

# GREEN TOWNSHIP BOARD OF ADJUSTMENT MINUTES

Regular Meeting of March 6, 2014

@ 7:05 p.m., Board Chairman, Eugene Bambara **CALLED THE MEETING TO ORDER**, then led members in reciting the **PLEDGE OF ALLEGIANCE** followed immediately by his reading the **OPEN PUBLIC MEETING STATEMENT**.

**ROLL CALL**: The Board Secretary – Desiree L. Dunn called the Roll finding Eugene Bambara, Chairman; Louis Tommaso, Vice Chair.; Mathew Fox (7:16p.m.); Sharon Mullen; Michael Muller; William Neilan; Michael Roller, and, Carmine Torella (Alt. #1) in attendance. Also present, Board Attorney Lyn Aaroe; Board Planner Jessica Caldwell; and, Township Engineer John Miller.

**OATHES OF OFFICE FOR NEW / REAPPOINTED BOARD MEMBERS**: None

**MOTION TO EXCUSE ABSENT MEMBERS**:

*\* Being aware that Fox would be late; the Chairman opted to waive / delay this vote to give the expected members a chance to arrive. (VOTE NOT NECESSARY)*

**MOTION TO APPROVE MINUTES (from February 6, 2014)**

Corrections: a) The Board Secretary explained that the blanks were present because the members who moved the minutes were undistinguishable from the recording. Tommaso recalled making the motion, while Mullen seconded; and, b) The Board requested the word "unlimited" be deleted. Having no other corrections, the Board Chairman entertained a motion to approve.

*\* The Board Secretary confirmed that both Muller and Neilan had attested to listening to the tape of the March meeting and were eligible to vote.*

- Tommaso so moved. Neilan seconded. ROLL CALL VOTE: Torella - YES; Neilan - YES; Muller - YES; Mullen - YES; Fox - YES; Tommaso - YES; and, Bambara - YES. No abstentions. No Objections. **Motion carried.**

**NEW RESOLUTIONS**: None

**ORDINANCES**: None

**OLD APPLICATIONS**:

A. BA 1313: Doggie Chalet, LLC - "d" or Use Variance Requested  
Property: Bl. 34, L. 11.02 (282 Decker Pond Road)

**Continued Hearing**: The Board Attorney began by describing how a letter had been submitted to the Board Secretary by a member of the Public who could not attend the meeting. He had reviewed it, as well as the Board Chairman. In that the author would not be present for questioning, he determined it was inappropriate and prejudicial to copy for the Board and said letters would only be admissible if the person was were present. Said letter would be kept on file.

**Representing the Applicant: Michael Selvaggi, Esq. M. Selvaggi** introduced his expert witness, **Robert Heffernan** and submitted a resume as **Exhibit A-10, 3-6-14: Qualifications of Robert F. Heffernan, SGGREA, SRA**. Heffernan testified about his qualifications as real estate appraisal expert. The Board accepted his qualifications and he was sworn in. **Heffernan** testified as an expert on property values. Identified the property size, house style, acreage, and sale date to the Bradleys. He described the process undertaken whereby he analyzed the sales that have taken place in the neighborhood. He presented **Exhibit A-11, 3-6-11: Chart of Sales** - a listing of homes that sold in the area through 2010, for

comparison. He pinpointed adjacent property at 288 Decker Pond which he alleged didn't suffer in value from close proximity to former kennel operation. He maintained that upkeep and operation of the kennel plays a larger role than its existence. Discussion ensued wherein the Board questioned Heffernan about the following: What was the timing of the former and present kennel operation relative to the sale of 288 Decker Pond? How long certain homes stayed listed? Were any other properties analyzed that had similar proximity to kennel operations? What are the disclosure requirements of realtors regarding business next door? **Caldwell** questioned what types of impacts would affect value and thus an appraisal. **Heffernan** described nuisance situations such as active train lines, heavily traveled roadways and adjacent cell towers. The Board specifically questioned what type of businesses would negatively impact property value. **Heffernan** said sometimes a property with a lot of dogs, however, not if kennel is operated properly. Further discussion ensued regarding the slow real estate market in 2010. @7:42p.m., The **Chairman** opened the meeting up for questions of Heffernan's testimony. The following persons spoke:

- **Jerry Jensen of 278 Decker Pond Rd.** Testified that he was concerned with close proximity to his deck and pool.
- **Christine Marcantonio of 299 Decker Pond Road** - As dog owners, they had no concerns. Questions ensued by the Board of her proximity of her home to the Bradley's and would she be concerned with excessive barking.
- **Jeff Wilson of 288 Decker Pond Road** - Questioned property values for resale.
- **Rick Zeckendorf, 299 Decker Pond Road** - Is it possible to ascribe a higher value due to proximity of dog kennel, specifically as it relates to dog owners?

@ 7:56 p.m., The **Chairman** closed the meeting for questions of Heffernan.

