". Mr. Darcy agreed. Mr. DeStefano continued, "They did not approve it, they recommended you appear that is the difference in 1992". Mr. Darcy agreed, but added he was talking about in 1986 it was absolutely

clear. Mr. DeStefano interrupted and added there is no Ordinance on our books which vacates those roads. Mr. Darcy agreed, and stated it doesn't necessarily mean the governing body doesn't have the authority to allow Ferris to mine within a paper street. It was exactly what this letter from Mayor and Council approved in 1986. It has been this way for 30 years. Mr. Pino wasn't sure it was spelled out (mining in the right-of-way) and thought Mr. Darcy was implying it from the way the letter was written. Mr. Darcy believed it was absolutely clear. Mr. Cappuccio stated (the letter) wasn't an approval to mine the street. It was approved to mine both sides of it not mine the street itself also. Mr. Darcy explained, the Mayor clearly said the plans submitted to Pineland were being approved by the Borough and those plans clearly show mining within the right-of-way of 4<sup>th</sup> Rd. There was no question about it and it has been that way for 30 years.

Mr. Coombs spoke about his review in preparation of this meeting. He reviewed the 1986 letter Mr. Darcy made reference to and the June 3, 1986 Pineland Commission letter and Certificate of Compliance. It was marked Exhibit 2 in the package. It was a letter to George Smith, SMD. In the final paragraph of the first page. Mr. Coombs read verbatim "Portions of the site were mined in violation of the requirements of the Plan before all necessary approvals were received. He found it interesting because 1986 was the very first request for approval and not portions of the site were mined in violation, all of the site was mined in violation before 1986. In the letter there is also a series of requirements on the marked page 3, but it is page 2. The series of different requirements Pineland felt were important before the proposed development. In the past renewals have been recurring themes over and over again with regards to: no resource extraction within 200 ft. of property lines, no clearing within 500 ft. of any residences, no extraction within 300 ft. of any fresh water wetlands, the restoration of top soils, entrance roads being fenced or blocked, surface water runoff, calculations which are poor, etc. with regards to restoration of the site. It was interesting because in 1992 there was a Resolution and an Engineering Report prior to this. By then it appeared the Block and Lot numbers had changed, but it is substantially the same piece of property. In looking at the Engineering report prepared by Adams, Rehmann & Heggan Associates, Inc. to the Borough of Folsom Planning Board dated August 12, 1992 it was a notated copy. These notes were kept by the then Solicitor Mr. Fitzgerald. In the notes on the second page of the Engineers report, paragraph 8 it stated, "The applicant request the vacation of Fourth Avenue and Thirteenth Street within the area of the parcels owned by the applicant". It was a non-issue in 1986 why was it still being talked about in 1992. Mr. Coombs continued with Paragraph 8 of the 1992 Engineers Report, "The decision for vacation must be reviewed by the Mayor and Borough Council. If these portions of the roadways are not vacated, the plans would have to be greatly revised to include buffers from said roadways". It did not say one couldn't mine there, but the plan would have to be revised to include buffers from those roadways. The Resolution adopted shortly thereafter and prepared by Mr. Fitzgerald dated August 1992 on page 3 stated, "The applicant proposes the vacation of the portions of Fourth Avenue and Thirteenth Street that are within the site. Neither of these right-of-ways are improved and the Planning Board does not recommend their retention for public access. However, the vacation of these right-of-way areas must be by the Borough Council and the applicant is required to submit a request for such vacation within 60 days. It was Mr. Coombs understanding based upon his conversations with the Board Secretary it was never done. The applicant could make a request for resource extraction, but it seemed based upon the recommendation from 1992, the plan will have to be revised to take into account the height of the roadways and the slope of the roadways. He recommended the Board Engineer comment more with regards to exactly what needs to be done. The area could still be

mined, but the plan would need to be revised.

