

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

August 19, 2015

The meeting was called to order at: 7:18 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 Hammonton 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, Ben Pagano, Michel Veneziano

Absent: Glen Smith, John LaPollo, Ed Malec

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

APPROVAL OF MINUTES:

A motion was made by Mr. Spiegel and seconded by Mr. Esposito to approve the minutes of July 15, 2015. There was a roll call vote with ayes all and one abstention by Mr. Cappuccio.

APPROVAL OF MINUTES:

A motion was made by Mr. Pagano and seconded by Mr. Veneziano to approve the minutes of the Special Meeting called on August 3, 2015. There was a roll call vote with ayes all and one abstention by Mr. Pino.

RESOLUTIONS:

04-2015 Betty Pollock, 1 Pine Lane, Williamstown N. J. 08094, seeking a C Variance for a side yard setback to build an attached garage to her house located at 1 Pine Lane, Block 2619-Lot 571. The Property is located in the RD Rural Development Zone. Application # 04-ZB-15

A motion was made by Mr. DeStefano and seconded by Mr. Pino to approve this Resolution. There was a roll call vote with ayes all.

APPLICATION:

Application 05-ZB-15 – IBEW Local Union 351, 1113 Black Horse Pike, is seeking a Minor Subdivision for a 2 lot subdivision at Block 3201 – Lots 11 & 12. Lot 11 is located in the Forest Commercial Sending and Lot 12 is located in Forest Commercial Receiving. The new lot will be retained for future use.

Mr. Esposito recused himself.

Stephen Duda Associates of Dixon Associates and Joe Joe Knecht Representative with IBEW have been previously sworn in and did not need to be sworn in.

Victoria Fannon an Attorney with the Law Firm of Parker McCay represented the Applicant IBEW requested with the continuation the matter started last month with respect to a two (2) lot subdivision request. As noted by the Solicitor, it was requested any testimony or information given by witnesses last month be continued and made part of the record for the Application.

The Application is a two (2) lot subdivision. One proposed lot contains the existing training facility and will be 19.29 acres. The second proposed lot will be approximately 2.78 acres. As a condition of Approval and requirements of the Pinelands the lot will be deed restricted from further development. There are no Variances requested with respect to the Application. Both Lots are over the required two (2) acres requirement for lots in both zones.

Mr. Stephen Duda, Engineer Associate with Dixon Associates, was familiar with the Application. The plan submitted with the Application was marked Exhibit A-1. Mr. Duda briefly explained the plan. Initially there were (2) separate lots. They were put together. The subdivision was brought about because the space required for nitrate dilution was less than the total area. Nitrate dilution requires 19.29 acres. There was an excess of 2.78 acres. He briefly described the intention of the subdivision and realigning the lot lines to have one lot, the main lot, be the site where the training facility is currently located. The second lot will be the 2.78 acres which would be utilized for potential nitrate dilution in the future if necessary. As noted on the plan, it is going to be restricted for future development.

Mr. Coombs asked why subdivide it. Ms. Fannon answered she thought it was required to be deed restricted. A blanket deed restriction on 2.78 acres. It was an operational requirement. They felt it would be better to have a separate lot indicating the 2.78 acres as a standard lot. Mr. Coombs asked how large the original lots 11 & 12 were and if they were substantially the same size. Mr. Knecht explained the lots lines by implementing the Plan submitted and marked Exhibit A-1.

Mr. Pitale questioned if after the subdivision if the lot could be used for nitrate dilution for another lot or an adjacent lot if necessary. Mr. Duda answered it could be, but it was not the purpose of this.

Mr. DeStefano noted at the last meeting it was stated there was no intent to sell, but in another statement it was stated it would either sold or kept. Mr. Knecht answered he thought he (Mr. Duda) responded to the question about would you sell the lot, but we have no intention to sell. It

is a requirement of Pinelands as far as he knew. Ms. Fannon added if in the event it becomes a standard lone lot, if it were to be sold and the testimony is there is no present intention to sell it, it would be subject to the deed restriction. There could be no further development on the lot.

Mr. Coombs asked who the neighbor of the lot immediately adjacent is. Mr. Pitale clarified Block 3301 – Lot 5. Mr. Knecht answered it was all part of the IBEW.

