

**A REGULAR MEETING OF THE PLANNING BOARD OF THE TOWNSHIP OF SANDYSTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY WAS HELD ON MONDAY, FEBRUARY 4<sup>th</sup>, 2019 AT THE MUNICIPAL BUILDING BEGINNING AT 7:00 P.M.**

Chairman Utter called the meeting to order. This meeting has been advertised in accordance with the Open Public Meetings Act by advertising notice of the meeting in the N.J. Herald and posting copy of the notice in the Sandyston Township Municipal Building.

**Roll Call:**

Messrs. Huber, Hull, Smith, Green, Woodhead, Mikulka, and Utter  
Absent: Harper, Cunico, Sinha, Milligan,

**BOARD ATTORNEY:**

A MOTION was made by Mr. Mikulka, seconded by Mrs. Woodhead to approve a resolution designating William E. Hinkes, a partner in the law firm of Hollander Strelzik Pasculli Hinkes Wojcik Gacquin Vandenberg & Hontz LLC as the Sandyston Township Planning Board Attorney for the year 2019. Upon roll call the following votes were cast: AYES: Huber, Hull, Smith, Green, Woodhead, Mikulka and Utter. NAYS: None. ABSTAIN: None. Motion carried.

**OATH OF OFFICE:**

The oath of office for Mr. Milligan was tabled as he was absent.

**MINUTES:**

A MOTION was made by Mrs. Woodhead, seconded by Mrs. Hull to approve the minutes of the meeting held on January 7<sup>th</sup>, 2019. Upon roll call the following votes were cast: AYES: Huber, Hull Smith, Woodhead, Mikulka and Utter. NAYS: None. ABSTAIN: Green. Motion carried.

**VOUCHER REPORT:**

A MOTION was made by Mr. Green, seconded by Mr. Huber to approve the February 4, 2019 voucher report, but specifically the voucher for Attorney Hanifan is subject to clarification of separation fees and escrow with an amount not to exceed that which was submitted. Upon roll call the following votes were cast: AYES: Huber, Hull, Smith, Green, Woodhead, Mikulka and Utter. NAYS: None. Motion carried.

**New Jersey Planning Officials:**

General: Invoice #49636 – PB Registration for T. Woodhead \$175.00  
@ SCCC on 3/30/19

**The Law Office of Michael J. Hanifan, PA:**

General: None.  
Escrow: Invoice #2019 Certified Used Auto/ Albert Toro \$768.00  
#02-2018 – dated 01/08/19

**H.E. Pellow & Associates, Inc.:**

General: None.  
Escrow: Invoice #68167 dated: 01/18/2019 – Certified Used \$32.50  
Auto/ Albert Toro – Site Plan #02-2018  
Invoice #68168 dated: 01/18/2019 – Andrew Kaplan \$65.00  
Site Plan #04-2018

**J. Caldwell & Associates:** None.

**CORRESPONDENCE:** None.

**FORMAL APPLICATION:**

**Application: #02-2018 – (Continued from 01/07/19 meeting)**

**Applicant: Certified Used Auto – Albert Toro**

**Location: Block 1105 Lot 22.02 Zone: B**

**179 Route 206 South**

**Project Name: Preliminary Major Subdivision / Variance Approval**

**Type: Preliminary Major Subdivision – C&D Variance**

*\*\* Mrs. Hull recused herself during this portion of the meeting. \*\**

Mr. Haggerty addressed the board on behalf of his client, reviewing the prior testimony and reminder of continued oath. He introduced additional professionals appearing before the board on behalf of Mr. Toro. James Glasson of Civil Engineering, Inc. and Andrew Waring, LSRP were sworn in and provided their educational/professional qualifications. For the record, the duties and responsibilities of an LSRP to the State NJDEP was explained as they act as an agent of the State will under the employ of the property owner.

