

**SUSSEX COUNTY
BOARD OF CHOSEN FREEHOLDERS**

**HEARING ON PLANNING BOARD APPEAL OF ANWAR QARMOUT
LOT 6, BLOCK 131.02, VERNON TOWNSHIP
PURSUANT TO N.J.S.A. 40:27-6.9
HELD ON MONDAY, SEPTEMBER 10, 2012**

5:00 PM

ORDER OF BUSINESS

Item

1. **CALL TO ORDER BY DIRECTOR** at 5:10 pm

2. **ROLL CALL:** Freeholder Space; Freeholder Vohden; Freeholder Zeoli;
Freeholder Director Crabb; John Eskilson, County Administrator;
Michael Lavery, Special Counsel; and Elaine Morgan, Clerk

Absent: Freeholder Zellman

3. **MOMENT OF SILENT PRAYER AND SALUTE TO THE FLAG**

4. **PUBLIC STATEMENT**

"Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975 Adequate Notice as defined by Section 3D of Chapter 231, P.L. 1975, has been made by regular mail, such notice being submitted on July 30, 2012 from the Administrative Center of the County of Sussex, located at One Spring Street, Newton, New Jersey to the following:

| | |
|--------------------------|------------|
| New Jersey Herald | WSUS Radio |
| New Jersey Sunday Herald | WNNJ Radio |
| Star Ledger | |

and is also posted on the bulletin board maintained in the Administrative Center for public announcements and has been submitted to the Sussex County Clerk in compliance with said Act."

5. **HEARING**

Freeholder Crabb turned the meeting over to Special Counsel Lavery at this point; Mr. Lavery said this is an appeal pursuant to N.J.S.A. 40:27-6.9; it is an appeal from the Sussex County Planning Board; there is a letter from Mr. Garofalo, Special Counsel to the Planning Board, who raised the question of jurisdiction of the Freeholder Board; his (Mr. Lavery) suggestion was to have Mr. Garofalo state his position on the record and then have the Applicant's attorney go second.

Michael Garofalo, Laddey, Clark and Ryan and Special Counsel to the Planning Board, came forward and said rarely it is ever going to be a good idea in the Legislature's eye to have a governing body, such as the Board of Chosen Freeholders or a municipal governing body, sit as a Board of Appeals; the very practical reason is the Board is the Executive Branch of government not the Judicial Branch; it would rarely be a good idea for a Board like this one to sit and hear an appeal from a decision of itself; the Board would be hearing an appeal from the County Engineering Department; this Board is in an awkward position; the Board is being asked to question whether the Planning Board did the right thing; a governing body like the Board of Chosen Freeholders is going to have appeal jurisdiction in a very, very rare situation; the same is true of a municipal governing body; this Board can hear appeals from site plan applications or subdivision applications that were heard by its own Board, such as the Sussex County Planning Board.

Mr. Garofalo said the reason he has raised jurisdiction here is because there was no site plan or subdivision application presented to the Planning Board; what has been appealed is a driveway opening permit; the property in question is in Vernon Township and there was no site plan application or subdivision application presented in Vernon; if there was no application in Vernon, there can't be an application before the County of Sussex; there is no appeal from the denial of a driveway opening permit and, in his opinion, that is for good reason; the New Jersey Legislature may have said that in certain cases it is wise for this Board to question what happened regarding a site plan or subdivision application; the driveway opening permits are specifically within the purview and expertise of the County Engineering Department; for good reasons on the record this application was denied; this Board simply has no jurisdiction to hear this appeal; he (Mr. Garofalo) believes, as an attorney, this Board cannot act on this appeal; the Statute says only if there is a subdivision or only if there is a site plan may the aggrieved Applicant before the Sussex County Planning Board come before this Board; that didn't happen and that is his decision.

John Barbarula, attorney for the Applicant, Anwar Qarmout, came before the Board; he said in certain aspects he agrees with Mr. Garofalo that there are limited times when the Board of Chosen Freeholders would be a hearing body in an appeal situation; however, it is not this Board deciding on its own decision; every County government establishes separate boards in different aspects; there are many different departments and agencies and one of them is the County Planning Board; the County Planning Board here took an application for Anwar Qarmout that was originally listed as a waiver and it was marked under the subdivision section; what happened in this situation was the Planning Board did have two (2) full hearings with all the presentations; Counsel has indicated that this is a jurisdictional matter, it is the opinion of the Special Counsel of the Planning Board that it is exclusive and therefore, this Board, the County Freeholders, cannot act; in his brief he says to the contrary, all authority to regulate County roads, including new driveway access, is vested in the Board of Chosen Freeholders by way of New Jersey Statute N.J.S.A. 27:16-1 et seq.; specifically he refers to Section 16-31 – and that the County Board of Freeholders may by resolution make such regulations as it may deem proper to prevent damage to County roads and to keep the travelling public safe and convenient for travel during all seasons of the year; one of the things that he (Mr. Barbarula) thinks is possible here in the administration of justice and fairness, one of the things that Counsel may agree or disagree, is that one of the things that the New Jersey Courts have in its rules is there is the primary rule that says that rules can be modified in the interest of justice; in this situation the Notice of Appeal, the information on how to run the Appeal, everything that was given to the Applicant was given by the Planning Board and the Planning Board told the Applicant this was the procedure to follow, along with directions and that is what the Applicant did follow.

