

Township of Hillsborough – BOARD OF ADJUSTMENT

APPROVED Meeting Minutes

November 1, 2023 – 7:00 pm

Chairman Herbert called the November 1, 2023, Board of Adjustment meeting to order and led the flag salute.

NOTICE OF MEETING

Chairman Herbert announced the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 (“Sunshine Law”). Notice of the 2023 Annual Meeting Schedule and additional meeting dates have been provided to the officially designated newspapers, the Township Clerk, posted on the Township’s website and available at the Hillsborough Township Municipal Complex.

Application documents have been made available on the Township’s website

<https://hillsboroughnj.civicclerk.com/> .

Complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

ROLL CALL

Frank Herbert, *Chairman* - Present
John Stamler - *Absent*
Helen Haines - *Absent*
Jarrett Dewelde - Present
Catherin Payne - Present

Jim Wohlmacher, *Vice Chairman* - Present
Frank Valcheck - Present
Tom Ramsey (*Alt#1*)- *Late arrival*
VACANT (*Alt#2*) - Present

Also in attendance: Marcella McLaughlin, *Zoning Officer/Board Secretary*; Mark Anderson, Esq., *Board Attorney* (Woolson Anderson Peach, P.C.) William Willard, Esq., *Township Attorney* (DiFrancesco Bateman Kunzman); Mark Mayhew, PE, CME, *Board Engineer* (Pennoni Associates); Michael Lombardozzi, CRS, CCR, *Board Court Reporter*.

CONSIDERATION OF MEETING MINUTES

- **September 6, 2023**, regular meeting
 - There was a motion by Ms. Payne to approve the minutes as written, seconded by Vice Chairman Wohlmacher. All were in favor, none opposed, motion carries.
- **September 20, 2023**, regular meeting
 - There was a motion by Ms. Payne to approve the minutes as written, seconded by Vice Chairman Wohlmacher. All were in favor, none opposed, motion carries.

CONSIDERATION OF RESOLUTIONS

- **Michael and Marie Avolio – BA-23-07** (revised to correct the lot size)
Chairman Herbert states it was revised to make a minor change.

Ms. Payne motions to approve, seconded by Mr. Valcheck.

Roll Call:

Yes - Mr. Ramsey
Yes - Mr. Dewelde
Yes - Ms. Payne

Yes - Mr. Valcheck
Yes - Vice Chairman Wohlmacher
Yes - Chairman Herbert

Motion carries

BOARD OF ADJUSTMENT BUSINESS

- **Midwest Storage Developers – BA-23-01** – Withdrawal of Application without prejudice effective 10/20/2023
 - 1) Chairman Herbert asks Ms. McLaughlin to update the Board about the withdrawal of the application.
 - 2) Ms. McLaughlin states the after conducting more environmental studies the applicant concluded it was not worth pursuing.
 - 3) Ms. Payne made a motion to withdrawal the application without prejudice effective 10/20/2023, seconded by Vice Chairman Wohlmacher. All were in favor, none opposed, motion carries.

BUSINESS FROM THE FLOOR

(Open to public comment for matters not on the agenda)

None

PUBLIC HEARING - APPLICATIONS

- **Nilesh and Parul Bhatti – File BA-23-21** (TOD 12/29/23) Block 175.17 (Previously Block 175), Lot 15.04 – 3 Danburry Drive, Hillsborough Township. Applicants seeking one :c: variance for rear yard setback for a deck where a 40” rear yard setback is required and proposed is 6.25’ in the R/Residential Zone. ***Legal Notice was not published – Applicant will be rescheduled to a future date - TBD***

Ms. Payne motions to reschedule to December 6, 2023, with notice, seconded by Vice Chairman Wohlmacher.