Mr. Haggerty presented Exhibit A-4, a colorized version of a portion of the property plans. Mr. Glasson addressed the plans as provided. He testified that there would be no disturbance of the steep slope except for fencing. The existing building would not be changed but is currently setback 51 ft. along route 206 where a 75 ft. setback is required and along Davey Lane 25.6 ft. where 75 ft. is required. In sum, two pre-existing non-conforming conditions exist with regard to the setbacks. He also mentioned the canopied fueling area on that site which is to be dismantled. Furthermore, there is an existing well and an old septic system on the site that is not connected to the tank and neither will be utilized. It was testified that the owner has determined he will be using outside port-a-johns. Should the owner decide to utilize the water well he would have to have the septic system certified by the Sussex County Health Department. He continued to explain that sheet flow will not be a problem as there is a wooded area in the slope and also that on Exhibit A-5 he has determined 51 spaces with one handicap parking space provided. As the site is not to be used or accessed by customers the two spaces as required under the Americans with Disabilities Act (ADA) due to the number of parking spaces are reduced to one. There are 5 employees and 5 trucks used by the business. They would be storing some of the trucks

A replacement of the fencing was established under prior testimony by the applicant at the 1/7/19 meeting was confirmed to still be consistent with the plan presented. Additionally, the area where a top soil stockpile is to be used during the remediation process was shown.

Mr. Glasson continued to provide testimony that the applicant would be requesting two use variances. One for a free standing sign which would be 7x5 (35 sq. ft.) and 20 ft. to the top. They will be also utilizing the existing signage on the building. The second use variance is for an office trailer to be placed onsite.

It was clarified that the stock pile of the top soil would not be in a wooded area and would be just west of the gravel site with no wetlands in the area.

As the parking area is proposed to remain gravel, it was asked if posts or markers could be placed for the applicant's employees to know the boundaries of the parking area. Mr. Glasson confirmed that some kind of post could be placed for that purpose.

Furthermore, it was pointed out that the final location of the proposed trailer on the plan is over the tanks to be remediated. It would depend on sequencing of remediation to determine where the trailer will go prior to completion of the project.

It was mentioned that in previous years when this location was in operation there was a problem with trucks parked along Route 206. The applicant affirmed that this would not be the case with his business. The Board Engineer inquired if it was considered how a car carrier can negotiate the site to turn around considering the layout of the parking on the plan. While the applicant, did not think it would be a problem, his engineer, Mr. Glasson, will provide information on that question.

*As this concluded the testimony to be provided by Mr. Glasson on behalf of the applicant, the Chairman open up this portion of the hearing to the public for comment on the testimony. With no comment from the public, the hearing was remanded back to the board for continuation of the hearing.*

Mr. Waring began his testimony explaining that the site contains two 15,000 & three 20,000 fuel oil tanks. In addition, there one 1000-gallon gas tank removed in November of 2018 with minor soil contamination removed at the same time and compliant soil samples taken thereafter. He also explained that there is one 1000-gallon diesel tank registered with the NJDEP but not mapped; however, he believes it may exist where tank #3 is located.

Mr. Waring continued to testify that the applicant retained Marksmen Enterprises for remediation and only one of the boring test holes they took found contamination, which was located where the gas tank was removed.

The matter of how the process by which the remaining tanks would be removed was discussed. Mr. Waring explained that the NJDEP would be notified and once submittal is approved they would begin the process taking each tank and soil samples as they proceed. If contamination is found, they would excavate at the same time as the excavation site is open. When compliant samples are achieved a Response Action Outcome (RAO) is issued for that particular removal which he would be required to certify. When asked about the time of year to conduct such remediation, he explained that while it can be done anytime of the year, the best time to do it is when the season is dry. Typically, he would prefer to do sites like this during the summer.

The amount of top soil it would require to fill the void of the tanks to be taken out was determined to be approximately 450,000 cubic yards of certified clean fill. About 20 truckloads. He suggested having the soil be staged on site as there is space, and would be ideal for the work they are doing. He clarified that there would be enough space to conduct business while the remediation was going on and permitting from the municipality would be obtained.

Mr. Utter asked if 100% of the product in the tanks has been removed. It was undetermined if there is still residual in them. Mr. Waring explained that it is his understanding that the term used when he was brought on was that they were empty, but that they would be cleaned of any residual prior to the removal. The Chairman expressed the concern of residual in the tank causing the tank to fail and the length of time they would remain in the ground adding to the possibility of the tanks failing. At this time, Mr. Waring was made aware that prior testimony by the applicant was that removal of the tanks would be done as he earned enough to take them out. Furthermore, when asked if he was aware of prior violations on the property Mr. Waring detailed his knowledge of the current violations on the property via an NJDEP public records response.

Mr. Haggerty, after conferring with his client, reported that Mr. Toro could commence the project by August, should there be no outside unforeseen obstacles, but they could not predict with certainty the length of time it would take to complete the project as the nature of potential contamination is indeterminate; but he agreed that completion of the project is in his best interest of the applicant to restore the property.