Mr. Pino asked if there was any revision on file, but there was none the Solicitor was aware of. Mr. Darcy explained the plan being presented this evening contains the same grades that have always been on the plans that have always been approved by the Board since 1986 and emphasized 4<sup>th</sup> Road is not a public street. It is a paper road. There are private rights of easement which arise as a result of the recordation of the filed plan in the late 1800's. It is not a public road. Ferris owns out to the center line of the street. The fee title interest they own goes out to the center line of the road, but they own it. It is not a public road. Mr. Pino noted it was with restrictions to buffering the center. Mr. Darcy stated it is not what the Board approved. The Board has always approved mining within the limits of 4<sup>th</sup> Road. It has always been done. It was Mr. Darcy's opinion it was because 4<sup>th</sup> Road is not a public street. It is a paper road dedicated in the 1860's or 1870's before there were even cars. Ferris by law owns the fee title to the center line of those streets on both sides. They are not mining within a public right-of-way. They are mining land they own the fee title to. It was Mr. Darcy's opinion they had the right to do it. Mr. Pino thought this was the issue at hand and asked if there was a way to resolve it and thought it needed to be addressed. He felt like he personally could not move forward until this issue was resolved. We have two different positions. He was a lay person and it put him in an uncomfortable position. It is a legal issue. Mr. Darcy had a position and the Borough had a position. One of Mr. Pino's duties was to protect the Borough. This was a legal issue and it was difficult for him to think past the different positions no matter what was present.

Mr. Pitale asked Mr. Darcy how he based his statement that Ferris & Associates owns to the center line if the road hasn't been vacated and if it has been a paper road owned by the Borough of Folsom. Mr. Darcy answered it is not a public street. Mr. Pitale responded it is not a public street but it is still a Borough paper road. Mr. Darcy answered it is a paper street where private property owners who own out to the center line have a right of easement. It is not a public road and will not be a public road until the Borough accepts it as a public street. The law in the State of New Jersey is unless there is a specific exception in the deed which says you do not own out to the center line of the street, then the law is the property owner owns the center line of the road. There is no question about it. Ferris owns out to the center line of the street. Mr. Pino asked why other cases believe vacating the streets for property owners to do whatever they want with their properties.

Mr. Polistina responded the Borough has rights to the right-of-way as well. Mr. Darcy was correct the ownership of the property rest with the owners of the properties on either side. In this case it is both Ferris, but the issues have become confused. It is not yet a public street, but it is a public right-of-way dedicated on the tax map. It is a 50 ft. wide right-of-way and the Borough has some rights to the right-of-way for the construction of public streets. The Borough's rights are somewhat limited to needing to build streets to access 4<sup>th</sup> Road from one side to the other. Never the less Ferris does own it to the centerline. If it does get vacated, Ferris would get all of the right-of-way of 4<sup>th</sup> Road because they own both side. The question is, what right is allowed Ferris to mine 4<sup>th</sup> Road. The answer is none. The Planning Board has no role in that right-of-way. It is the Borough Mayor and Council who has the role. The Mayor wrote a letter, but the Mayor by himself cannot vacate a right-of- way which is owned by all of the residents of the Borough of Folsom. It has to be an action by the Mayor and Council of the Borough of Folsom. Mr. Polistina thought this was where the issue became. The Mayor might have wrote what he did, but clearly through out of all

of this there are references of the Pinelands, and the Adams Rehmann & Heggans Report and everything which was done back in the early 1990's about the need to vacate those streets. The best which could be done is give an approval condition on vacation of those roadways similar to what was done in the past. If they cannot get the vacation of roadways, the plan cannot be performed. They would have to bring the road back up to grade. They would have to create 3 to 1 slopes on either side. These were the comments made back then. To completely and totally eliminate the ability for Ferris to mine as shown on this plan. Mr. DeStefano added, this is where Council is right now and it is why we did not vacate the road. Mr. Darcy noted it was the last thing they wanted to do was to become adversarial about the issue. All Ferris wanted to do is to continue mining operation they have been doing for the last 30 years. We do not want to become adversarial, but to suggest Ferris cannot do what has been approved by Pinelands and the Board for the last 30 years will create difficult burden on them. He emphasized, they would like to work with the Borough. It is why they went to Mayor and Council and requested politely to vacate the street. The Borough's Planning Board recommended it back in 1992. Mayor DeStefano clarified it was recommended to go to Mayor and Council it was not recommended to vacate the road, but Mr. Darcy thought differently and did not want to disagree, but the 1992 Resolution stated the roadways did not serve any public interest. Mayor DeStefano stated he was reading from the Minutes of the meeting where the Board recommended Ferris go to Mayor and Council, and not recommend vacating. Mr. Darcy referred to the 1992 Resolution where the road ways do not serve any public interest. He again mentioned they didn't want to be adversarial with the Borough, but they wanted to do was to continue the mining operation. We asked to vacate the street. Mayor and Council told us no and now the Planning Board told us we cannot mine in there. If this were the first time we were making this application, I could understand. This has been going on for 30 years and felt very strongly the Mayor and Council back in 1986 had the plans. They wrote to the Pineland Commission. They knew mining operations were going to take place within those right-of-way and approved it.