Roll Call:

Yes - Mr. Ramsey
Yes - Mr. Dewelde
Yes - Ms. Payne

Yes - Mr. Valcheck
Yes - Vice Chairman Wohlmacher
Yes - Chairman Herbert

Motion carries

- **Meredith Ramsey – BA-23-10** (TOD 11/20/23) – Block 204, Lot 7.11 – 198 Fairfield Lane, Hillsborough Township. Applicant requests one “c” variance for relief from impervious coverage to construct a concrete patio and walkway associated with a new in-ground pool – where 10% impervious coverage is permitted, 11.9% currently exists and 13.9% is proposed on property located in the RA/Residential Agricultural Zone. ***Carried from the September 20, 2023, Agenda with Notice.***
 - 1) Chairman Herbert states he recuses himself from this discussion and hands the meeting over to Vice Chairman Wohlmacher.
 - 2) **Matt Flynn** attorney, with Savo Schalk Law Offices, for the applicant introduces himself and the application.
 - 3) Mr. Flynn explains they are re-noticing for 13.9% impervious coverage. He states they will be relying on the testimony presented at the previous meeting.
 - 4) **Michael Ford**, Civil Engineer, introduces himself and takes the Board through the changes which required the re-notice.

- 5) Mr. Ford states the small walk-way and porch have been included in the calculations.
- 6) Mr. Flynn asks other than that calculation change has the proposal changed in any other way.
- 7) Mr. Ford states it has not.
- 8) There are no questions from the Board.
- 9) Vice Chairman Wohlmacher opens up to questions from the public.
- 10) **Susan Gulliford**, 7 Hunt Club Road, asks about storm water management across the street.
- 11) Mr. Ford states this project drains to the rear of the property so it would have no impact on storm water management across the street at the front of the property.
- 12) Ms. Gulliford asks the size of the proposed patio.
- 13) Mr. Ford states it is about 14 feet.
- 14) No further questions from the public.
- 15) Mr. Flynn states the applicant is asking for one variance as it relates to impervious coverage, prosing 13.9% with 10% permitted in the zone.
- 16) There is no further discussion from the Board or statements from the public.

Ms. Payne motions to approve, seconded by Mr. Valcheck.

Roll Call:

Yes - Mr. Dewelde

Yes - Mr. Valcheck

Yes - Ms. Payne

Yes - Vice Chairman Wohlmacher

Recused - Chairman Herbert

Motion carries

- **Steven & Erica Glowinski – BA-23-09** (TOD 11/29/23) – Block 203.15, Lot 11 – 11 Regina Drive, Hillsborough Township. Applicant requests one “c” variance for relief from impervious coverage – where 15% impervious coverage is permitted, 14.79% currently exists, and 17.7% is proposed to construct an in-ground pool and associated patio on property located in the “R”/Residential Zone. **Rescheduled from the September 20, 2023 agenda due to notice deficiency.**

- 1) Steve Glowinski, property owner, is sworn in.
- 2) Mr. Glowinski explains they are looking for a variance for the increased impervious coverage and storm tech chambers to control the capture recharge. He states their calculations may be excessive and need to be readjusted.
- 3) Mr. Glowinski addresses comments by stating the lot size is correct, the impervious surface coverage is currently 14.8% and by adding the patio & walkway it will come up to 17.7%. They are going to work with the engineers to correct the calculations for the storm capture and recharge. He states they have received a permit from the Somerset Union Soil Conservation District.
- 4) Mr. Glowinski states they will comply with Township Section 188-52 along with the Conservation District’s plan approval.
- 5) Mr. Mayhew confirms the calculations issue and suggests a condition that the applicant be permitted to work with their office to provide the necessary underground storage. He has no other concerns.
- 6) There are no other questions from the Board.
- 7) Chairman Herbert opens to public question and statement.
- 8) There are none.

9) There is no further discussion from the Board.

Ms. Payne motions to approve with the condition their storm water management is approved by the Board Engineer, seconded by Vice Chairman Wohlmacher.

