

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
APRIL 27, 2016**

Meeting called to Order by Chairman Novellino at 7:30 p.m.

Reading of Adequate Notice by Chairman Novellino.

Salute to the Flag and observance of a moment of silence for the troops.

Roll Call: Present - Barthelmes, Morelli, Novellino, ailey, Frost, Lambros, Conoscenti and Ferro. Absent – Mostyn.

**APPROVAL OF MINUTES:** March 23, 2016

The Board having reviewed the meeting minutes and changes were incorporated, Mr. Frost made a Motion to approve and Mr. Bailey offered a Second. Roll Call Vote: Frost, Bailey, Morelli, Barthelmes, Ferro and Novellino vote yes to approve the minutes.

**Resolution:**

**Z15-10 Lenzo, James and John** - -Block 17, Lot 8.04, 8.05 located in the HC Zone and part of Lot 10 located in the PCD Zone. Located at State Highway 33 consisting of 12.28+/- acres. Proposed use of property is for the sales and servicing of recreational vehicles. Applicant sought and received a D-1 variance to permit outdoor display of recreational vehicles.

Mr. Morelli made a Motion to memorialize the Resolution and Mr. Ferro offered a Second. Roll Call Vote: Morelli, Ferro, Bailey, Barthelmes and Novellino voted yes to memorialize the Resolution.

**Z15-11 Sbrigato, John** - Block 62.02, Lot 41. Located at 9 Wetherill consisting of 1.88 acres in the R-130 Zoning District. Applicant installed a paved driveway. Applicant seeking a variance for lot coverage where 20% is permitted, applicant has lot coverage of 35.5%. Deemed Complete: 10-29-15. Date of Action: 2-26-15. Noticing required. Application heard in part and carried to 3-23-16 without need for further noticing; applicant granted extension to 3-31-16.

Mr. Bailey made a Motion to memorialize the Resolution and Mr. Barthelmes offered a Second. Roll Call Vote: Bailey, Barthelmes, Morelli, Ferro, and Novellino voted yes to memorialize the Resolution.

**Z16-02 - Gallagher, William** - Block 35.03, Lot 15 located at 38 Cheryl Lane consisting of 3.03 acres in the R-130 Zoning District. Applicant seeks relief from steep slope ordinance Section 9-5.2 for the installation of a 20 ft. x 40ft. in ground pool. Deemed Complete 2-5-16. Date of Action: 6-3-16. Noticing required.

Mr. Frost made a Motion to memorialize the Resolution and Mr. Morelli offered a Second. Roll Call Vote: Frost, Morelli, Ferro, Bailey, Barthelmes and Novellino voted yes to memorialize the Resolution.

**Carried Applications:**

**Z15-09 Merkin, Michael and Barbara** - Block 37.01, Lot 1.02. Located at 43 Bittner Road consisting of 1.64 acres in the R-80 Zoning district. Applicant received approval from the Construction Department to construct a 3- car attached garage addition. Applicant did not attach the garage to principal building, creating three variances for accessory structure in front yard setback, minimum separation from accessory structure to principal building 10-foot variance needed, accessory height 21.5 feet where 16 foot is maximum. Deemed complete 11-12-15. Date of Action: 3-11-16. Heard in part on 2-24-16. Extension of Time granted through 4-27-16. Noticing Required.

The Applicant had asked to be carried. Extension of Time granted to June 30, 2016. Applicant to re-notice for the June 22, 2016 Meeting.

**Z15-12 - Stavola, Asphalt Co.** - Block 18, Lots 3,4,5&5.01 located at Bergen Mill Road & Old Route 33. The property consists of 29.99 acres in the PCD Zoning District. Applicant seeks Use Variance (D1) approval to modify the operational hours of the facility. Deemed Complete 12-15-15. Applicant has granted a Date of Action through April 30, 2016. Heard in part on 2-24-16. Carried to 4-27-16 without the need for any further noticing.

Attorney Vella read the following Exhibits into evidence:

- A-17            Web Notice
- BOA-4            (Recorded) Agreement between Millstone Township and C. H. Sutphen, Inc. dated 1-4-73
- BOA-5            Appeal of Final Judgment and Court Order In Re: Matter of Millstone Township vs. Stavola Contracting Co. dated 6-11-92 and 7-19-91, respectively

Attorney Vella reported that he had subsequent discussion and agrees with the Township Attorney that and the Township granted the previous owner ability to operate on the site. The expanded use was previously approved including limited hours of operation. Attorney Vella stated that there was some litigation as to validity of that agreement. One of the issues brought up at last meeting was what authority does the Board have concerning the hours of operation.