Mr. Coombs asked if Pineland's knew about the street vacation. Mr. Darcy stated yes, it was shown on the original 1986 plan. It shows the streets to be vacated. Mr. Polistina added the 1991 Certificate of Filing from the Pinelands (which was after 1986) and when the Ferris application came back it stated, "The current application proposes the vacation of portions of Fourth Road and Thirteenth Street. Absent the consent of the owner(s) of the concerned rights-of-way (ROW), this Commission Certificate of Filing does not authorize any development activities to occur within said ROW's. The Pineland's knew about it and clearly stated their approval was not valid without the vacation of the road. Mr. Darcy explained, after that, the Mayor wrote a letter in 1991 which the Pinelands has a copy of. He clearly stated Council and myself have full knowledge in the mining operation which has been there for many years, probably since the late 1940's or early 1950's. The Mayor wrote again 5 years later to Mr. Ellsworth and told him this was in the Pineland's file. After this letter was written there is a No Call Up letter. Pinelands would not issue the street vacation as no longer a condition of the Pineland Certificate of Filing. After that it no longer is. There is a lot of documentation which indicates everybody knew mining was taking place within 4<sup>th</sup> Road. Plans have always showed it. These plans are exactly the same plan which have been submitted for the past 30 years. Mr. Darcy realized and understood this was a complex issue, but thought there was plenty of evidence on the side of this Board approving what has been approved for the past 30 years. Allowing Ferris to mine within a Paper Street to which they own up to the center line. They are mining within lands they own fee title to.

Mr. Polistina stated, to vacate a public right-of-way an Ordinance is required and must be adopted by Mayor and Council. The problem is the process was never finalized. Mr. Cappuccio questioned the June 3<sup>rd</sup> letter (from the Pineland's Commission). It was stated for SMD Inc. They are not involved any more. It was sold many time. Does this carry to new owners? Mr. Coombs answered, they have reapplied. Mr. Cappuccio stated the letter in question was for SMD not for Ferris. After looking back on prior approvals and prior precedent when making the determinations With regards to same use on the same piece of land. It also appears there have been prior conditions on the land which have not been met. Mr. Cappuccio added they have not done everything they were supposed to do even up until today. They are still in violation of different things which have not been done and have not been brought back where they should be. Mr. Coombs revisited the Engineers letter dated August 12, 1992 Paragraph #8 stated, "The decision for vacation must be review by the Mayor and Borough Council". They are not vacated. He continued from the letter, "... the Plans would have to be greatly revised to include buffers for said roadways". It has the answer and the solution.

Mr. Darcy asked for the Boards cooperation to allow Ferris to get a Renewal of the Resource Mining Extraction Permit which they have had for 30 years. He requested to look at the documentation which affirms what has been done for the last 30 years. He thought there was. He understood what the Board was in reviewing the documentation, but asked the Board to cooperate with them to get Ferris up and running again and get the mining operation in a position where they wouldn't have to talk about violations any more. They were going to propose a bi-annual review instead of having a review by the Board every two years. Have Mr. Polistina go to the site in the spring and the fall, inspect the site, write a report of his findings. If things need to be updated or upgraded, we will do it every 6 months.