Roll Call:

Yes - Mr. Dewelde

Yes - Ms. Payne

Yes - Mr. Valcheck

Yes - Vice Chairman Wohlmacher

Yes - Chairman Herbert

Motion carries

- **Sandeep & Hetal Patel – File BA-23-13** (TOD 12/21/23) Block 207.09, Lot 1 – 8 Jamieson Way, Hillsborough Township. Applicants are seeking one “c” variance for relief from impervious coverage where 15% is permitted and 12.3% currently exists and 17.4% is proposed for a new 1,800 sf. paver patio; a new 79-sf. walkway from driveway to new patio; a 420-sf. driveway expansion; and placement of a 192-sf. shed within permitted setback on property located in the R/Residential Zone.

- 1) Hetal Patel is sworn in and explains the details of their application.
- 2) Ms. Patel states the current impervious coverage is 12.3% and looking to expand to 17.4%.
- 3) Mr. Mayhew, in reference to the October 23, 2023, letter, asks for confirmation of area of the paver patio vs the dimensions on the plan as it did not add up to what is shown. He is concerned they are asking for more than what they need based on the dimensions.
- 4) Ms. Patel states they do not have a contractor yet.
- 5) Mr. Mayhew suggests a condition that the dimensions be listed on the construction permit when submitted to allow the construction office to verify if the area of the patio is less than or equal to what the Board will grant.
- 6) Mr. Anderson concurs with this suggested condition.
- 7) Ms. McLaughlin states the construction office would not be privy to this discussion so she would have to sign off on the permit jacket.
- 8) Mr. Mayhew clarifies for Ms. Patel that if she receives an approval there will be conditions and she will need to submit a revised plan back to the Township to make sure it conforms with the approval she received.
- 9) Ms. Patel asks if she needs to include more dimensions.
- 10) Mr. Mayhew states yes.
- 11) Ms. McLaughlin explains it will be handled during Resolution compliance and she will receive a letter after her approval explaining everything she needs to do.
- 12) Mr. Mayhew asks for more explanation of the proposed curved stone around the driveway.
- 13) Ms. Patel states they are not touching the concrete walkway or the entrance. They are only working on the sides of the blacktop area; edging the driveway with stone pavers.
- 14) Mr. Mayhew asks if the paver stone will be level with the asphalt driveway paving or will it be vertical. Mr. Mayhew states they are trying to avoid putting street-like curbing on her driveway.
- 15) Ms. Patel offers a picture she has.

- 16) Mr. Mayhew states for the Board's benefit the picture appears to show an angled curvature. He asks if she would be against having that flat so as not to interrupt the direction of runoff across the driveway of her property.
- 17) Ms. Patel states no. They are just trying to avoid getting mulch on the driveway.
- 18) Mr. Mayhew explains for the Board's benefit they are trying to avoid concentrating the flow on the driveway as if it was a road with curves. He recommends keeping this product level with the driveway and grass.
- 19) Ms. McLaughlin explains what the proposal is currently showing is almost concave and it channels, they do not want that happening.
- 20) Mr. Mayhew ask for clarification of the width for the 'pull-out area', the area in front of the garage doors. He recommends adding this measurement to the compliance drawing.
- 21) Mr. Mayhew suggests BMP be added to capture just the excess above the zoning allowable.
- 22) Chairman Herbert clarifies to capture the additional water runoff.
- 23) Mr. Mayhew gives some examples for capture.
- 24) Ms. Payne asks if the wooden deck of to the side will remain.
- 25) Ms. Patel states no it will be replaced.
- 26) Ms. Payne asks if it will be replaced by wood.
- 27) Ms. Patel states it will be all pavers.
- 28) Ms. Payne asks if it is a gravel driveway and how many feet they will be coming back from the driveway.
- 29) Ms. Patel states it is a black-top driveway and five feet.
- 30) Ms. Payne asks the reasoning for the five feet.
- 31) Ms. Patel explains it will allow her space to turn her vehicle around after backing out of the garage.
- 32) Ms. Payne asks what the current width of the driveway is.
- 33) Ms. Patel estimates 20 feet stating it is narrow.
- 34) Chairman Herbert asks if this information changes the calculations.
- 35) Ms. Payne states it does not change the calculations but rather she was asking for clarity on the existing conditions and why she is looking to expand the driveway. She is on-board with the paver area but not with the driveway.
- 36) Chairman Herbert opens to public questions.
- 37) There are no questions from the public.
- 38) Chairman Herbert opens to public comment.
- 39) There is no public comment.
- 40) Chairman Herbert calls for Board's final discussion and motion.
- 41) Mr. Anderson reviews the suggested recommendations.