Attorney Vella provided that he and the Township Attorney are in agreement that the Board does not have jurisdiction over the expansion of the hours of operation. Mr. Mehr disagrees.

If the Board votes in favor of the application, the applicant would be required to go to the Township Committee. Only the Township Committee can modify the hours. Mr. Mehr disagreed and felt it is the Board's jurisdiction to grant a variance.

If the Board votes in the positive for a variance, they would make their recommendations to the Township Committee. The applicant indicates they will not build any improvements if they do not get the hours of operation.

Attorney Vella explained the process advising that the applicant's Counsel has the right to reserve his position. The process is the Board makes a motion to approve or deny the application with the understanding that the Township Committee must approve any change to the hours of operation. If the Township Committee says no to the change of hours of operation of the site, then there may be litigation.

Attorney Vella advised that this is an existing contract with the Township and the Board is not going to overstep its bounds. If the Board denies the application, then the point becomes moot.

Mr. Mehr met with both Attorney Vella and the Township Attorney to discuss the matter. Mr. Mehr stated that back then, in the Appellate Division decision, there was no Zoning Board so the Town had the right to step in and handle this. Attorney Vella indicated that even if The Township acted as the Zoning Board previously we do not have right to modify the conditions.

Mr. Mehr advised that he had viewed the March 23, 2016 meeting and wanted to address some areas that were not resolved.

Mr. Branch was previously sworn in and is still under oath.

There were discussions about the night operations. Mr. Branch explained that if a job is less than 800 tons, they could prepare the product during the day and store it in the four silos. The plant would not have to manufacture it after hours because it could be prepared ahead of time and kept in the silos. That is for a smaller job.

Mr. Branch explained that an average job is between 1200 to 1500 tons, which requires something different. They would have the 800 tons in the silos already and then they would have to make up the additional product of 400 to 500 tons that is not in storage. It takes 2 -2.5 hours to meet that job requirement beyond the normal operating hours of the day. Mr. Branch stated that the job size is dictated by how the material can be placed on the roadway. He explained the process and timeline to lay the material and get traffic on the road by 5:00 a.m.

Mr. Branch stated that currently, their hours of operation are 6:00 a.m. to 6:00 p.m. He explained to make 800 tons of product for a customer that night, as soon as they stop manufacturing asphalt for their daily customers, who he stated do not always make a reservation, then they would start making asphalt for the evening hours. At night, they only work on contracted purchases. They would know days in advance.

Mr. Branch stated that if less than 800 tons is needed, they can produce that during daytime hours and keep the product heated in the silos. For 1400 tons of asphalt, the trucks start coming to the site at 9:30 p.m. or 10:00 p.m. They produce 300 tons per hour.

Attorney Vella asked how long it takes the trucks to empty a silo if the trucks come in at 9:30 p.m. to 10:00 p.m. Mr. Branch advised that the trucks come in groups. It takes an hour to empty a silo. Silos can be refilled as the silos are being emptied.

Mr. Barthelmes asked if they could build more silos on the site. Mr. Branch stated that is an option.

Regarding controls for onsite tailgate banging, Mr. Branch stated that tailgate banging is a result of a driver who is trying to clean out the body of the truck after a delivery of stone or millings is made to the plant. This is prohibited on their site. He explained the steps that Stavola Asphalt takes to address this. They have a full time employee whose job it is to monitor this activity.

Mr. Branch explained that a few weeks ago, he received a call from a resident apprising him that tailgate banging was taking place. Mr. Branch discovered that the employee specifically assigned to monitor the tailgates during daytime hours was pulled away from that duty and re-assigned another duty by a new supervisor. He explained that this was corrected and did not happen after that.

Discussing the noise, Mr. Branch stated that the berm height and its design would not allow residents to hear any noise. Even if berm is up, they will still have the program in place despite the berm.

He has an employee that logs each truck that comes in. No oil or any other agents are allowed on the truck body that may contaminate water. Mr. Branch stated that because of that concern, Stavola provides onsite a biodegradable releasing agent set up as a spray system. A truck goes through spray booth, receives the biodegradable agent which is sprayed in the body of the truck.

Discussing the New Jersey Department of Environmental Protection regulations provide that truck engines be turned off while trucks are waiting to pick up asphalt. Drivers that do not obey the plant's rules are censured.

Mr. Branch stated that there are fifteen (15) other locations throughout the State of New Jersey that have asphalt plants that operate at night. He named a few citing that the Bound Brook facility is the largest facility. Tailgates are a concern at the plant and they effectively have a monitor that logs each truck and license number. He stated that there are dozens of asphalt plants located next to residential areas.