Mr. Cappuccio noted nothing has been done. A lot of the violations were from before. Prior violations haven't been corrected which were supposed to be and now are asking the Board to give approvals to start digging (Mining) again with the violations which haven't been corrected. We are being told it will be done now, but that was said before and it wasn't done. Mr. Darcy responded, there has been substantial work there, but Mr. Cappuccio added, it is not where it belongs. Other people's personal property has been mined. He had a letter from a neighboring land owner and stated it has not yet been restored the way it should have been restored, but are asking for permission to start digging again without things being done the right way. There was no guarantee the violations will be done. In 6 months our Engineer may come back and nothing was done. Then what!? The Bond may not be enough to cover everything which has to be done. Mr. Darcy understood it wasn't an excuse, but explained the applicant has probably spent approximately \$20,000.00 in restoration, but Mr. Cappuccio stated it didn't matter how much was spent, it still hasn't been done the way it is supposed to be done. If it cost \$100,000.00, then it is what has to be done to do it, but it hasn't been done. Mr. Cappuccio did not understand how Ferris could ask the Board to move forward with the approval when mounting outstanding violations over the years have not been corrected when they were supposed to be, but are not.

Mayor DeStefano added there is standing water which is very dangerous out there, there are piles of asphalt, and there is personal, private property which was removed. He thought what Mr. Cappuccio was saying and what he himself would like to see is full restoration before anything is approved. Including 4<sup>th</sup> & 13. Mr. Darcy question Mayor DeStefano if he wanted the right-of-

ways restored. Mayor DeStefano answered, yes. Mr. Darcy responded he hope there would be some other alternative. The Mayor directed it to be presented to Mayor and Council. Permission to mine the right-of-way or re-visit the street vacation issue needed to be presented to Mayor and Council. Mr. Coombs wasn't sure if Mayor and Council issued a formal decision. Mayor DeStefano acknowledged they did not. An Ordinance was presented and failed. This was all that was before Mayor and Council. Mr. Darcy understood Mayor and Council had every right to do it. They do not have to vacate a street. Mayor DeStefano continued the other restorations problems need to be fixed. Mr. Darcy explained they were working on it and didn't think it would be unfair to say substantial improvements were made there. Mayor DeStefano had a lot of concerns over the standing water. It's a dangerous situation. Mr. Darcy stated the water was tested. It is standing water. Ponds are allowed by Ordinance. There can be a pond in mining operation. The standing water in and of itself is an impermissible condition. Mr. Pitale stated the access is a problem. People have access to the property around the gate and standing water is a safety issue. Mayor DeStefano added there could be mosquitos.

Mr. Darcy explained when they came to the Borough in March of 2015 he felt he had gotten a fairly denying report from the engineer. We complied with every single thing we can. Everything that was asked for was given. Everything that we were asked to do we have done to the best of our abilities. He was going to present an application to show we complied with every single provision of the Ordinance. He asked to try to reach some sort of reasonable resolution at the Planning Board level where they could get the license renewal. If it is not possible, he asked for some sort of vote on the application in a form which can be subject to appeal.

Mr. Darcy took a few minutes to confer with his client Linda Bloomfield.

After conferring with his client Linda Bloomfield for a few minutes, Mr. Darcy respectfully requested the hearing be continued. He explained he would reach out to Mayor and Council and make every effort to try to reach a reasonable resolution to what obviously can be interpreted both ways. He emphasized again he did not want to get adversarial with the Borough of Folsom. Mayor DeStefano stated it was not the Borough's goal either. Mr. Darcy was very good to hear it and added if it was acceptable to the Board, to continue the application and the first opportunity would like to reach out to the Mayor and Council Members open up dialog. Mayor DeStefano suggested to be on the March Agenda and to put a request in to the Clerk. Mr. Darcy agreed.

Mr. Polistina talked about some of the restoration which was done. There were different time frames to the application. Ted Ellsworth was doing what he did for a period of time. Then there was a gap in the early 2000's where they didn't seek approvals because they weren't doing much. Then they came back in the late 2000's. They got an approval in 2012.