Mr. Polistina stated somehow the acre requirement by the Pinelands Commission where the lot would have to be subdivided would make the nitrate dilution worthwhile for a lot. It is unclear as to what the subdivision theme comes from. It is not for Pinelands. It is not for nitrate dilution. He was trying to get clarity. Ms. Fannon responded she indicated part of the operational requirements of the Applicant to have it as a separate lot in addition to reserving it for future nitrate dilution, but right now the one lot which is being proposed 19.9 acres should be sufficient and the Pinelands will approve the particular lot as being 19.929 acres in trying to make two conforming lots. Mr. Coombs asked what it was about the operational requirements of the Applicant requiring them to subdivide. Mr. Knecht answered he was lead to believe either Pinelands or Cape Atlantic or possibly both sometime during the last few years, when we were trying to get all the permits together, said we had to designate it for nitrate dilution. Whether it needs to be subdivided or just have to promise it is there available for them if it is needed. Mr. Polistina stated it makes sense. It could be for nitrate dilution for the training facility, but it could be done in one overall lot. The area could be deed restricted as part of one over all lot and not have this subdivision. The Borough has done a lot of work to encourage commercial development on the Black Horse Pike and now you are creating a lot which is completely deed restricted from development in specifically the area where the Borough tried to create commercial development in the Forest Commercial Receiving. He explained it was the reason he was trying to get clarity for what is being done. It is creating a conforming lot, but can't do anything with it in an area where the Borough is trying to promote commercial development. Mr. Knecht replied if he remembered correctly the lot is within the block we (IBEW) owned and are trying to get subdivided. It is not a parcel of land we would sell or let someone else build on it. It is part of our property. Mr. Cappuccio asked, why subdivide it. Mr. Knecht thought it was what he had to do.

Ms. Fannon responded the question with respect the particular area couldn't be utilized for development even though it is on Black Horse Pk. It is a conforming lot even if a bonafide purchaser purchased the lot the client couldn't build on that particular portion of the overall mother lot anyway. It makes it cleaner for them to have a lot with the deed restriction and as she understood it was a requirement or whether or not there is a blanket deed restriction on the mother lot. That is why the Applicant is requesting the subdivision. It is a conforming lot. Mr. DeStafano asked if the Applicant had any formal paperwork from the state or county telling you to do this (subdivision). The Applicant's Attorney did not have it available. Mr. Coombs was looking at the previous Decision and Resolution and mentioned it indicated there would be a deed restriction with regards to maintenance of basins, storm water basins and maintenance of onsite septic and private well, but he didn't see any requirement prior to Decision Resolution for deed restriction for nitrate dilution. This was through this Board. Pinelands may have done something different.

Ms. Fannon asked for clarification of the Decision Resolution Mr. Coombs read from. It was for the site plan in order to build the training center in 2012. Then there was subsequent discussions with respect to the lot area and how this was going to be utilized with respect to the training center and to separate out the portion of this particular area to a conforming lot for deed restrictions.

Mr. DeStafano questioned if there were another underlying reason for the subdivision. He didn't see why it had to be done and there wasn't anything to show proof the Applicant had to do this.

Ms. Fannon explained the future use, as she understood, use separating it. It is a subdivision re-aligning lot lines for having the IBEW training center on one lot and having the other lot reserved, not for development, because it is required to be deed restricted. The Attorney was trying to find out exactly where the requirement came from and asked if it could be done by an overall blanket deed restriction. The request this evening is to be able to have two conforming lots. One would be deed restricted. Restriction reviewed by the Boards solicitor to have on record. She was not testifying because she was not the Attorney during the particular Pinelands. She asked if it would be possible to work with the Board Engineer to go over why this (deed restriction) was required and why the lot lines were gone in this particular area.

Mr. Spiegle asked if the new subdivision would affect the future property tax assessment. Ms. Fannon answered the Zoning would change. Its vacant portion of the lot now. The assessment for the overall lot verses the smaller lot. It is a commercial. One is Forest Commercial Receiving and one is Forest Commercial Sending and would have to check with the Assessor. Mr. Spiegle repeated the question would it affect the property tax assessment. He questioned if there was a possible financial motivation for this request. Ms. Fannon stated she couldn't honestly answer the question. Her understanding is a zoning restriction is not re-classification of the zoning of the property.