Vice Chairman Wohlmacher motions to approve with discussed recommendations, seconded by Mr. Dewelde.

Roll Call:

Yes - Mr. Dewelde
No - Ms. Payne

Yes - Mr. Valcheck
Yes - Vice Chairman Wohlmacher
Yes - Chairman Herbert

Motion carries

Chairman Herbert calls a five-minute recess at 7:38 pm.

Chairman Herbert reconvenes the meeting at 7:44 pm.

Chairman Herbert announces Mr. Ramsey arrived to the meeting.

- **Hillsborough RB LLC (Block 201, Lot 1)** – File BA-23-15 APPEAL (Ref: 23-PB-10-MS/MSP) – Applicant seeking APPEAL of the Zoning Administrative Officer’s decision on completeness of the land development application submitted to the Planning Board under file 23-PB-10-MS/MSP, seeking preliminary major subdivision; preliminary major site plan; and waivers. Application file 23-PB-10-MS/MSP was deemed “incomplete” on July 27, 2023 in the LI, Light Industrial Zoning District.

***Participants:** Damien Del Duca, Esq., Del Duca Lewis & Berr, LLC – applicant’s attorney; Brett Skapinetz, PE, PP of Dynamic Engineering – applicant’s engineer; and Corey Chase of Dynamic Traffic.*

- 1) **Damien Del Duca**, attorney to the applicant, introduces himself.
- 2) **Bill Willard**, attorney on behalf of the township of Hillsborough, introduces himself.
- 3) Mr. Del Duca distributes copies of Exhibits A1-A6 stating each of the exhibits are part of the submitted application.
- 4) Mr. Del Duca summarizes the details of the application. He states they are appealing Mr. Kois’ decision which deemed the application incomplete. Mr. Del Duca will argue the application is complete.
- 5) Mr. Del Duca reviews Exhibits A1-A4.
- 6) Mr. Del Duca references Ordinance 2023-8, adopted on June 13, 2023, which prohibited warehouses as an acceptable use in all zoning districts in Hillsborough.
- 7) Mr. Del Duca reviews section 10.5 of the Municipal Land Use Law which states the development regulations in effect on the date of submission of an application for development shall govern the review of that application for development; any provisions of an ordinance except those relating to health and public safety that are adopted after the date of submission of an application for development shall not be applicable to that application for development.
- 8) Mr. Del Duca reviews Exhibits A5 and A6. He they did not receive a response to their letter, exhibit A6, date August 15, 2023.
- 9) Mr. Del Duca states on August 16, 2023 the applicant filed their appeal, which is part of this record and not a separate exhibit.
- 10) Mr. Anderson states to his observation the copy of Exhibit 5 Mr. Del Duca distributed is not complete, there appears to be missing pages. He considers this an oversight but not reflecting what is in the record or on Civic Clerk.
- 11) Mr. Del Duca agrees it is a copying oversight.
- 12) Mr. Del Duca states section 72 of the Land Use law permits any party affected by the decision of an administrative officer of the municipality to appeal the ruling. He states the applicant has filed an action in Superior Court against Ordinance 2023-8 and a separate action challenging Mr. Kois’ completeness determination, seeking an order declaring the Planning Board application is complete and must be scheduled for a public hearing. Both actions are pending in Superior Court in Somerset County.