Entered into evidence, Exhibit A-18, List of Asphalt Plants having Night Operations in Residential Areas. Mr. Branch explained that none of those plants has a barrier such as the one that they are proposing.

Mr. Lambros asked about the production of material for a turnpike job as opposed to commercial and residential jobs. Mr. Branch stated that at nighttime, you are making one mix continually for the larger job and during the day, you may be making different mixes to accommodate client's different needs. Discussing larger jobs such as the turnpike, economically, it is feasible to get the product closer geographically to the job.

Mr. Lambros asked if Mr. Branch presented to the residents the same exhibits and presentation that they are presenting to the Board. Mr. Branch stated that this is same presentation that they presented to the residents. Mr. Branch stated 53 invitations were hand-delivered and 40 residents attended. He offered that he was not sure of the breakdown but felt that there was a good representation of the neighborhood.

Mr. Frost asked if at any point would it be feasible to pick a different location strategically placed but not impinging upon people and their homes. Mr. Mehr stated that this plant has been in place for over 40 years and starting with a virgin property would be difficult.

Mr. Branch stated that they had an opportunity to remove the two houses at the corner and put in a dedicated driveway to handle the truck traffic. He stated that this opportunity was not available to them early on.

Mr. Branch stated that asphalt plants today go under a general permit by the NJDEP and are required to be tested quarterly. He stated that two (2) discharge points

permitted along the river and he explained the procedure. This quarterly testing has been in place since the beginning of the operation of the plant. Mr. Branch stated that the NJDEP continuously looks at permits and requires more stringent testing be performed in accordance with what is required. Mr. Branch has been at the Stavola plant since 2003 and they have not been in violation.

Referring to an Exhibit, Mr. Branch points to the two discharge points explaining what would be tested and discussed that the parameters are below the detectable limit. All asphalt plants are under the general DEP permit. The plant has the findings tested by a lab. They test for total suspended solids, total dissolved solids, oxygen demand and petroleum hydrocarbons, total lead, diesel oil, chromium, benzene, etc. These are elements found in the product produced by the plant.

Mr. Branch explained the method of detecting the parameters.

Board Engineer Matt Shafai asked if the Township gets copies of this testing and Mr. Branch advised that they are all online. NJDEP data miner is the website.

The applicant stated that they have not had any NJDEP violations to date and with improvements, they will make it a better site.

It was discussed that AC Cement is the product used in the manufacturing of the asphalt is delivered hot and is considered a liquid. Mr. Branch explained how they produce the final product and the materials that are used. He explained what is done if there is asphalt spilled on the ground. Cleanup is done on a regular basis.

Mr. Barthelmes asked about resident concerns presented to Mr. Branch. He stated that last summer he had one resident he was in contact with via text message communication regarding a trucking firm that delivered stone from the Stavola quarry. Mr. Branch advised the trucking firm that they would not work for Stavola if this did not stop the banging. He had one or two other calls last summer and then the call one week ago which he explained earlier. Mr. Branch had calls from approximately four parties last year.

Attorney Vella advised that Engineer Peter Strong was already sworn in and is still under oath.

Mr. Strong was asked how many cubic yards of materials does it take to build the berm. He advised that it takes 55,000 to 60,000 cubic yards. He stated that the soil would be clean as it comes from Stavola's own mine. All virgin material is used and has been tested. Mr. Mehr stated that the materials will be certified clean.

Traffic was discussed. Mr. Strong stated that he did not know if Bergen Mills and Old Bergen Mills Road would be turned off to truck traffic. The Township owns the roads

and they would have a say as well as an advisory NJDOT. Mr. Strong explained that Stavola can stack 12 to 15 trucks. Mr. Strong advised that they can monitor stacking.

They can direct traffic out onto Route 33 and Perrineville Road, which is a County Road to stay off Bergen Mills and Old Bergen Mills Roads.

Mr. Lambros asked about Lot 3 whether it was permitted to be used for stockpiles. Attorney Vella looked at this and was not certain. He stated that since 1972, Stavola had been utilizing the entire site. If they were using Lot 3 improperly, that would be the Township and Code enforcement to address this.

Landscape Architect Rick Wiener was sworn in. Mr. Wiener is a New Jersey Licensed Landscape Architect and a principal at Crest Engineering and has appeared before the Board in the past and he is accepted as an expert.

Mr. Wiener stated that he participated in the landscaping portion of this project. He explained what the proposal is. He advised that this is a conceptual plan at this point. He explained that it was a difficult site due to the slopes.