Mr. Polsitina added he thought the question was the overall lots which Approval was granted for had some requirements for nitrate dilution. As it was read there were basins and storm water management facilities. The Borough always contemplated commercial zoning on the Black Horse Pike. Is there a way to change the subdivision so as not to deed restrict an area of the Black Horse Pike the Borough has spent a lot time and a lot energy on making the Forest Commercial Receiving so the lot could be used for Commercial property.

Ms. Fannon answered redesigning it based upon what the Pinelands input with respect to this lot. In the event this could be developed, which it has to be restricted right now, and obviously we would have to make another application and come back to this Board to have the deed restriction lifted from the Pinelands. Whether this portion of the lot is one lot or two lots still would be required to deed restricted the area.

Mr. Cappuccio asked who is saying the property had to be deed restricted. He suggested if it was Pinelands or Atlantic Cape Conservation. Mr. Polistina added it is Pinelands. You have to free the septic system for the training facility. You have to have an overall lot size to provide for nitrate dilution for septic system. For anyone it is a Pinelands requirement. No one, until this

point, ever talked about deed restricting property on the Black Horse Pike in the Forest Commercial Receiving District as part of nitrate dilution. The line it is split zone there is a little portion in Forest Commercial Sending, but it was always contemplated Forest Commercial Receiving would be developable property. The Borough went and did a lot of work with Pinelands in order to make sure the property on the Black Horse Pike in the FCR (Forest Commercial Receiving) would be developable. Mr. Cappuccio added that was why it could be sold as a usable piece of property.

In Mr. Coombs review of the Certificate of Filing, the Pinelands states as part of the background, the Applicant propose to deed restrict 2.78 acres. It doesn't say Pinelands.

The Applicants Attorney reviewed at the background from the Certificate of Filing from the Pinelands. She read from the Certificate of filing. Prior to Commission issuance of a letter advising that any municipal or county approvals can take place a copy of the recorded requisite deed restriction (or stamped, filed deed filed for recordation) must be submitted to the Pinelands Commission and the Application for proposed two lot subdivision and no further development only. It stated, any other future development shall be governed by the Borough of Folsom's certified land use ordinance and the Pinelands comprehensive Management Plan. She stated it gives the background of the initial Approval of the Training Facility in 2012. She cited the background. Existing development: The proposed subdivision will create a 19.29 acre lot and 2.78 acre lot. The applicant proposes to deed restrict the proposed 2.78 acre lot from any development in perpetuity.

Mr. Polistina commented, it sounds like the Applicant is going to proactively deed restrict it. Is there a way to create a 2.78 acre lot on the property which is not in Forest Commercial Receiving District? The Applicants Attorney responded, this is the area which needs to stay intact for the training facility. The area on the Black Horse Pike she didn't know whether or not it could be shifted because of wetlands to the 2.7 acres and realign the lot lines. Mr. Polistina suggested if IBEW owns Lot 5 it would be technically feasible to deed restrict a portion of lot 5. If it is necessary to accomplish this, deed restrict a portion of lot 5. He didn't think the Borough had any concern with impacting Forest Commercial Sending because the whole premise of what was done with Pinelands Commission was the Forest Commercial Receiving / Forest Commercial Sending were developed. The premise was the Forest Commercial Sending wouldn't have any development, but this would allow additional commercial development in the Forest Commercial Receiving. The Applicant is violating the whole premise which was spent a lot of time getting done with Pinelands by deed restriction a commercial lot on the Black Horse Pike. The Applicants Attorney clarified if the Applicant did Lot 5 it would still be a Lot on the Black Horse Pike. Mr. Polistina explained Lot 5 is adjacent on the right hand side of the map. The back portion of Lot 5 could be deed restricted. The Forest Commercial Sending District – FCS could be deed restricted property in order to accomplish whatever is trying to be accomplished without restricting development on the Black Horse Pike.

Mr. Cappuccio needed clarification. This property has to be deed restricted to serve the other property, but why is it being deed restricted though. Mr. Knecht stated it is just being deed restricted from further development. Mr. Cappuccio asked, why is it deed restricted? He asked if Pineland is saying you have to deed restrict it. The Applicants Attorney speculated could it be

a Condition of Approval as part of obtaining outside agency approvals as in the Engineers letter to show the Pinelands requirement for it. Still, Mr. Pitale didn't know why it needs to be deed restricted. He thought the Board needed more information because there were questions unanswered.