Mrs. Woodhead asked where the trailer would go as the remediation process progressed because the plan shows it in its final location. Mr. Toro thought he would wait to permanently install trailer and move as necessary through the project. With stairs and ramps to the trailer being installed after the completion of the project. It was understood that the permanent installation of the trailer would not be ideal, as he is proposing in his plan to move the trailer several times.

The matter of the length of time that the tanks would be in the ground was again addressed and the applicant was reminded that his testimony is his word that he will be starting a process and expected to see it through completion. To not comply, would put him in violation of his site plan. Mr. Toro confirmed he understood.

Mr. Haggerty affirmed that his client's completion of the project is in his best interest and that if the board would like to have the tanks emptied by a certain date that they would entertain that request. Mr. Waring stated that from his standpoint, there is a benefit to having the tanks completely emptied.

Mr. Hinkes asked if there what kind of financial assurance is placed to commence a project like this. Mr. Waring stated that there is really not process such as that provided by the NJDEP as compliance is the objective and a violation would be the result of not adhering to the submittal.

Mr. Hinkes also asked Mr. Waring his professional opinion of the week long timeline provided in the plan to remove the tanks. Mr. Waring reported that in his experience as long as the process continues as expected and no contamination is found, than it is possible. If contamination is found that may change the plan, but that cannot be predicted.

David Simmons suggested that while the plans show the permanent location of the trailer, a temporary location might be determined now as the location shown on the plans is where 4 of the tanks to be removed are located. This way they are not moving the trailer many times. He also asked if the order of magnitude of the cost of the tank removals was determined. Mr. Toro stated that if everything went as planned, the cost would be around \$80,000. Mr. Waring added that was a good ballpark number and once everything is excavated that physically can be

removed, if there is contamination, Mr. Toro's business could be run uninterrupted as monitoring wells are installed.

Mr. Toro stated that he would be willing, in good faith, to remove the sludge in the tanks immediately seeing that it is a concern for the board. It was established that a reasonable time frame would be **90 days from the date of this meeting**. Mr. Waring will be issuing documentation on this process for this situation as recommended by the Board Engineer. The final removal of the tanks was confirmed to begin in August.

A waiver of an Environmental Impact Statement (EIS) was requested and addressed. In light of the testimony of the professionals and as funds are better used to remove the tanks and remediate, if necessary; the Board Engineer would agree even though the project could be potentially complicated, the regulation and oversight on the property may be enough.

*As this concluded the testimony to be provided by Mr. Waring on behalf of the applicant, the Chairman open up this portion of the hearing to the public for comment on the testimony provided or about this project generally. With no comment from the public, the hearing was remanded back to the board for continuation of the hearing.*

The conditions and requests were reviewed as follows: the trailer would be placed in a temporary location until the remediation is completed, a use variance for the freestanding sign with use of the wall mounted sign, recognition of the pre-existing non-conforming conditions of the front yard setback from Route 206 & Davey Road for the existing building, variance for the 8-foot stockade and chain-link fence, waiver of paragraph 2 Section C of the code pertaining to the lighting, gravel parking as per the sheet flow as per the Engineer's report.

Mr. Mikulka took this opportunity to clarify that he knew one of the principals of Marksmen Enterprises who was mentioned as he had a prior professional relationship with him and his ex-spouse when they were all employed by the NJDEP. He didn't think under these circumstances that it was reason for recusal but would leave that up to the discretion of counsel. He was thanked for bringing that to light and it was determined that the circumstance would not cause him to lose objectivity in this case.

A final reminder to the applicant was given pertaining to the ADA requirements for handicapped parking that he will need to continue to be aware of his obligation to provide the required amount of spaces as per the law.

A MOTION was made by Mr. Huber, seconded by Mrs. Woodhead to grant approval of the variances and waivers that have been proposed in this application. Upon roll call the following votes were cast: AYES: Huber, Smith, Green, Woodhead, Mikulka and Utter. NAYS: None. ABTAIN: None. Motion carried.

A MOTION was made by Mr. Green, seconded by Mrs. Woodhead to grant preliminary site plan approval. This motion was amended and approved by both to include verification to the Board Engineer of turning ability of a tractor trailer onsite, posts to delineate the perimeter of the parking area to be installed and the agreed upon timeframes of the testimony and submission of amendments of the plan as per the agreements of testimony. Upon roll call the following votes were cast: AYES: Huber, Smith, Green, Woodhead, Mikulka and Utter. NAYS: None. ABTAIN: None. Motion carried.

