Shamong Township October 15, 2019

A regular meeting of the Shamong Township Joint Land Use Board was held on the above date at the Municipal Building. The meeting was called to order by Chairman Sweet, at approximately 7:00 P.M.

The Secretary stated that in accordance with the Open Public Meetings Law, notice of this meeting had been published in The Burlington County Times, and posted accordingly.

Pledge of Allegiance was recited.

Roll Call (absentees noted):

Noni Bookbinde-Bell	P	Amy Huber arrived 7:09 pm		Larry Sharrot	P
Michael Cooney	A	Gene Lera	P	James Sweet	P
Dave Diamond, Alt	A	Susan Onorato	P	Barbara Valenzano	P
Michael DiCroce	A	Bonnie Schneider-Alt	P	Kathleen Wigley	A

Also present were Christopher Norman, Esq. and Dante Guzzi, P.E.

On a motion by Mr. Lera, seconded by Mr. Sweet the September 17, 2019 regular and executive session minutes were approved with all Board Members present voting yes except Ms. Huber who was absent for this portion of the meeting.

Application:

Aquaflow Pump & Supply Company – 9 Park Drive (Block 27.01, lot 9.12). Seeking preliminary and final site plan approval and any other variance or waivers noted to the board to construct a 6,200 SF warehouse addition to the rear of the existing warehouse and office building.

Mr. Pat McAndrew, Esq. introduced himself as the representative for the applicant. Mr. Norman swore in the applicant and Bill Nicholson, P.E. - site engineer for the applicant. Bill Nicholson testified on the current conditions of the site and the reviewed illustrations of the proposed addition (Exhibit A-1) a color site plan. Mr. Nicholson stated the addition would primarily be used to store materials and equipment. Mr. Nicholson noted a waiver would be needed as the road frontage is less than required and is a pre-existing condition. Mr. Nicholson stated the site plan allows large trucks and or emergency equipment to access the site. There will be an 8’ X 12’ door between the buildings to be able

to close out the new extension which will not be heated and a man door. The applicant testified there are 6 employees and described the neighboring properties and stated there is limited customer traffic as most traffic would be distributing materials. The building is proposed to be constructed with 16' clearance at the side and therefore the overall height could be approximately 30' tall in center but not higher than what is allowed by Township ordinance.
Ms. Huber joined the meeting at 7:09 pm.
Mr. Nicholson testified regarding the Pinelands Commission Inconsistent Certification of Filing based upon the amendments proposed to the basin.
Mr. Guzzi reviewed his October 7, 2019 report on application for the Board and those present. A bulk of his report addresses Storm Water management issues and reminded the applicant that since no additional employees are planned, there is no need to amend the septic system.
Mr. Nicholson testified upon the drainage of overflow from the basin.
Mr. Norman confirmed there are no variances to be approved, only to verify the road frontage is nonconforming which is a pre-existing condition, the Board is required to approve the site plan.
Mr. Sweet opened the meeting to the public, as there was no comment from the public, the public portion was closed.
On a motion by Mr. Sweet, seconded by Mr. Sharrott the site plan was approved subject to Mr. Guzzi's report, height of building meets township ordinance and the drainage basin meets all requirements of the Pinelands Commission.

Resolutions:
2019-17 Forrest Jennings, 426 Oak Shade Road (block 19.01, lot 12.01) minor subdivision approval to subdivide 17.24-acre lot into three (3) lots.
The subdivision still requires Pinelands Approval and therefore no development can take place on these lots prior to Pinelands Approval.
On a motion by Mr. Sweet, seconded by Mr. Lera resolution 2019-17 was approved with all Board Members present voting yes.

2019-18 Executive Session – Attorney-Client/Litigation Strategy and Personnel Matter (Retaining Special Planner).
On a motion by Mrs. Onorato, seconded by Mr. Sweet resolution 2019-18 was approved with all Board Members present voting yes.

Mrs. Onorato announced to the public that the Board would take no actions during the Executive Session, any actions taken by the Board would only be taken during the public portion of the meeting.

Chairman Sweet opened reconvened the public portion of the meeting at 7:42 pm.

On motion by Mr. Sweet, seconded by Mr. Lera, Tiffany Morrison was hired as a Planner to assist the Board with the Cell Tower case. All Board members present voted yes except Ms. Huber who abstained.