**Selvaggi** introduced **Joseph Golden, P.E.** to testify about options for conforming to the township driveway ordinance. **Golden** offered that the ordinance gives the Township Engineer latitude in approving driveway applications, concerning width and site distance. He read from the driveway ordinance required geometric designs; guidelines and deviations allowed and read further that when unable to comply, the applicant may apply to the Township Engineer for an exception. Being the author of said Ordinance, the **Board Attorney** disagreed it gives that much lenience. **Selvaggi** asked **Golden** to explore the Class II requirements, thereby **Golden** gave stipulations. Because of proposed use with limited daily car trips, he proposed a 12 ft. width rather than 16 ft. and described the current driveway length. He maintained that Class II could work to allow for access by emergency vehicles, even with the change in grade required. Discussion ensued wherein the Board asked for more specificity regarding the exact length of the driveway, as well as its proximity to the property line. Issues concerning proposed grading, entrance modifications, resulting elevation at the parking site was detailed further, using **Exhibit A-9, 2-6-14: (colored) survey map**. The Board expressed concern that no topography map had been provided and the close proximity of adjacent residences. **Selvaggi** offered that the Board considers as a condition of approval that the driveway meets the Class II standards or the case reverts back for a re-examination by the Board. The feasibility of that suggestion was questioned by the Board Attorney. The Board expressed concern with no indication of the proposed new driveway design. **Golden** used the survey map to show the Board a rough design for the new driveway. He proposed planting Blue Spruce trees to buffer the driveway from adjacent homeowners. To answer **Selvaggi's** questions regarding how the new design would differ from the existing driveway, **Golden** used **Exhibits A-5 through A-9**. He showed a new configuration for the driveway and offered that the applicant would increase landscaping and add thick buffers to mitigate any view of the operation in question. The Board questioned the slope. The **Board Attorney** requested confirmation that the existing driveway entrance would be closed off and a new entrance created. Applicant, **Nicholas Bradley** described his tree line in front, consisting of cedars. Board members concurred with making the driveway Class II instead of Class III. **Selvaggi**

concluded his testimony. The **Chairman** clarified that what is now requested is a site design bifurcation if the application. **Selvaggi** confirmed. .

**@8:43 p.m.**, following a 5-minute break, the **Chairman** opened the meeting up for general public comment on the matter, beginning first with a statement that the Board was hoping to hear comments about any concerns, both positive and negative, plus suggestions for conditions the Board may consider imposing on such use. The following persons spoke after each being sworn in by the Board Attorney:

- **Gabby Cook, owner of Doggone Farm, 221 Brighton Road** - Described how when she has overflow clients who need a similar operation, she's been referring them to Doggie Chalet. She said Doggone Farm has been fully booked, thus the service is needed in the community.
- **Stuart Feldstein, 275 Decker Pond Road** - He lives directly across the road from Doggie Chalet and has been a customer for about one year. He's found their operation to be much better than a traditional kennel. He described having owned 294 Decker Pond Road prior to moving to his current home in 1984. He described how he wanted to move to a rural area from the onset and has lived alongside cattle, sheep, and pigs. He reminded the Board that the symbol at the top of the Township crest on the wall behind them is a farm scene. He said people who have a problem with animal sounds should not move to Green Township. He described how Carol, the owner of the property in question, raised Giant Schnauzer dogs, which are "bred to bark." He said no one complained then and Doggie Chalet fits in well with the concept for the Township.
- **Rick Zeckendorf, 299 Decker Pond Road** - He described getting to know the Bradleys. He said it's a good local business that positively adds to the community. As long as they commit to the ordinances, he feels it can only add value. The **Board Attorney** reminded him not to view this use from a personal standpoint because the use would run with the land. **Zeckendorf** responded that he is comfortable with conditions.
- **Jeff Wilson, 288 Decker Pond Road** - Addressed the Board as the owner of property that has been brought up several times in testimony. The Board asked whether the Giant Schnauzer's were present when he bought his home. He answered no and the kennel operation was never disclosed by his realtor. He said the previous owner was living elsewhere and returned only on occasion and only with one dog. The Board asked if he would have bought his home knowing about the kennel. He answered no. He said he was not satisfied that going forward he would now have to disclose and make concessions in price upon resale. In answer to a Board question, he said he complained about excessive barking to the Zoning Officer about 8 months after moving in. Presented **Exhibit O-2, 3-6-14: photo from his bedroom**. He said he doesn't want to live next to the dog runs which are pictured. Believed it would have a serious negative impact and was unfair because the Bradleys moved in later giving him no choice in the matter. Presented **Exhibit O-3, 3-6-14: aerial map (from google maps)** showing his house in relation to the Doggie Chalet operation. Presented **Exhibit O-4, 3-6-14: an aerial map showing Doggone Farm** and said it shows there's no comparison. Presented **Exhibit O-5, 3-6-14: List of kennels within an eight-mile radius** (derived from a State resource). Discussed the availability of kennels in the area. He said he remains concerned about appearance of neighborhood, driveway and netting on fence. **Selvaggi** questioned Wilson about his video, (previously forwarded to the Board and available as a digital copy). Specifically, he wanted to know how long the kennel was in operation when video was made and was that the only video made. How did he know about the Bradley's Mansfield application? What was the purpose of the Bradley's several visits to his home? Was he aware of their intent to apply for a use variance in Green? When was the last time he heard barking from the Bradley's property? Did he see kennels on the property when operated by the former owner? The **Board Attorney** asked how Mr. Wilson knew the property was vacant? He responded- no lights, no noise, no plowing. He was asked by the Board how many cars he sees coming in and out of driveway each day? **Wilson** responded he couldn't

estimate but people have often come up his driveway looking for Doggie Chalet. The **Chairman** asked him to stipulate how many times he hears dogs barking between 6 AM and 10 P.M.. He responded it's about 20 minutes in the morning and nothing at night and that he hasn't been woken up at 5 AM. The Chairman read from Page 509 of the Township Ordinance concerning Disturbing the peace & Dogs Running at Large to evaluate current compliance.