Mr. Barbarula said the exception he would like the Board to consider is that the Board could take this application as original jurisdiction if you, as the Board of Chosen Freeholders, under the Statute, clearly and specifically have the right to control the County roads, then, he believes, that under original jurisdiction, the Board could take this application and hear the application for a road opening permit itself in the interest of justice based upon the appeal that was presented; he (Mr. Barbarula) knows this is a very different argument; he explained his experience with this type of law and said he has spoken to everyone in the community and said the law in the area is very slight and mostly non-existent as to procedures, but he does believe, in the interest of justice here, that one of the alternatives might be for the Board to take this as an original jurisdiction matter and also to think about how this application was presented and was marked and was processed through the Planning Board.

Freeholder Zeoli asked Mr. Barbarula how he responds to Mr. Garofalo's claim that the Freeholder Board only has jurisdiction to appeal on matters of subdivisions and site plans; Mr. Barbarula said he is not saying he (Mr. Garofalo) is wrong; he is saying that he (Mr. Garofalo) is asking the Freeholder Board to take an exception based upon the interest of justice here and go back to the Statute that says that the authority to regulate County roads, including new driveways, which is what Mr. Garofalo has stated.

Freeholder Zeoli said he feels that is more of a global responsibility and if the Board would get involved in every single matter having to do with the roads, the Freeholder Board would never be able to do anything; the Board sets policy, but not for every individual property.

Mr. Barbarula said what is right and in the interest of justice should not be tempered by the fact that the Board is afraid to open the flood gates; Freeholder Zeoli said it is not that he is afraid; Mr. Barbarula said he should not have said afraid, perhaps apprehensive about having a huge amount of cases; Freeholder Zeoli said it is not that at all; it is the fact that it is a different interpretation of what the Board's purview is as to regulating County roads; he (Freeholder Zeoli) views it as the Board regulates speed limits on County roads, not individual driveway openings; if there is a specific ability for this Board to hear an appeal that goes beyond the scope of a subdivision or site plan, that is an argument that would be helpful for them to hear because right now he is not hearing that.

Mr. Barbarula said if there was, he would be giving it to the Board and there isn't; he is not about to blow smoke and mirrors at the Board; there was a short discussion.

Mr. Barbarula said he is asking two (2) things; that the Board go back to the original aspect that the Board controls the County roads and then in the interest of justice in this case, specifically, just for this case, in terms of the facts that were presented to the Board, make that judgment.

Mr. Lavery said he felt both counsels made excellent arguments; he feels Mr. Barbarula argued what he could argue in this case, but he feels the bottom line is that the Statute specifically says that the Freeholder Board has jurisdiction over site plans and subdivisions; he also pointed out that the County's own Administrative Code, Section 2.2(G) mirrors the Statute and says the Board has jurisdiction over site plans and subdivisions; he (Mr. Lavery) doesn't see anything in the Statute or in the County's Administrative Code that would allow the Board to deviate from that; he understands the Applicant's argument, it is an equity argument, but the Statute doesn't give the Board that leeway; he went on to explain his opinion on how municipalities handle some appeals; Mr. Lavery said he agreed with Mr. Garofalo and feels that the Freeholder Board does not have jurisdiction to hear this Appeal.

Freeholder Space said he feels the Board needs to listen to the professionals.

Freeholder Zeoli said it seems pretty clear to him; he doesn't see a way to hear this Appeal.

6. **MOTION** made by Freeholder Vohden to terminate the hearing, seconded by Freeholder Space.

Mr. Barbarula said in order for his client to have certain rights, he asked the motion to be amended to say that the motion is to terminate for lack of jurisdiction.

MOTION made by Freeholder Vohden to amend his previous motion and say that his motion is to terminate this hearing for lack of jurisdiction, Freeholder Space amended his second also.

On roll call, the vote was:

| | |
|---------------------------|-----|
| Freeholder Space | Yes |
| Freeholder Vohden | Yes |
| Freeholder Zeoli | Yes |
| Freeholder Director Crabb | Yes |

7. **ADJOURNMENT**

MOTION made at 5:30 pm by Freeholder Zeoli to adjourn, seconded by Freeholder Space and passed unanimously.

Elaine A. Morgan, Clerk

DATED: September 10, 2012