There was over excavation done and in some cases it is just impossible to restore fully. In some cases someone's private property was taken out. There was mature forest, and there was supposed to be 200 foot buffer to the mining limits. In some areas Ted Ellsworth or whoever was operating the facility not only took out the buffer, but took out a mature forest and took out the dirt both in the buffer and on private property.

In 2009 when they initially came back, we have been trying to attempt to restore these areas. They



are planting little saplings. There had been a problem with ATV's. They have indicated at various times when asked where the plantings were the ATV's destroyed them. From 2009 to 2012 and after they got the approval in 2012 they did plant some saplings. It is not nearly enough and he thought they (Ferris) acknowledged it and went back out in the field last year to try to resolve some of those issues. They did put the asphalt apron in on 4<sup>th</sup> Road to try to prevent some vehicles tracking dirt and mud out on 4<sup>th</sup> Road and put some directional signs.

Last year when the Board initially tabled the application because there were a lot of questions raised. Myself, the applicant, and John LaPollo went out there and tried to give them some instruction as to what to do to restore the site properly. We were told the plans are the exact same plant that have been submitted for the last 30 years, but came to find this is not the case. We came to find there were some areas where the topo on the plans shown did not match what had been done or what had been done in the field in the areas which were over excavated. Specifically up the northwest corner when we looked at it. The plans are different than what has been submitted over the last 30 years. The limits and 200 ft. buffer are the same, but the topo is clearly different because of the over excavation which occurred. After the application was tabled they did try to do more. They have put some topsoil back in there and some saplings to try to get some regrowth. They put some no trespassing signs and tried to address a lot of the things the Board was asking for, but when you are taking out a mature forest and replacing it with 6 inch high saplings it will never be to the point the Board may be looking for. The period March (2015) through the summer when they went to the governing body they did do work. They restored it. In some cases restored the buffers, some area saplings were put in, and tried to restore some of the private property which was excavated, but it will never be what was there previously. They should have never touched some of the areas which were touched. They should have never disturbed the buffer. It has made it difficult to reclaim some of those areas and it makes it difficult now to make sure the buffer is there while it is being mined. The thought is to do one into the pit, keep the buffers around it, be able to mine from the inside, and create some of the slopes which were necessary. But it isn't possible because of what was done previous to 2012. It is impossible to reclaim the areas which were over excavated and disturbed It can't happen at this point because of what was done.

Mr. Cappuccio asked if there were permanent markers at the site now and if they could be seen. Mr. Polistina answered they did re-survey in terms of the concrete monuments. He didn't verify, but confirmed Ferris did re-survey at the Borough's request and put in concrete monuments. Their surveyor was available and could speak to it better. We did make sure they re-surveyed and made sure it was known where the property lines were to establish the 200 foot buffer which is how it is supposed to be. Mr. Darcy responded the mining limits now have been clearly defined. It is all PVC pipes. They know where they are allowed to dig. The property owner of Ferris is ultimately responsible for what goes on at the property, but Ted Ellsworth was the guy who did the over excavation. It is not an excuse on her part, but wanted the Board to know Linda Bloomfield did not do it. She is a business woman and it is not how she wants operate and didn't want to continue it with the Board. It was one of the reasons she was requesting bi-annual inspections and have Mr. Polistina look at the site on a regular basis so this sort of thing does not happen again.

Mr. Pitale noted, one of the problems on the minds of the Board Members is we are being asked to approve this permit and all of these things have gone on. There was encroachment on buffers and private property. It is on the minds of the Board Members this may happen again whether

there are markers or no markers. Sometimes things evolve and it was a concern of the Board Members. Mr. Darcy understood and diligently wanted to make sure no mining takes place outside of the mining limits from this point forward.