- 13) Mr. Del Duca states the decision before the Board this evening is whether Mr. Kois decision to determine the application to be incomplete should be affirmed or reversed and not to determine if a warehouse should be approved at this location.
- 14) Mr. Del Duca states the witnesses they intended to present, a traffic engineer and a professional planner, but was informed by Mr. Anderson prior to the meeting the Board of Adjustments will not permit any testimony by or on behalf of the applicant as appeals are based on the information available to the person making the initial decision.
- 15) Mr. Del Duca states, for the record, he disagrees with Mr. Anderson's position and objects to the determination. They are not aware of any other authority that reflects this position. He references the seminal case on completeness in NJ, Dunbar Holmes vs Franklin Township. Mr. Del Duca states they will proceed without testimony.
- 16) Mr. Anderson confirms Mr. Del Duca relayed his opinion correctly and elaborates on his opinion.
- 17) Mr. Del Duca states there are two reasons why Mr. Kois' determination was incorrect; Mr. Kois was not an authorize designee of the Planning Board to determine completeness and had Mr. Kois had the proper authority, his five-stated-reasons for incompleteness were incorrect.
- 18) Mr. Del Duca states neither the township's ordinance or the procedures adopted into place by the Planning Board vest Mr. Kois with the authority to certify Planning Board applications as complete or incomplete. He reads a portion of section 188-28b1 of the Ordinance into the record. He states it is the Planning Board who is vested with this authority, not Mr. Kois.
- 19) Mr. Del Duca states on August 9, 2023 they submitted an OPRA request, Exhibit A9, asking the township to provide them with any and all resolutions designating or authorizing any person or committee to certify the completeness of applications. He states the response did not include any such resolution but did include a series of resolutions and the Administrative Procedures of the Planning Board as well as Zoning Board bylaws and ordinance provisions which relate to the Planning Board's authority and powers.
- 20) Ms. Haines states they do not have a copy of Exhibit A9.
- 21) Mr. Del Duca passes out copies of Exhibits A7-10 and states the OPRA request response is Exhibit A10.
- 22) Mr. Anderson states this is an appeal under 40:55D-70A. He states this Board has considerable jurisdiction over who gets to decide. He states it is his understanding part of the Superior Court action is challenging Mr. Kois' authority.
- 23) Chairman Herbert asks if they are challenging his authority here or just in court.
- 24) Mr. Del Duca states they are challenging his authority to determine completeness as the authorized designee of the Planning Board as they see no evidence, he has been so authorized.
- 25) Chairman Herbert asks for clarification on what is being asked of the Board.
- 26) Mr. Del Duca states the issue is whether Mr. Kois properly determined the Planning Board application to be incomplete and if he had the authority to do so. It is the applicant's belief the application is complete by default.
- 27) Mr. Del Duca reviews Exhibit A10 pointing out reference to their discovery of the bylaws of the Board of Adjustments which do designate Mr. Kois to make completeness determinations for this Board.