Correspondence:

Secretary Onorato stated all correspondence from the Pinelands Commission had been previously circulated via e-mail to the Board members.

Mr. Sweet opened the meeting to the public.

Eileen Carlos – 109 Indian Mills Road was sworn in by Mr. Norman. Ms. Carlos questioned what qualifications the planner has in valuating properties. Mr. Norman stated that valuation of a property is done by an appraisal not planner. Mr. Norman stated the Board cannot get into the issue of property values and the only condition the applicant cannot meet is it is not on publicly owned property. The use is permitted, and the zoning permits the tower. Mr. Carlos asked for additional information on what a planner does. Mr. Norman stated a Planner role is to evaluate compliance of municipal land use law on a development application, the application was a conditional use, D3 variance, two (2) uses on a seven (7) acre lot and the final variance is to permit a compound larger than permitted. The planner will evaluate the application, master plan, surrounding neighborhood, zoning boundary line in the middle of Oak Shade Road and give advice to the Board. Ms. Carlos asked if the Planner would give the Board advise on 449 Oak Shade Road only. Mr. Norman testified based upon Judge Bookbinders report the Board. Ms. Carlos stated in looking at the application, the municipality gave directions to Verizon on where they can go and the CMP states where the tower can go. Mr. Norman stated he already made that argument to Judge Bookbinder. Ms. Carlos presented her understanding of what took place in the application process. Mr. Norman stated the applicant evaluated 64 sites as well as the Pinelands position on same. Ms. Carlos questioned why there was not an application submitted to the Pinelands Commission on these sites, Mr. Norman stated a pre-meeting with the Pinelands Commission is not an uncommon practice for applicants to seek guidance prior to subjecting themselves to excessive fees from professional and the Pinelands Commission. Mr. Norman refuted Ms. Carlos' concerns of what sites were evaluated. Ms. Carlos suggested another site which was found to be privately

owned and therefore would not meet the requirements of the Township ordinance either. Mr. Guzzi stated the Boards job is to review the site chosen by the applicant. Mr. Sweet confirmed the Board can only consider what is placed before them.
Ms. Carlos stated the Township ordinance stated place the tower on Township property, but the Township did not consider block 8.01 lot 8.02 located in RD1 which the Township owns. Ms. Carlos questioned why the Township does not want to consider this property. Ms. Carlos wants the Board to request a zoning change of the Pinelands Commission for this property. Mr. Norman testified the board's responsibility is only to review the applications before them, nothing else.
Ms. Carlos agreed. The applicant did not comply to looking at all the Township properties as per the ordinance. Mr. Norman stated the applicant researched 64 township owned parcels, which is pretty exhaustive. Ms. Carlos stated there are 125 Township owned properties. Ms. Carlos stated she believes the board should ask the applicant to verify if they have explored every township owned property as a possible location for the Tower, which she believes they have not. Ms. Carlos stated the Pinelands Commission placed in writing that the Township can ask for the Pinelands to change a zone. Mr. Guzzi stated that the Board cannot make that request. Mr. Norman testified a request was made of the Pinelands Commission to provide a waiver for the site and the Pinelands Commission stated they have Deputy Attorney Generals on staff who will work as long as we want and it doesn't cost the Pinelands Commission anything more as they are on staff. The township does not have deep enough pockets for this fight.

Ms. Carlos quoted from a letter to Mayor Long on January 20, 2016 from Larry Ligget of the Pinelands Commission stated the options to change zoning in an area. There was a discussion on the need for the Pinelands Commission to change their position on the RD zone.

Ms. Carlos stated the applicate did not submit application to the Pinelands Commission for the Red Onion Road site. Chairman stated the JLUB is not privy to the discussions the applicant and Township officials may have had and he asked the professionals to correct this if he is wrong stating that is how it works in all towns. Ms. Carlos continued to testify on the need to place the tower on Township land including property on Route 206. The Board and professionals disputed her comments as there was lengthy presentation provided by the applicant's professionals which confirmed the necessity of a cell tower in a specific location to provide service where it is now lacking coverage. This area was specific and approved by the FCC and did not include the Route 206 section of the town. Mr. Guzzi stated the applicant proved the need for service in a specified territory with expert witnesses in the January 2018 to February 2018 meeting. Ms. Carlos stated the applicant comes to Shamong because a gap in coverage is in Medford/Shamong, but the Tower is located in Shamong and only covers the Shamong area. Mrs. Onorato stated this makes no sense as how could they direct radio waves to just stop at the boarder of Shamong.