Mr. Polistina added, there was one other thing which was recommended. There was a request by the Borough to post two separate bonds related to this. There may only be one on file. There is supposed to be one bond to cover all of the over excavation itself. If the saplings never grow, and what was done never takes root. The Borough has some protection where they can go out and restore the areas which were not supposed to be disturbed. Then there is supposed to be a separate bond if the approval is granted to finally restore everything once the mining is done. There may only be one bond in place where there is supposed to be two. Mr. Darcy recollected and thought there was only one bond in the amount of \$124,000.00. Mr. Polistina asked if Aqua Terra did the estimates for both of the bonds, but Mr. Darcy didn't know the answer to it. Mr. Polistina added he knew Aqua Terra did because there was a review of the amounts and he certified the amounts were accurate back in 2009 and it is something the Borough was looking for. The Borough needs to both protect the over excavation and when done make sure the areas are restored and needs to protect any restoration at the end of the mining operation if this application is approved and the mining begins again.

Mr. Coombs swore in Linda Bloomfield. Ms. Bloomfield explained when the two bonds were required we did the work of the second bond. We actually did and performed the work of the second bond. It was reassessed and that was how it was approved with the bond which was posted. Mr. Polistina advised he would have to clarify it. It was not his understanding because the one bond was to cover what was done in terms of over excavation and over clearing. The work clearly as of last year when we were out there was not done. Even on the plans the topo was different in the northwest corner. Things were done which were never resolved. He thought the Borough needed some protection for both what was done, to make sure the saplings grow, and the areas get restored; and the final protection for when the mining is done to make sure it is restored properly. It was something which needed to be gone back over, but thought it was something the Borough would be looking for in order to be protected. Mr. Darcy agreed work with Mr. Polistina to resolve it.

Mr. Polistina asked if there were any other comments or anything to add to the restoration issue, but wanted to bring the Board up to date on what was done last year. There were some concerns related to the ongoing restoration at the site. He stated Mr. Darcy acknowledged despite the fact some things were done, it is absolutely ongoing which is why the bond would be requested. By no means was the site in a state which at this point, after not even a year of the saplings growing, is in a state which will be acceptable. Mr. Pino stated the apron was mentioned to address gravel transfers to the roadways and recalled the mention of several other checklist items. He asked if the applicant recalled having such a list and if so what progress was done. Mr. Polistina responded there were several lists. His understanding was the applicant had done most of what the Borough requested. It was requested in 2012. When they came back in 2015, there were public comment and Board comment and other things the Borough subsequently sent to the applicant. They tried to address it from March (2015) through probably August. There was a list of about 15 items. Some of them have been addressed. Things like the asphalt marl are still there and needs to be taken out, but the Borough requested for the water to be tested and to leave it there. There was

no excavation incurred at the site because they didn't have a permit at that point to do anything on the site. Some things have been done, some things still need to be done, but it was predicated on them getting approval to actually have activity at the site. Mr. Pino then inquired if it was left it would be essential to have the Checklist item preformed prior to the approvals or if it was left at the Engineers discretion. Mr. Polistina answered it is at the Boards discretion. The items were brought up by the Board and the public. The Engineer notified the applicant and worked with them. He advised if the items are things the Board wants to see done before the applicant seeks approval it would be at the Boards discretion. Mr. Pitale noted it was already on record and asked if it was on the record as a requirement verses a request. Mr. Darcy acknowledged it and informed the Board he was aware. Mr. Polistina clarified the request was to complete all of the issues which were raised by the Board over the course of the hearings last year and the Engineers site inspections for all of the items to be done before they seek approval for the mining operations.

Mr. Coombs added in the presentation (of the application) there were certain things which were a possibility and certain things which were impossible. We will have to be realistic about those checklist items and how they are interpreted. Mr. Darcy thought the applicant had submitted everything and will make another package of documentation for the Engineer and send it to his office. He will address every single item he had in his reports and emails. Mr. Polistina stated he will look back and resolve it. The asphalt is still there. There was a request for a forester to take a look at some to the forest there. There are things they could do like taking asphalt out if the Board wants to see it done before they seek approval. Mr. Coombs was certain the asphalt marl was in the prior Resolution. Mr. Pino recalled the Board first motioned and approved the issue being tabled until it was addressed at the level of Council. It was his understanding the Council didn't approve it. He asked if Ferris now had to go back to Council to appeal it. Mr. Darcy answered no and explained it was the last thing the applicant wanted to do. They wanted to see if they could work with Council to try to figure out how they could accomplish this.