The Applicants Attorney needed clarification and asked if the issue was with respects to deed restricting any property on Route 322 or this particular creating a lot here (indicating the site plan) which has some wetlands on it which could possibly be utilized in the future and believed the Applicant indicated not proposing development. She tried to clarify what the Boards concerns were. Mr. DeStefano stated the Boards concern was why the Applicant want to deed restrict it if they don't have to. The Applicants Attorney didn't think they would be before the Board with an application for a deed restriction of their own accord if they weren't required to do so. She will need to get additional information or a written letter from the Pinelands to confirm it is a Condition of Approval and agreed they didn't really want to deed restrict the property if they didn't have to. Mr. DeStefano added he didn't think anyone there wanted to deed restrict any piece of property along the Black Horse Pike because a lot of work was done by the Board to make it buildable. Mr. Duda stated as far as Pineland's concern to build on this lot you need to show the depth of ground water is more than 5 feet from investigations in the area. Conditions can change every 100 feet. Another factor could be zoning requirements in the area and nitrate dilution. If the three are satisfied the lot could be developed. Without investigating the depth of ground water it would be deed restricted for development.

Mr. Coombs added the doubt comes from the fact you can deed restrict the same exact portion without doing the subdivision because the Applicant owns the lot right next door. The Applicants Attorney stated, if it is the case, then it will not answer some of the Boards concerns about deed restricting a part of the property on the Black Horse Pike. There is no difference whether they get a subdivision and create the lot or if the Application were to be withdrawn and put a deed restriction on the lot as a private owner and show it to the Pineland and give the copy to the Board. She suggested with respect to the particular area if they could understand the particular lot is, although conforming, is the requirement for deed restriction. If the Board needed proof as to where it is coming from it (the requirement for deed restriction) is coming from the Pinelands, they could get the additional information by making it a Condition of Approval and work with the Boards professionals. If the Application is withdrawn this evening the Applicant still could do a blanket deed restriction on the overall lot.

Mr. Cappuccio stated the lot could be subdivided, but why have it deed restrict it from the Pineland's. Mr. Coombs explained it could be made a Condition of Approval, but he hasn't seen anything unless we present it to Pineland's, it needs to be deed restricted.

Mr. Polistina asked the Applicant if they would be willing to table it for another month and let us work with Dixon (the Applicants Engineer) and the Pinelands to see if there is an ability to deed restrict property in the Forest Commercial Sending as opposed to the Forest Commercial Receiving to still accomplish what they can do. The Applicants Attorney explained they did table the Application due to technical jurisdictional issue last month and preferred to get the Condition and work with the Board. Obviously if they can't meet the Condition they can't get the subdivision anyway. Mr. Pitale stated there were too many questions for the Board which are

not answered. The Applicants Attorney requested for the Board to look at it because it is a conforming subdivision. Conforming lot and we are not requesting any Variances. It is technically a plan of right. Mr. Pitale responded the Board is not comfortable with deed restricting property on the Black Horse Pike and we are not sure why it needs to be deed restricted. The Applicant's Attorney stated the particular area is wooded and it may not be a viable portion of this property or whether it is a lot to be developed anyway. Whether it is located on the Black Horse Pike or somewhere else. Mr. Polistina stated it was not the case. He explained what the Borough did and what the Board did with Pinelands was to create the Forest Commercial Receiving strip along the Black Horse Pike specifically to allow for commercial development. The Applicants Attorney asked if the whole lot could be cleared. Mr. Pitale responded, the development corridor. The attorney pointed out the wetlands and Mr. Polistina added that is the buffer there, but yes you most likely have a conforming lot just about 2 acres which is conforming outside of the wetlands buffer for a small commercial establishment as an office or whatever the case may be. He stated what we (the Board) is asking for some time for him to contact Pinelands and to ask if there is another way to do this without this deed restrict property which they told the Borough we could develop when we did the Zoning changes back in the mid 2000's. It makes no sense from the Borough's standpoint. They did a lot of work to create this zone for commercial development now we are having Applicants coming in and saying the Pinelands is telling them to do it when the Pinelands told us we could specifically create this zone in order to promote commercial development. It creates enough confusion that we would like some time. The Applicants Attorney asked, if the applicant owns this area, and they are not going to develop it, it is a concern to deed restrict the lot they own. Mr. Polistina noted the applicant is creating another lot on the tax rolls, but it can't be developed it doesn't make much sense. The Applicants Attorney noted it was up to the Board, but would really request the Board consider the subdivision with a Condition the applicant provide the necessary proofs and if the Board feels there is not enough information to be put to a vote then we would have to come back next month. We have been hanging on now for the third month for the subdivision. Discussion ensued.