- 28) Mr. Del Duca states as a matter of law under section 10.3 of the Land Use Law the application was complete on day 46. He states if the Board agrees with this determination, then there will be no reason for him to review Mr. Kois' five-reasons for incompleteness.
- 29) Mr. Anderson recommends the Board decide if they would like Mr. Willard to address the issue first.
- 30) Chairman Herbert states they do need Mr. Willard to address the issue.
- 31) Mr. Willard states he disagrees with council. He states the procedure has always been, after an application is filed it goes to the Planning & Zoning Department where it is reviewed by the Planner, the Zoning Officer, and the Township Engineer. Once reviewed the Planning Director issues a memo of completeness.
- 32) Mr. Willard reads Township Ordinance 188-27-BF into the record.
- 33) Mr. Willard reads into the record the definition of the Development Review Committee found in the Administrative Procedure. It states the Development Review Committee is made up of professional staff including the Township Engineer, the Township Planner and the Township Zoning Officer and other Township professionals as needed.
- 34) Mr. Anderson reviews the options before the Board.
- 35) Mr. Del Duca replies stating he did not hear Mr. Willard state where the Planning Board designated Mr. Kois, in any capacity, to review completeness. He believes it cannot be inferred or implied. He believes the applicant is protected by Section 10.3.
- 36) Chairman Herbert and Mr. Anderson agree to move forward hearing review of the Five Points from Mr. Kois' letter dated July 27, 2023.
- 37) Mr. Del Duca points out Mr. Kois' comments are embedded in their response letter which is Exhibit A-6.
- 38) Mr. Del Duca begins with the first issue in Mr. Kois' letter and reads it into the record. He explains one of the submitted sheets is on an 80 scale for the purpose of fitting onto one page verse the required 40 scale. Mr. Del Duca reads the Ordinance to show support.
- 39) There is a discussion between Mr. Anders, Chairman Herbert, and Mr. Del Duca regarding if and when the Board should hear responses from Mr. Kois.
- 40) Mr. Del Duca asks for confirmation Mr. Kois is not present.
- 41) Mr. Anderson confirms.
- 42) Mr. Del Duca objects to Mr. Kois' absence and requests for the Board to adjourn until Mr. Kois can be present.
- 43) Chairman Herbert states they will not do that.
- 44) Mr. Del Duca continues with his testimony. He states the applicant stated the intent of the application as required. He states the applicant should not have been expected to define what the application is not going to be.
- 45) Mr. Del Duca reviews issue number three, parking breakdown. He states no provision was provided in the checklist or ordinance supporting his remarks. He states per the Dunbar case, it does not require review of each submission to determine a meaningful review can be undertaken. Mr. Del Duca reviews checklist item N12, in Exhibit A-2.
- 46) Mr. Del Duca reviewed Exhibits A-11 and Exhibit A-2
- 47) Mr. Del Duca states they believe DOT approval is not required but their traffic engineers applied for a Letter of No Interest; DOT determined a Lot Subdivision Permit, a type of access permit, is required. He states the subdivision application cannot be submitted until after they receive municipal approval of the subdivision.

- Mr. Del Duca refers to Exhibit A-8 which is the Lot Consolidation Application along with its checklist.
- 48) Mr. Del Duca reads into the record and excerpt from 'Supreme Court V Dunbar'
 - 49) Mr. Del Duca states when consolidating two lots is done by recording the deed which does not require municipal approval. He states this is why it is a either or situation.
 - 50) Ms. Payne asks if that is asking for the deed before or after the subdivision.
 - 51) Mr. Del Duca states it is asking for a deed related to lot consolidation. Mr. Del Duca reads it into the record.
 - 52) Ms. Payne asks for confirmation if they have the deed to the property.
 - 53) Mr. Del Duca states his client has the deed/title to the property, but he does not have the deed that consolidates the lots which is the deed to which the application references. He states providing a deed for the property does not indicate consolidation or subdivision has occurred which is the purpose of number 18.
 - 54) Chairman Herbert states if Mr. Del Duca's response has a typo since he refers to NJc-1647 6-1 while in Mr. Kois' response he referred to NJc-1647 8-1.
 - 55) Mr. Del Duca states it is not and reads a portion from each into the record and reminds at this point in the application they are proposing to subdivide lots. He states it was not a typo but rather two different codes.
 - 56) Chairman Herbert asks if he is disputing Mr. Kois' statement.
 - 57) Mr. Del Duca states they are not disputing NJ DOT has told them that a lot subdivision permit, which is a type of access permit, is required in order to subdivide this lot.
 - 58) Mr. Del Duca states what they are saying is that the application for the lot subdivision permit requires inclusion of local approval of the subdivision which must occur before DOT approval otherwise the application to the DOT is incomplete.
 - 59) Ms. Payne states today it is a farm on hwy 206 and the code states if there is a land lot being used with access to a highway, then the DOT needs to be informed. She asks if she is misinterpreting that.
 - 60) Mr. Del Duca states that is not exactly what it says and the DOT has confirmed in order to subdivide this list, on a state highway even though the lot line is parallel to the state highway and does not create additional lots along the state highway, a lot subdivision permit is still needed.
 - 61) Mr. Del Duca states he believes the township cannot force them to file an incomplete application with the DOT.
 - 62) Chairman Herbert asks if they are expanding the Use of the property.
 - 63) Mr. Del Duca states they are changing the Use. He explains an expansion would be of the same Use and, for example, making it larger but they are proposing to change it from farmland to a warehouse.
 - 64) Chairman Herbert reads .3 into the record and asks if that would be the reason the DOT would want to know about this.
 - 65) Mr. Del Duca states that is not the reason they sited.
 - 66) Mr. Del Duca continues by distributing and reviewing Exhibit A-7 which is DOT's response to the Letter of No Interest request submitted by Traffic and dated August 31, 2023 and was received after Mr. Kois' determination.
 - 67) Mr. Willard states the Board is taking the position that anything outside the record which Mr. Kois did not have should not be part of the hearing but feels he is in a Catch-22 position.