*\*\* Mrs. Hull returned for the remainder of the meeting. \*\**

**RESOLUTIONS:** None.

**OTHER BUSINESS:** None.

**AUDIENCE PARTICIPATION:**

Mr. Glen Hull of Layton, NJ wanted to discuss the application. He asked if the application was opened to the public prior. When he was told it was, he stated that he never heard the application opened to the public. He was told it was opened twice during the meeting. Mr. Hull stated that he was waiting for a motion to open it up to the public. It was explained that a motion was not necessary to seek public comment. Mr. Hull stated that the Chairman should make himself a "little more clear" because he could not hear it. The Board Attorney stated that the Chairman made himself very clear during the hearing waiting enough time to allow for public comment during those portions of the meeting. Mr. Hull stated he could also not hear the Board Attorney who was speaking to him at this time either. He said that people who are hearing impaired could not hear when papers are being shuffled. Mr. Hull explained he wanted to ask about the tanks in the ground and what the dimension were. The Chairman explained that the board would not have the dimensions of the tanks, only the gallons. He also asked about lot 22A and 22B, inquiring if 22A was included in the plan. It was explained that the map he was referencing is an old plan and that the lot numbers a likely different and merged. The board secretary walked over to the map and pointed out to Mr. Hull the scope of the proposed lots in the application and their boundary as currently known. Mr. Hull then asked which tank would be taken out first. He was told that would be determined through the NJDEP, but the logistics of the removal would be one at a time as the process permits. Mr. Hull asked if there would be compaction of the replacement material. It was explained that compaction would be part of the process. Mr. Utter took this opportunity to apologize to Mr. Hull relating to Mr. Hull's statement that he could not hear. Mr. Utter stated he did not know that Mr. Hull could not hear.

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Mr. Tom Horsfield of Layton, NJ stated that in view of the fact that this township has a history of creating problems and allowing problems to continue for years and years he would be very reluctant to approve this application as proposed. He continued to state that as it was a "D" variance it did not seem right or proper to have a trailer on the property as it would be an eyesore forever on the property. Mr. Hinkes addressed Mr. Horsfield's comment, explaining that this discussion is irregular as the application has been approved and in the case with Mr. Hull's questions, he was unable to hear and continuation of this discussion is unfair to the applicant. Mr. Horsfield stated that when the hearing was opened for public comment on the professionals' testimony, he did not have anything to ask then. He said the public didn't have another chance. Mr. Hinkes disagreed and stated that the second time it was opened to the public for comment it was for both the professional and any part of the application. Mr. Horsfield stated he did not catch that and did not have the same issue with not being able to hear as Mr. Hull. Mr. Hinkes validated their concern, but explained that with the application now approved and closed it was improper to continue this kind of discussion. Mr. Horsfield again stated that he didn't think the public had an opportunity.

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Mr. Hixson Spangenberg addressed the board and asked about the liability of taxpayers if the applicant does not finish the work. It was explained that the responsibility stays with the owner. Mr. Utter explained that the property has been in violation for some time and now there is someone willing to take on the remediation. Mr. Spangenberg responded by asking why this situation was this created in the first place accusing Mr. Utter of being on the board at the time and allowing this to go on. Mr. Utter clarified that he was not on the board when that site was created, however, he was on the board when a new site plan was created to completely clean the site up and make it a viable operation. Mr. Spangenberg stated that this Township is responsible for what went on and were negligent in allowing this to happen in the first place. Mr. Utter said that wasn't a fair assessment. Mr. Spangenberg asked if there was approval for these 10000 gallon tanks. It was confirmed they was on top of which the tanks are registered by the NJDEP as the LSRP testified. Mr. Utter reported that the prior owner walked away from the issue and the NJDEP had the responsibility to oversee that site as the registrations lapsed. Mr. Spangenberg agreed that it is now clear it was not the Township and had a better understanding of how the site came to be and the responsibility of the NJDEP. He then expressed his concern that this would morph into a "chop shop". He was told that the applicant is bound by his testimony.

**A MOTION** was made by Mr. Green, seconded by Mr. Huber to adjourn the meeting. **AYES:** All in favor. **NAYS:** None. Motion carried.

A handwritten signature in black ink, appearing to read 'Beth Brothman', with a long, sweeping underline that extends to the right.

Beth Brothman  
Board Secretary