Mr. Pino felt the issue needed to be resolved (at Mayor and Council) before it came to the Planning/Zoning Board again. It was Mr. Pino understanding the Board made it clear the Planning/Zoning Board would not act on the application until the road issue was resolved with Mayor and Council. Mr. Pino couldn't understand why Ferris came back to the Planning/Zoning Board when the issue was unresolved. Mr. Pino felt this was the problem and asked why we are here. Mr. Darcy apologized if the feeling of the Board is they were brought out for nothing. They didn't intend to do that. He believed the issue was resolved. They went to Council and asked them to vacate the streets. They said no. Minds can differ. It is our position we have permission to mine within the right-of-ways. It is something we will discuss with Mayor and Council. Mr. Esposito expressed he also felt the same way. He was quite surprised to see Ferris on the agenda again, but he thought it was a good discussion because in his mind there were two issues. The vacation of the road(s) and the list of requirements also. He would like to see the vacation issue settled with Council and also the list of requirements should be done before we get together again. Mr. Darcy told the Board the report from PS&S about the water quality indicating there is no contamination in the water. If they wanted the material removed it (the water quality report) it provide John Callahan will remove it. It explains where it is going to go. Mr. Polistina had recommended not to remove the material yet because technically they did not have the right to operate yet, but if the Board wanted to it removed it will be removed. It was Mr. Darcy's preference to get rid of it so it doesn't become an issue again. It was Mr. Pino's opinion there

were bigger problems to deal with and those issues should be taken care of first. The removal of asphalt was one of the smaller issues to be addressed and can be handled later, but thought the bigger issues needed to be dealt with before coming back. Mr. Darcy thought the larger issues were already handled and respectfully apologized once again for bringing everybody out. He added he would not bring all of these people out if he didn't think we were on firm ground. He thought he was, but the Board disagrees and the Mayor disagrees and we want to work it out.

Mr. Cappuccio addressed an email complaint and asked if it was the Board's responsibility to answer it or if it was the applicant's responsibility. He didn't like to leave anybody hanging. Mr. Coombs asked to see the email. It was an email from Mr. Marchetti an adjacent property owner to the Ferris property. Mr. Coombs stated the Board could look at and consider Mr. Marchetti and the specific damage to his property. He should come out to the next meeting. Mr. Cappuccio wasn't sure which piece of property was his or how much was done to his property. Mr. Coombs wasn't sure if the applicant was aware of this or has seen the email. The applicant confirmed they did not have a copy of the email. With regards with the specific concerns and specific things Mr. Marchetti wanted to see repaired or rectified he can come out to the next meeting and address it. Mr. Cappuccio thought it seems like Mr. Marchetti contacted Ferris Associates by the way the email read. Mr. Polistina explained, Mr. Marchetti was represented at one of the hearings and thought he had some discussions. He is the private property owner adjacent to 4<sup>th</sup> Rd at the northern end. He had an attorney here last time and thought he had discussions with the Board, but doesn't feel like those discussions progressed to the level which they should. Mr. Darcy responded he (Mr. Marchetti) wrote a letter and made allegations and we haven't heard anything further from him. Mr. Polistina continued it goes back to the issue he brought up. The way the site should have been built was natural topo to the property lines natural topo for the 200 foot buffer and then start mining at the 3 to 1 slope. It is pretty much impossible to put it back together and create the natural topo which was there before. Mr. Cappuccio asked if they took that much dirt out. Mr. Polistina responded, they took that much dirt out. Mr. Cappuccio asked if Ferris went onto Mr. Marchetti's property. Mr. Polistina answered yes. Mr. Cappuccio asked if it was stated how much Ferris lowered Mr. Marchetti's property. Mr. Polistina responded he will have an estimate of it, but can use the maps to quantify it. Mr. Darcy stated he wanted to be clear his silence was not an admission for Ferris has any responsibility or liability for what occurred on the private property owner's property. We do not know the circumstances under which those events took place. Mr. Cappuccio asked if he was denying Ferris mined this property. Mr. Darcy told Mr. Cappuccio he was not. He was saying they do not know at this point how it occurred. Mr. Cappuccio clarified you are saying you didn't do it. If you do not know how it occurred, then you cannot say you did or didn't do it. Mr. Darcy explained he knew Linda Bloomfield would not go out to the site with a machine and cut those trees down. Mr. Coombs interjected just to be fair to everybody technically this is heresay. This is still a quasi-judicial entity and we have to consider evidence fairly. Mr. Marchetti needs to testify and present what he wants to present. He can be represented if he would like and he can also testify as to when these things happened. The when is pretty important since this case has been ongoing for many many years with no idea if it was Ferris or SMD or Ellsworth Sand. It has had various different names over the years. It is something to be concerned about. It is something to bring up and Mr. Coombs thought maybe the applicant should reach out to Mr. Marchetti. It would be a great thing. Mr. Cappuccio asked if he should be notified, but Mr. Coombs advised all of the adjacent property owners were noticed. Mr. Polistina noted if the Board continues this hearing to another hearing with no notice required he would not get noticed for the