Ms. Carlos then questioned why Mr. Sharrot could not vote at the last meeting. He stated he could not vote as we have a 7 board and he is an alternate member, when there all full members are present to vote he does not vote. Mr. Norman stated there are 7 members on the Zoning Board and 9 members for the Planning Board applications as this is a joint board. Ms. Carlos questioned why he was permitted to make comments but not vote, which Mr. Norman stated this is permitted.

Ms. Carlos again asked why block 8.01 lot 8.02 was not evaluated. She was again asked to provide the location of this parcel which she did not. She also stated the property was located in the RD-1 zone, which Mr. Norman stated the RD-1 was already turned down by the Pinelands Commission. Mr. Norman stated the Cell towers are a conditional use in the Rural Development Zone which is why can't it be considered in the Red Onion Road area. Mr. Norman believes it might have something to do with the waiver needed for the 35' height restriction, which once the Pinelands Commission approves a waiver for a 35' tower in the RD zone for Shamong it would have to for other communities.
There was a discussion on the location of block 8.01 lot 8.02 which was determined is located on Bunker Hill Road in the Wheat Sheaf Road development and would affect dozens of residential properties as well.

Ms. Carlos requested Mr. Norman to provide a copy of Judge Bookbinder's report.

Diane Wagner – 448 Oak Shade Road testified she is concerned that the Board members will vote on an application which will affect their lives and the Board is not able to change "stuff". If the Tower doesn't fit into the landscape is this an option to deny. Mr. Norman stated that was included in the resolution of denial which Judge Bookbinder stated this was not good enough. Ms. Wagner would like this appealed as Judge Bookbinder has retired and she feels the Board has an obligation to do so. Additionally, she feels the Tower will affect her property value as well as health concerns.
Mr. Norman stated the Judge directed the Board to review and remand the application. Mr. Norman verified for the Board that due to race judicate he would be concerned if the Board denied the application for the same reasons it previously denied it for which may place the Board in contempt of court. Mr. Norman reminded all present that the Board has a responsibility to all the residents of Shamong. Ms. Wagner stated she understands that the rights of the group versus the right of an individual, but this will affect more than 1 or 2 individuals. Ms. Wagner was reminded that the Board already voted against this application.
There was a discussion on what the residents could do to assist with bringing this to the Pinelands Commissions attention previously by the Board and they are again recommended to communicate with the Pinelands Commission on their position

against placing a Tower in the Rural Development area or an area other than the Regional Growth area.
There was a discussion on the amount of authority the Pinelands Commission has within Pinelands Communities. Mrs. Onorato stated the Pinelands Commission often has more authority than the Township Committee has.

Ms. Wagner stated she did not understand the need for an additional tower when a tower exists within 5 miles of the proposed location. There was a discussion on the areas a tower can serve, and the tower located in Atco does not service this area in Shamong as presented by the applicants' expert testimony. Mr. Norman stated many towns would not have fought this appeal as Shamong has. Ms. Wagner would like to see the other locations evaluated. Mr. Norman stated he was stunned that the applicant evaluated 64 sites as most applicants would not have gone to those lengths.

Ms. Wagner is concerned that the towers do not cover 5 miles. Mr. Lera stated that it's a distance and the volume of use that determines the need and location of towers. Mr. Sweet reminded those present that the Board has previously requested residents to reach out to the Pinelands Commission. Mrs. Onorato stated the Board provided a 60-day continuance which provides residents time to research and reach out to the Pinelands Commission around their work schedules.

Mr. Lera stated the shot clock requirement which are a legal requirement of the Board to act on this application.

Mr. Norman testified that since this application has been through litigation the Township now has to pay for their professionals directly, not from the applicant's escrow funds. Additionally, the cost of any experts hired (i.e. planner) will be funded by the Township directly.

Bert Shaff – 28 Wallingford Way questioned where the Pinelands Commission meets – Mr. Guzzi informed him of their location and the Pinelands Commission website was recommended to him. Mr. Shaff stated he does not feel the Pinelands nor the Judge care. Mr. Sweet stated he again recommends residents go to Pinelands directly.