A motion was made by Mr. DeStefano and seconded by Mr. Pitale to continue the application and to carry the matter to the next meeting on September 16, 2015. A roll call vote was taken with ayes all and one recusal.

APPLICATION: JOHN & LORETTA BLAZER:

Application # 06-ZB-2015 – John & Loretta Blazer, 1450 Backline Road, seeking a Minor Re-Subdivision for Block 701 – Lots 15 & 25. The Re-Subdivision will reduce the size of Lot 15 from 7.73 acres to 3.21 acres and will increase the size of Lot 25 from 3.284 acres to 7.80 acres. Both properties have dwellings and are located in the Village Residential Zoning District.

Mr. Coombs swore in John Blazer, Jr. of 1450 Backline Rd., Folsom, N. J. 08037 and Loretta Blazer of 1450 Backline Rd., Folsom, N. J. 08037. Mr. Blazer gave the background for the Application. His aunt passed away and the property was left to him. The re-subdivision of the property will put the majority of the property with his house. After the re-subdivision he will sign his aunt's house on the smaller property to his son. Pinelands required him to provide a minimum number of acreage. There is a barn he wants to keep on his part of the property. He is living on Lot 25 currently. He wants to expand it (Lot 25) from 3.28 acres to 7.80 acres. The lot

line at the back of the property will be ragged because of the block barn which is staying with the bulk of the acreage on Lot 25.

The Solicitor questioned the Engineer if there were any issues with the narrow 50 ft. passage created. He engineer responded they have frontage at the street line.

Mr. Pitale asked if there were any questions from the Board. Seeing none he asked for the Engineers report:

The report is dated July 29, 2015. This is a re-subdivision of land. There are two (2) existing lots and two (2) proposed lots. They are just moving lot lines around. Lot 25 gets a little larger and Lot 15 gets a little smaller. There is no development proposed.

There are some Completeness Review:

- Item 17: A polaroid of the premises.
- Item 18: Contours to determine drainage of the land.
- Item 19: Natural and artificial watercourses.
- Item 20: Wooded areas indicating predominate species.
- Item 21: Location of trees 6 inches or more in diameter.
- Item 22: Areas in which construction is precluded.
- Item 23: All areas to be disturbed.
- Item 27: Location of existing wells and septic.
- Item 28: Indication on the soil boring for the septic system.
- Item 29: Plans and profiles of utility layouts.

Some of the Items are not applicable because there is no development proposed. Others because they are not making any change. He didn't see a need for the polaroid requirement and recommended to grant the waivers and deem the application complete. The property is located in the Village Residential (VR) Zone.

There are some existing non-conformities:

There is a front yard setback of 75 ft. is required and 51.9 ft. is existing. On the accessory buildings the side yard setback is a 20 ft. requirement and 3 ft. is existing. The rear yard setback is 50 ft. requirement. There is 7.5 on one Lot and 20 ft. is proposed on the other lot.

They are all existing non-conformities and no development is proposed, but because two (2) lots are being created as a result of the subdivision they are technical variances, but they are required.

There was a question related to the access. The Blazers live on Backline and have access through some of the Earth Drives. Mr. Blazer clarified, on Earth Drive to the left of the property isn't on our property but, it is on the neighbor's property on Mays Landing Rd. The one dirt road does not belong to us. Mr. Polistina asked if the one which goes through (inaudible) is relative. Mr. Blazer answered no. Mr. Polistina explained there is one in stone on Lot 14 which

seems to be relative. Mr. Blazer answered yes. Inaudible discussion between the Engineer and the Applicant ensued to clarify which of the properties the dirt road, Earth Drive, was on. Mr. Polistina commented for his report, if the Blazer's are giving it (the newly subdivided lot) to their son, they might want to consider, if you need the access out to Mays Landing Rd. because it will be across that property, you may want to have a formal easement granted across this property because without a formal easement may help. If it is ever sold to somebody else, they can shut down the access. He didn't know if it was necessary or not but, if the Blazers wanted make sure to maintain the access out to Mays Landing Rd. they would need to have an easement granted across Lot 15.