Marked into evidence, A-19, Root Ball Planting Exhibit prepared by Rick Wiener of Crest Engineering

Referring to the Exhibit, Mr. Wiener explains the root ball planting as it relates to the health of the tree. He stated that they must utilize smaller trees and bare root trees because they must deal with the slope. They plan is to plant evergreens on the top of the berm where there is an eight (8) foot fence. The slopes will be stabilized with grasses. Mr. Wiener stated that an irrigation system is critical until the root system is established.

Mr. Mehr offered that they will build that irrigation system into the slopes.

Typically, 3 to 1 slope can accommodate mowing. When asked about the berm base and pitch, Mr. Wiener offered that the berm base is 70 to 80 feet. He explained the difficulty in planting root balled trees.

At 9:05 p.m., the Board took a break, returning at 9:20 p.m.

Attorney Vella swore in Edward Potenta of Potenta Environmental Consultants. He presented his credentials stating that he is the owner of Potenta Environmental for the past 22 years. He has 35 years experience and he is a noise control engineer. He received his BS in Civil Engineering from Rutgers and his Master from NJIT. Mr. Mehr submitted Mr. Potenta's CV to the Board.

The Board accepts Mr. Potenta as an expert.

Mr. Potenta looked at the existing plant operations to determine what sound levels would be during night operation. He identified the key sources of noise as being delivery trucks, front loaders, and skid steer loaders both at grade level and at elevated levels. Mr. Potenta looked to analyze the sound levels associated with these activities. Mr. Potenta in reviewing the proposed berms, added supplemental berming along Bergen Mills Road and perimeter berms. He explained the purpose of the perimeter berms.

Addressing the state regulations. Mr. Potenta stated the maximum sound nighttime standard for the plant is 50 decibels, which he explained is the equivalent of two people, standing three feet apart, at the property line, whispering to each other. The standard is very stringent that the facility has to comply with.

He summarized what he found and how the site will comply with the 50-decibel standard. Mr. Potenta stated that they looked at the residential neighborhood. Referring to Exhibit A-21 Mounted Aerial with Residential Receptors prepared by Crest Engineering.

Mr. Potenta presented that he selected the residents closest to the plant. Existing facility vs. proposed nighttime facility activity. He looked at noise levels generated by the plant itself. He stated that sound level meter noise levels change depending on what side of the site you are at. He took measurements at three locations at the Arrowhead Way community. Mr. Potenta took the noise levels with the berms in place. He stated that the berm along Bergen Mills Road, the earth part is 20 ft. height with an 8-foot fence on top of that. The sound wall is then 28 feet high.

He calculated noise levels at all 11 residences as shown on the Exhibit A-21. The berms were designed with this information so this site would comply with the 50 decibels or below.

Mr. Potenta reported that he did evaluate the effect from banging truck tailgate. He stated that is an impact sound. He reported the State standard is 80 decibels. Mr. Potenta took measurements of a truck performing this banging and he stated that the 80-decibel standard is exceeded within 40 feet of the truck after that you are below 80.

He stated that the proposed berm should eliminate the noise. Engine braking is used by trucks for steep slopes. There is no reason for them using that braking on the site. Millstone Township also has an Ordinance prohibiting this engine braking.

Slow speed trucks will maneuver on site and there would be no need for the Engine Brake. In the local ordinance, he stated that the indoor sound level standard is 40 decibels. Mr. Potenta feels that he has shown that the plant could operate at night with the proposed berm in place and not cause any problem to the residents.

There is no proposed change in the existing equipment.

Mr. Potenta stated that they realize there are odors connected to the asphalt plant. He explained the pollution removal equipment is operating properly. They have to monitor their operations daily, keeping records that are submitted to the NJDEP quarterly. The maintenance plan requires record keeping under best management practices, which NJDEP monitors. There is rigorous annual testing for emissions and he explains. Mr. Potenta stated that the plume coming from the bag house is due to water condensation, a result of the drying process. He stated that that process is permitted by the NJDEP. The plume is super heated air and it will be visible. This takes place after the bag house is cleaned.

There are odors and Mr. Potenta explained. The elevator conveyor that is going to the silos is covered but is not airtight. He feels the berm will help dissipate the odors. There are some odors coming from the trucks carrying material but they will be utilizing a new driveway to Route 33 and that will help with those odors.