- 68) Mr. Del Duca submits and reviews Exhibit A-12 which is a letter dated October 20, 2023 from his office to Mr. Kois and Ms. McLaughlin which includes a copy of the applicant's letter to the Planning Board.
- 69) Mr. Del Duca moves on to review issue number five. He reads a portion into the record. He states there is no way for them to predict they are required to have a consultation with the Board Engineer about the soil permeability or soil classification unless it is stated in the application checklist.
- 70) Mr. Del Duca states in closing they ask the Zoning Board to do one thing, to reverse Mr. Kois completeness determination, no more, no less.
- 71) Mr. Anderson states he has a question regarding his interpretation of Mr. Kois' incomplete comment on N3.
- 72) Mr. Del Duca states that is how they interpret it. He states they have completed all the requirements as listed in the application forming ordinance. He states it is not a completeness issue.
- 73) Chairman Herbert calls for a 10-minute break.
- 74) Chairman Herbert calls the meeting back into order.
- 75) Mr. Willard explains the history of the Time of Decision rule and Time of Application rule in NJ.
- 76) Mr. Willard reviews the dates of the application process for this application, the Dunbar ruling, and the five items of incompleteness.
- 77) Mr. Willard states the main issues are items four and five. He states he respectfully disagrees with council that issues four and five have been satisfied. And he disagrees they were not required.
- 78) Mr. Willard reads a portion of N.J.A.C.16:47, permit validation into the record.
- 79) Mr. Willard asks the Board to confirm Mr. Kois' decision as reviewed.
- 80) Mr. Anderson ask if it is in the Board's authority to have jurisdiction.
- 81) Mr. Willard states "who else would". Does not know answer.
- 82) Mr. Del Duca states he does not believe the DOT regulations take in totality with the checklist stand for the proposition. He reviews requirements of the soil report and notes they met all requirements. He states though the municipality can require additional testing and though the municipality has specified certain requirements, they meet those requirements. And the information the municipality seeks in comment number five does not give Mr. Kois the authority to render the application incomplete.
- 83) Mr. Del Duca states for the record they have a color copy of a document called Soil Survey Map created by Dynamic Earth dated June 23, 2020, sheet #2 with red hand writing which they are marking into evidence as T-1
- 84) Mr. Willard states for the record the handwriting on the document is not the applicants.
- 85) Mr. Del Duca states they believe their plans and reports address all the requirements of NJE7:8 which is NJDEP stormwater regulations. He states Mr. Skapinetz, who was not permitted to testify, asked he clarify they are not proposing to reclassify the soil, the township is.
- 86) Chairman Herbert states he would like time to process the information given and so they are not prepared to make a decision at this meeting.
- 87) Mr. Anderson recommends a transcript be done.
- 88) There is a discussion about carrying the application to the December 6, 2023, meeting.

89) Ms. Payne motions to carry to the December 6, 2023 meeting without notice, seconded by Mr. Dewelde. All were in favor, none opposed. Motion carries.

ADJOURNMENT

A motion to adjourn was made by Ms. Payne, seconded by Vice Chairman Wohlmacher. Motion carries unanimously.

9:58 pm meeting is adjourned.

*Submitted by Robyn Bittle-Abramo
Recording Secretary*