Mr. Coombs asked Mr. Polistina to clarify which access as the one which appears on the southern edge of the map along the new lot and if it roughly follows the property line. Mr. Polistina confirmed with yes, the adjacent lots. Mr. Pitale added it straddles the property line.

A motion was made by Mr. Pagano and seconded by Mr. De Stefano to accept the Engineers report granting waivers and deem it complete. There was a roll call vote with ayes all.

Mr. Pitale ask if there were any questions from the Board for the Applicants.

Mr. Pino asked if the block sheds were pre-existing. Mr. Blazer answered yes, all of the sheds are existing. We had a farm for a while. Mr. Pino questioned if the proposed lot line would run right through (the block shed). Mr. Blazer answered no, it is on one side of it. There is a barn and then there is a path which goes to the hot house when his grandfather used to farm. It's (the proposed lot line) is right on the other side of that (the hot house). Mr. Polistina commented there is a 3 ft. setback.

Mr. Pitale asked if there were any other questions from the Board. Hearing not the meeting was open to the public. There was no one from the public and the public portion was closed.

A motion was made by Mr. Pino and seconded by Mr. DeStefano to grant the subdivision with the requested Variances and Waivers. There was a roll call vote with ayes all.

OTHER BUSINESS:

Discussion for follow thru of Conditions of Resolutions or possibly having Applicant meet Conditions prior to the Boards vote to approve an Application and Resolution.

Mr. Pitale referenced the Poretta property where the Conditions were not met prior to Memorializing the Resolution for an example. They were supposed to plant trees, but they didn't plant trees. He asked for suggestions on how to handle the issue of having Conditions met prior to Memorializing Resolutions.

Mr. Polistina explained he and Mr. LaPollo had a meeting scheduled the next day at 9:00 in the morning with Mr. Poretta to go through the requirements of the 2001 Approval and get the additional trees planted and get the additional screening done. It was supposed to be done. In terms of civics related to this whole situation, if we were to simply amend the checklist. The Checklist we go through for the maintenance review to indicate the Applicant must demonstrate

compliance with any previous Approvals by the Board. This will cover it because if they didn't address one of the previous Approvals it would simply be deemed incomplete. Mr. Esposito asked if it would come to the Board. Mr. Polistina answered we could deal with it administratively. It would not even get before the Board if the Applicant doesn't meet Completeness Review. He explained when there is something on the Completeness Review the Board needs to make an informed decision, we can usually work with Applicants to get it done prior to going before the Board. If we amend the Checklist, we will have something to rely upon, but we will need something to rely upon to show they (Applicant's) didn't comply with another Approval. It will be in the Checklist now and they will have to demonstrate to it. The Checklist will be incomplete until Conditions to a prior Approval are done.

Mr. Esposito asked how to amend the Checklist. Mr. Polistina answered it is an Ordinance Amendment to amend the Checklist requirements. Mr. Coombs explained we would send it to Council with a recommendation. Mr. Polistina added, we would send the recommendation to Council. The Council would introduce, prepare it here, in the middle of council would be adopted. Mr. Pitale clarified all of the Conditions would have to be met before the Board hears the Application. All of the completeness issues when we do them, they are re-subdivisions and no developments. We would recommend waivers.

He referenced the IBEW just had some Completeness issues as an example. He explained, if it was a concern to the Board, the contours to determine the drainage of the land and those sort of things. The Applicant asks for waivers of it. The Board is not required to grant those waivers. If it is something the Board wants to see, you simply do not grant the waiver and deem the Application Incomplete until the information is provided. The Applicant will have to comply.