- **Christine Mercantino, 299 Decker Pond Road** - Described how "between us neighbors" there are eight pet dogs and has yet to experience problems with noise. She said she never hears the Bradley's dogs and her farmhouse has no buffer.
- **Jerry Jensen, 278 Decker Pond Road** - He testified about his close proximity to the Bradleys, within eyesight. He feels it does affect property value. On weekends, Doggie Chalet clients often pass the driveway and park on his grass. Suggested better signage if approved to stop confusion. The Board asked him about negative impacts from the barking? He responded not really. He did have several complaints longed about the former owner's Schnauzers. He suggested a deer-proof buffer.

**@9:41 p.m.**, with no one offering further comment on the matter, the **Chairman** closed the meeting to the public and requested summations from the Board Professionals.

**Miller** offered that his report pointed out his concerns about site distance, trees and vertical grade. He described the current driveway as suitable for a private residence but very poor for public access, including grade and turn-around. County approval of a road opening permit would be needed and they are very stringent and will have jurisdiction as to the first 25ft as to how they classify the driveway. With no plans submitted of the proposed new driveway he's had nothing to review. Concur that Class II might work, but not sure because of the 400ft. length and concerned that said modifications might eliminate the natural buffering vegetation. The Board asked him to estimate the cost of probable driveway improvements. **Miller** responded he thought it would likely cost 10's of thousands, as storm water management with cut & fill plus retaining walls would have to be incorporated. Thus, he said a very thorough Site Plan would be required.

The **Board Attorney** asked Miller to explain the issues that were non-negotiable when reviewing driveway plans. **Miller** responded primarily public health and safety.

**Caldwell** acknowledged that the applicant had pretty much addresses all of her previous technical concerns. Now, with the proposed bifurcation, she outlined several points that the Board must rely on to ensure that the negative and positive criteria have been adequately addressed to grant the use variance requested.

**@10:06p.m.**, The **Chairman** polled the Board leading to discussion about site suitability; negative impacts; lack of known conditions to impose; proximity of other houses; neighbors concerns about property values; perpetuity of use; feasibility of re-doing driveway; apparent inadequacy of proposed noise barriers; and, general lack of specificity offered in mapping, photos and testimony presented. Discussion ensued regarding the differences in the Doggone Farm application, approved last year for a similar use in town. The **Board Attorney** stipulated that five positive votes are required to grant a use variance. He proposed that conditions could be drafted in consultation with the Board Professionals.

- **@10:33 p.m., Muller made a motion to hold off the vote until said conditions were presented for the Board's review. Not seconded. Motion failed.**

Board attorney suggested the option of giving the applicant a chance to address these concerns and come back next month. The Board did not favor this approach saying that the Applicant had been given multiple opportunities since submission to submit data requested and had not complied, thus no confidence remained.

- **The Chairman made a motion for DENIAL of the application. Tommaso seconded. ROLL CALL VOTE: Roller - YES; Neilan - YES; Mullen - YES; Muller - ABSTAINED; Fox- YES; Tommaso - YES; and, Bambara - YES. No Objections. Motion carried.**

**NEW APPLICATIONS:**                   None

**GENERAL PUBLIC COMMENT:**   None

**OTHER BOARD BUSINESS:**

**Chairman's Report:**       Reiterated the need to use the Township E-mail system to satisfy OPRA requirements. Discussion ensued about problems linking and/or viewing attachments. Suggestion that the Board Secretary to write a letter to Administration requesting permission to use the personal e-mail addresses to communicate with the Board to announce meetings, "One-way" communications. She responded that there are problems with that in that she needs two-way access to get responses, but she's been authorized FOR THE TIME BEING to send to both until further notice.

**Secretary's Report:**       She mentioned that in researching a Board question during the Doggie Chalet matter, she Googled Doggone Farm and found that they are advertising Doggie Daycare, despite the offer to remove it upon the previous approval. The Board asked her to write a reminder letter to Doggone Farm about their impending June 6th deadline and inform the Zoning Officer about the website findings.

**MOTION TO ADJOURN**

With no more business to discuss, the Chairman entertained a motion for adjournment.

- **@10:57 p.m., Mullen so moved. Fox seconded. VOICE VOTE: All members present voted "aye" in favor. No abstentions. No objections. Motion carried.**

Minutes Respectfully Submitted by:

Desiree L. Dunn, Secretary  
Planning Board & Board of Adjustment

***✓ APPROVED May 1, 2014***