Mr. Potenta advised that he had taken these measurements October in 2015 and at night after 10:00 p.m. until 3 or 4:00 a.m. He stated that he jumped around to different receptors. At the time when background noises would be expected to be low, after 10 p.m. until 3-4 a.m. He discussed the existing ambient noises stating that each one is individual under table 2 in his report. Mr. Potenta explained his report. He offered that a decibel is a form of measuring sound in a way that can be equated to how humans respond to noise levels. He stated that it is a complex mathematical calculation. Frequency and sound was discussed.

Mr. Frost offered that there are variables when taking sound measurements and it is not just about measuring decibels. He offered that everyone hears sound differently, depending upon the frequency, air temperature that affects density of the air. Mr. Frost suggested that if you are going to perform a sound study, there is equipment that monitors sound over a period recording the highest and lowest number providing you with a reliable number.

Mr. Potenta explained the formula used. The NJDEP has center band frequencies that they met. Mr. Potenta advised that he took measurements of the plant itself all within 100 meters from the source. He explained that that reading is then taken to calculate the effects to the residents and he explained what they could expect to hear. He complied with all of the standards set within the administrative code.

Chairman Novellino asked Mr. Potenta if this plant were approved to operate at night, would any resident hear more noise from this proposed project than they would hear tonight or any night.

Mr. Potenta advised that there would be a slight increase but the decibels are all under 50.

Attorney Vella asked about his findings. He asked if Mr. Potenta tested the same receptors when the plant was operating during the daytime. The Board noted that Mr. Potenta did not explain how they are stopping the sounds. They wanted information as to where the noise was created on the site today.

Mr. Potenta has that material to provide and was waiting for the site plan phase. Attorney Vella felt it was important for the Board to know today what the impact of the operation would be and not at a potential site plan phase.

The Board noted that he did not include in his report the impact to these residents with the addition of 100 trucks coming between 9:00 p.m. and 4:00 a.m.

Mr. Potenta took his measurements during the daytime when the plant was in full operation at the corner of Old Bergen Mills Road and Bergen Mills Road. The noise level was below 65 decibels and the daytime standard is 65 decibels. Mr. Potenta stated that it would reduce approximately 20 decibels when the berm and fence are installed. The Board discussed.

At 10:35 p.m., Chairman Novellino opened the application to the public.

Sean Kilcomons, 17 Winding Creek Drive. Mr. Kilcomons stated that he was not in attendance at the last meeting. He stated that when he bought his house, he knew the Stavola plant was there. He stated that they are a great neighbor. He explained that when he has a complaint, he calls Tom Branch. Mr. Kilcomons is located where he can hear the plant starting up in the morning. He stated that he trusts the Company. He stated that they have a street sweeper that sweeps the streets. They did run at night one summer and he stated that he had no problem sleeping through that night job with his windows open. He stated that he did not hear the operation.

Dorothy Sluzas, 7 Arrowhead. Ms. Sluzas disagreed with Mr. Kilcomons. She had a few points she wished to cover. She stated that this rural community is focused on the quality of life with the residents. She asked what recourse they have if a decision is made and it does not go the way that it is planned. Ms. Sluzas did compliment Mr. Branch who provided his cell phone number for the residents to call him if something should arise. She stated that he goes beyond to try to address her concerns. She stated that it is nearly impossible to control the noise because you are dealing with human beings. She felt that the variables of noise and smells are enough to make lives more difficult. She accepts it during the day but not at night. She feels it will have an impact of them.

Ms. Sluzas stated that the nighttime highway traffic noise could be heard. She referred to the nighttime operation as unwanted noise. She feels the plant operations will be continuous noise.

Brian Lourenco, 12 Arrowhead Way. Mr. Lourenco advised that he has spoken to Mr. Branch on several occasions. He questioned if a double berm would be better. Mr. Potenta advised that one earthen berm is the most effective way to get rid of noise.

James Whitney, 31 Indian Path. Mr. Whitney is concerned regarding water quality. A great concern more specifically is odor. He advised that he smelled the plant last Tuesday at 6:45 a.m. There is not to be any emission of odors or gases and he cited the Township Ordinance.

Edward DiFiglia – Stony Brook Millstone Watershed Association had questions concerning the NJDEP. He advised that the NJDEP had cited the plant. Mr. DiFiglia stated that they had shared the May 2007 formal infraction that was made against the site. Mr. Branch advised that he would look into this further.

Seeing no further public comment at this time, Attorney Vella announced that this application would be carried to the June 22, 2016 meeting without any further noticing required. The applicant provided an extension of time through June 30, 2016.

Seeing no new business or old business, at 11:30 p.m., Chairman Novellino asked for a Motion to adjourn the meeting. Made a Motion and offered a Second and by unanimous vote, the meeting adjourned.

Respectfully Submitted,

Pamela D'Andrea