Mr. Pitale asked who will assure compliance with the Conditions. Mr. Polistina answered it would depend on what the Conditions are, but it would either be us (the Engineer) or the Zoning Officer (John LaPollo) depending on what the situation is. Mr. Pitale asked what if there is a dispute. He gave an example, residents sometimes have a point. We have to listen to it. If our Zoning Officer goes out and inspects the property and reports the Conditions have been met, but a nearby resident does not believe it is true. Who would prevail? Mr. Cappuccio suggested someone from the Board could go and look. Mr. Pitale noted we all see things differently. Discussion ensued with reference to the Poretta property and the number of trees which should have been planted and maintained and other Conditions which should have been met, but were not complied with.

A motion was made by Mr. Pagano and seconded by Mr. Cappuccio to amend the Checklist to include an additional Item for the Applicant must demonstrate compliance with all previous approvals as a requirement of the Folsom Planning/Zoning Board. A roll call vote was taken with eyes all.

MASTER PLAN: Discuss updating the Master Plan for compliance with COAH regulations. Mr. Pitale asked if COAH was abolished. Mr. Coombs explained it wasn't abolished, but the reins have been taken away from them and given to the courts. He explained, providing a variety in choice of income and housing for various incomes in New Jersey falls under the Mt. Laurel legislation. In the mid 80's Mt. Laurel set their zoning ordinances in such a way that you could

only really build a big house. They were taken to court and they lost. They went all the way up to the Supreme Court and they lost. It created a model for the nation. Essentially the Fair Housing Act which created COAH Council On Affordable Housing, work fairly well until the year 2000 when COAH failed to adopt a constitutionally required regulation for a third round compliance. New Jersey Supreme Court, in March of this year, issued a ruling removing COAH oversight and sent a portioning of all Mt. Laurel cases to the courts. The courts don't usually do this sort of thing so someone set up 17 designated Mt. Laurel judges throughout the state which would determine what the procedure will be for determining what municipality's obligation would be and how they would calculate it. A stay of declaratory judgment could be filed which everybody did because no one knew what was going on.

Judge Nelson Johnson in Atlantic County is appointed locally. It was Mr. Coombs understanding every Municipality has a pending declaratory action, but he wasn't sure if Mr. Bonchi, the Borough's Solicitor, had a pending declaratory action for Folsom. There is no fixed criteria yet. Some judges are coming forward with recommendations and others are just waiting, but this is coming and it is coming soon. There was no certainty of how it will affect Folsom. It will depend on how the courts will rule.

Mr. Polistina added information. The premise of COAH is not to allow Municipalities to exclude low and moderated income housing with their zoning. Folsom as a rural community with limited access to sewer and things which could spur development. Folsom doesn't actually have a plan. The declaratory judgment referred to from municipalities who had received some COAH certification and are now asking for immunity from the court against builder (inaudible). Folsom or any other community has not complied with COAH regulations. There is an option if there is no compliance, builders can sue the Borough to compel to provide affordable housing and to provide zoning to allow for affordable housing. The Borough has not done a plan or complied so the Borough would not submit a declaratory judgment action at this point, but if the Borough desires because the risks are there it should do a plan.

At the State level, the COAH was there until the Supreme Court took it away from them in March. COAH published numbers for each municipality which they believe are the numbers which municipalities have to meet. There is a number published by COAH for how many units Folsom is obligated to provide for low and moderate income houses. Fair Share Housing center is the main advocate for Affordable Housing has gone through and hired an expert and came up with their own numbers. Since COAH is no longer functioning and now this has been transferred to the courts, no one knows what the number is going to be. It is extremely difficult to develop a plan when they don't know what the target is. There are builders out there looking at this and looking at towns which have not complied, and seeing if there is an ability for them to come in (to the town) and try to do affordable housing with the basic presumption for affordable housing is about 6 units an acre. This is way more than Folsom or Pinelands ever contemplated, but this is the basic premise. If there is a concern, builders may be looking at vacant property now in Folsom and may sue the Borough, then the Borough should go ahead and do the plan. At this point in time Folsom has not formed an affordable housing plan. There are 3 rounds of obligation plus a re-count obligation which Folsom would be subject to if he were to try to do a plan to accommodate affordable housing.