next month.

The meeting was opened to the public.

Ben Pagano, 2201 14<sup>th</sup> Street, Folsom, N. J. was sworn in by Mr. Coombs. Mr. Pagano thanked the Chairman. He began by suggesting to have some wording in the second bond to cover any over excavation if there will be a second bond in case that certain thing should happen again. As far as the documentation which was presented this evening he couldn't see anything forward whatsoever this could be construed. In 1986, 1991, 1992 the Mayor and Council back then made a vacation of the road. Mr. Pagano asked Mr. Darcy if he could produce any documentation. Mr. Darcy stated he objected to the characterization. He never said Mayor and Council vacated the street and explained the letter indicates the Mayor and Council approved the plans which show mining within the limits of 4<sup>th</sup> Road. Mr. Pagano continued, with that being said then obviously there was never a vacation because a vacation require due process and notification to surrounding owners. It could never be misconstrued again. It is not a public road, but it is a public right-of-way and that is what the governing body vacates and that is what the people of Folsom have the governing body to do. They haven't vacated the right-of-way. The area that you legally can travel. The right-of-way happens to be full of a lot of water which he testified before. The authority comes from the New Jersey Health Wellness Citizens Planning Board and it should be a concern. Mr. Pino thought most of the issues were clarified earlier and acknowledged it as a point he was making. Mr. Pagano thanked the Board.

There were no other members of the public wishing to be heard and the public portion of the meeting was closed.

Mr. Pitale had a few more thing for the applicant. He explained he had a recent map dated 2016 and it was a Google map. It showed some erosion going off property. He asked what type of erosion control was being used on the perimeter. Mr. Darcy asked to see the map. Mr. Pitale reviewed the map with Mr. Darcy. There was some gravel running off of the Ferris site and ponding on the railroad right of way and in several other areas. The ground was higher than the railroad and it was running off onto the railroad property. Mr. Darcy reviewed the map with Mrs. Bloomfield. Mr. Coombs asked the Board Secretary where she got the map. Ms. Carroll answered Byron Gummo. It was marked as Board Exhibit 1 and mark it as "B1".

There were no other question for Mr. Darcy.

A motion was made by Mayor DeStefano and seconded by Mr. Spiegel to continue the meeting to March.

After some discussion the motion was withdrawn and a new motion was made with conditions.

A motion was made by Mr. Pitale and seconded by Mr. Esposito to continue the meeting to March with the continuance conditional on Borough Council resolving with Ferris Associate with regards to street vacation 4<sup>th</sup> Road and 13<sup>th</sup> Street within the area of the parcels.

A roll call vote was takes with ayes all.

There was no other business for the Board.

Mr. Pitale announce the next scheduled meeting March 16, 2016

Meeting adjourned at 9:26 pm.

Respectfully submitted,

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Susan Carroll  
Board Secretary