Jim Michalowicz – 8 Candle asked the need for the planner. Mr. Norman stated for a negative criteria considerations; the negative impact on neighborhood, zone plan and Master Plan. Mr. Norman stated unfortunately the zoning change happens to fall in the middle of the street between the homes and commercial properties but does not rely on the effect of property values.

Mr. Michalowicz reported on the Hillsboro Case which Mr. Norman questioned if it was a permitted use in Hillsboro as it is in Shamong and this difference could make a big difference. Mr. Guzzi stated if the township purchased the property (from Opici) the

tower would be allowed. Mr. Sweet stated Hillsboro is not a Pinelands Community as well. The Hillsboro case was reviewed in February of 2019 per Mr. Michalowicz. Mr. Michalowicz asked if there is more the residents can do to help with fighting this case? Mr. Sweet again recommended reaching out to the Pinelands Commission or hire your own professionals.

Mr. Guzzi stated the planner would review all the documentation and make a presentation to the Board for the Board to make their decision. Mr. Sweet stated this is an independent opinion.

The residents and Board reviewed the options already discussed. Mr. Guzzi testified there was a lot of properties reviewed by the Township which were ruled out due to being included on the ROSI (Recreational Open Space Inventory), Green Acres funded property, zoning requirements, wetlands, etc.

Mrs. Onorato stated that a benefit of the Board operating ominously from the Township Committee is the board is not influenced by the Township Committee per State Statue.

Mr. Sweet stated as a taxpayer he personally would prefer the tower was place on township property. If the tower was placed on the rear of the school property it could generate funding to an entry level position within the school.

There was a discussion on the School Boards position on why they did not want the tower. The School Board did not state their reasons to the Board and the School Board was notified of the application via 200' list notices and by the applicant reaching out to them directly.

There was a discussion on the location of the tower being close to the school and if it is going to be located this close to our school the school board should place the tower on its property. The residents were directed to reach out to the school board directly on this. There was also a discussion on the potential revenue generated from a cell tower.

Ms. Carlos stated she had spoken to Keith Carter at the Pinelands Commission who read the ordinance and stated you can put a tower anywhere you want in the Township. Ms. Carlos asked if the Pinelands CPM list the Regional Growth Zone as where they want the Tower. Mr. Norman stated it is the 35' height requirement in Rural Development but 200' in the Regional Growth zone is permitted. Mr. Norman requested the Pinelands Commission relax some of their requirements in the Rural Development Zone, but they would not.

Mrs. Onorato stated the Joint Land Use Board was asked to seek additional funding from the Township Committee and to hire a professional to assist the Board with this

application which it has done. At this time the Board cannot take any further actions until we hear back from the planner at the next public meeting.

Ms. Carlos stated that once the Board acts on it the residents will then have to act upon it and sue Verizon if the Board approves the application. Mr. Norman stated the residents would then sue Shamong as well.

Mr. Michalowicz questioned if other rural development areas had towers built on them. He recalls the towers have been approved in RD area, but he questioned if the towers were 35' tall? Mr. Norman and Mr. Guzzi stated they are not aware towers constructed in rural development zone. Mr. Sweet clarified the 35' height limit is for any structure in the RD zone not just a tower.

Kitty Stanley – 462 Oak Shade Road questioned if when she sells her home would she have to notify if there is a cell tower to be built in the future. Mr. Norman stated he believed that if you are aware of the pending cell tower you would need to disclose it.

Ms. Carlos asked if a cell tower is material to selling a home. Mr. Lera stated we are off topic. Mr. Norman stated that is not a land use questions.

Ms. Stanley stated she purchased her home on December 19, 2018 and she was not informed of a cell phone tower going in across the street from her home. Mr. Norman recommended she speak to an attorney on this.

A resident stated that he would rather see the school get the revenue from the cell phone tower than Opici. Mr. Norman stated that the school did not want the tower if you want to do something you can go to school board meetings and vote on their budget.

There being no further business, **on motion by Mrs. Schnieder, seconded by Mrs. Valenzano the meeting was adjourned at approximately 8:50 with all Board Members present yes.**

Attested by:

Susan D. Onorato, Secretary
Shamong Township Joint Land Use Board