Mr. Cappuccio questioned the problem of the septic system on six units on such a small piece of ground with Pinelands. Mr. Polistina responded it is impossible. The Borough would either have to find a way to connect into public sewer system or would have to do an actual treatment system. This is one of the reason Folsom has not done it. Mr. Cappuccio asked who would be responsible for it. Mr. Polistina responded the developers would be. If a developer had a large enough property and got a presumptive density, which would be 6 units an acre, then they may be able to assume the cost of doing an alternative waste for the treatment system. This is why it has never been a concern because it is very difficult in Folsom.

Mr. Cappuccio asked if there is an attraction with a well and a septic system on a property like Folsom has.

Six houses in one acre the presumptive density is 6 units per acre. It may be a mix of housing types not necessarily detached. He suggested attached or twins. You would never see it on 1 acre of ground. It would have to be someone looking at 25 acres. Doing 150 would be the concern. If there were vacant property of 25 acres and someone wanted to say Folsom didn't comply with 25 acres and wanted to build affordable housing, you would negotiate (inaudible) density, but only be somewhere probably 4 to 6 units an acre if they could get through Pinelands, and if they could demonstrate compliance with all the other regulatory requirements. A lot of ifs.

Mr. Esposito asked if other rural communities have a plan. Mr. Polistina answered some have, but most have not. There are about 300 out of 562 which have done a plan. Most of the other rural communities have not because the risk is not as great. Depending on the size of the property. If you were get sued and go to court the judge would look at what density is necessary to make the project a reality. There would be some discussion on what density you would have to have in order to make the project happen.

If it is a concern of Folsom, Mr. Polistina offered to find the most recent numbers COAH has published and what Fair Share Housing has done

To Mr. Polistina's knowledge Nelson Johnson hasn't issued anything yet and he is a builder's attorney. Right now the State, for large communities who have asked for immunity and fought for a 5 month period it wasn't clear if the 5 month period began from when the declaratory judgment was filed or when the actual number was published. It was very difficult for towns to try to do a plan without knowing what the number is. Earlier the recent rulings stated the 5 month period starts from when the declaratory judgment was filed. Towns are now spending time and money to try to develop a plan not knowing what the numbers are. It is complete dysfunctional system which costs towns time and money and just makes housing more unaffordable. Discussion ensued.

Mr. Pitale asked if the State could withhold things from the Borough if the Borough doesn't comply. He noted any government mandate usually requires something in return. Mr. Coombs did not have an answer, but will need to look into and will report back the next meeting.

Mr. Pino commented it seemed like it would affect someone with more involved infrastructure like the sewer. Mr. Coombs responded towns like Galloway and such where all they would have

to do is extend the pipe a little bit further. They (the towns) are having a difficult time stopping them.

There were no other questions from the Board. Mr. Pitale announced the Hazardous Mitigation Plan Update.

HAZARDOUS MITIGATION PLAN UPDATE

Folsom is participating in a **Multi-Jurisdictional Hazard Mitigation Plan**. A HMP is a living document that communities use to reduce their vulnerability to hazards. To inform and engage the public and other local and regional stakeholders in the planning process, a hazard mitigation planning website has been developed and can be visited at: www.aclink.org/PDM/.

Mr. Polistina explained the Plan. It is mitigation to try to mitigate impacts from the storms we have been having. The last five years there has been between flooding, the drain storms, the Sandy's. It is a mitigation program to try to prevent or to create more sustained ability so communities are not as impacted by some of the storms. This is one next time you deal with municipal plan rated elevation update should be included. As people come to the Board, to the extent they are in an area which could be flooded, or an area where there is concern about when they should meet requirements to mitigate those impacts. Mr. Spiegle believed FEMA requires each community to have this type of a plan in place, but in the event of a cataclysmic disaster where the Borough would have to go to FEMA for money the legality is twice the same. Mr. DeStefano added we are actually in the process right now of working with FEMA to get money back from the state.

Mr. Coombs asked the engineer if the plan also includes recommendations for a quick rebuild ordinance such as the ones seen in the bay communities which would allow people to streamline the process through the planning board. He replied he is attempting to get things done much quicker than in the past.

Mr. Pitale asked if there were any other question from the Board. Seeing none he announced the next scheduled meeting September 16, 2015 and the meeting was adjourned.

There was no other business for the Board.

The next scheduled meeting will be September 16, 2015 at 7:00 pm.
Meeting adjourned at 8:32 pm.

Respectfully submitted,

Susan Carroll
Board Secretary