

**LAND USE BOARD MINUTES**  
**April 4, 2012**

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Mountainville, New Jersey. The meeting was called to order at 7:35 p.m.

Present: Blake Johnstone, Dana Desiderio, Shaun Van Doren, Mary Elizabeth Baird, Bruce Mackie, Elizabeth Devlin, Arnold Shapack, Alt. #1 and Ed D'Armiento, Alt. #4.

Also present: Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Shana L. Goodchild, Land Use Administrator.

Absent: Shirley Czajkowski, Michael Moriarty, Ed Kerwin, Eric Metzler, Alt. #2, Tom Dillon, Alt. #3.

There were approximately twenty (20) people in the audience.

**OPEN PUBLIC MEETING ACT STATEMENT**

Mr. Johnstone opened the meeting by announcing that adequate notice of the meeting had been provided by posting a copy thereof on the Police/Administration Building bulletin board, faxing a copy to the Hunterdon Review and the Hunterdon County Democrat, and filing with the Municipal Clerk, all on January 05, 2012.

**PLEDGE OF ALLEGIANCE**

Those present stood and pledged allegiance to the American flag.

**CLAIMS**

Mr. Johnstone asked the Board if there were any questions or comments regarding the following claims to which the response was negative. Ms. Desiderio made a motion to approve the claims listed below and Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at March 21, 2012 meeting - invoice dated March 22, 2012 (\$450.00)
2. Maser Consulting – Land Use Board General Work, invoice #179162 (\$130.00)

**Roll Call Vote:**

Ayes: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Nays: None

**CORRESPONDENCE**

A motion was made by Mrs. Devlin and seconded by Mr. Van Doren acknowledging receipt of the following items of correspondence. All were in favor.

1. Notice dated March 26, 2012 from Malick & Scherer re: JCP&L's application to the NJDEP for a freshwater wetlands general permit, transition area waiver, flood hazard area individual permit and hardship waiver for Block 17, Lots 2.01 & 2.02.
2. A Memo dated March 28, 2012 from Roberta Brassard re: Ordinance No. 03-2012 for informational purposes.
3. A Memo dated March 29, 2012 from Roberta Brassard re: Ordinance No. 02-2012 for review for consistency with the Master Plan pursuant to MLUL 40:55-26a.
4. A copy of Memorandum dated March 22, 2012 to Jesse Landon from Chuck McGroarty re: Overview: Conformance in the Planning Area – Build-Out Analysis for Planning Area.
5. A draft of the 2012 Periodic Reexamination Report of the Master Plan and Development Regulations prepared by Charles T. McGroarty, received on March 20, 2012.
6. A letter dated March 30, 2012 from William Burr re: JCP&L, Appl. No. 12-04, Block 17, Lots 2.01 and 2.02.
7. Memorandum dated April 2, 2012 from Chief Holmes re: Appl. No. 12-04, Blk 17, Lot 2.01 & 2.02.
8. An e-mail dated April 4, 2012 from the Scenic Roads and Bridges Commission re: Appl. No. 12-04, Blk 17, Lots 2.01 & 2.02.
9. A letter dated April 3, 2012 from John Beyel re: Appl. No. 12-04, Blk 17, Lots 2.02 & 2.02.
10. Memorandum dated April 4, 2012 from Dan Bernstein re: JUJ 1944 Trust Resolution.

## **MINUTES**

- February 15, 2012

The minutes of February 15, 2012 were approved by motion of Mr. Van Doren and seconded by Mr. Shapack. All were in favor.

- March 7, 2012

The minutes of March 7, 2012 were approved by motion of Mr. Van Doren and seconded by Ms. Desiderio. All were in favor. Mrs. Devlin and Mr. D'Armiento abstained.

## **ORDINANCE REPORT**

Mr. Mackie reported on an ordinance from the Township of Bedminster which updates their ordinance definitions dealing with the transportation, air safety and zoning act of 1983. Mr. Mackie passed it along to Ms. Goodchild.

## **PUBLIC PARTICIPATION**

Mr. Johnstone asked the public if there were any questions or comments regarding anything not on the agenda.

Mr. Jon Holt, 2 Fox Hill Road was present to update the Board on the Friends of Fairmount appeal of the JCP&L substation. He explained that there is a schedule for the appeal of the NJDEP Highlands Exemption Determination and the Friends of Fairmount filed their brief last month with reply briefs due from JCP&L, NJDEP and the Township

on April 19<sup>th</sup>. The Friends' final reply is due on April 30<sup>th</sup> and then it goes to the panel of judges. The appeal is ongoing, JCP&L built the substation at risk; if the Friends prevail in their appeal JCP&L must return the site to the original condition.

Mr. Holt read into the record the following statement regarding the proposed wall approved by the NJDEP:

*On November 22, 2012 the Friends of Fairmount Historic District (FFHD) appeared before the Tewksbury Township Committee regarding the NJ Department of Environmental Protection (DEP) requirement that JCP&L install a "crumbling façade wall" as part of the DEP-approved landscape plan for JCP&L's substation located at 8 Fox Hill Road, Tewksbury (Block 17, Lot 2.0).*

*Tewksbury Township Attorney Michael Selvaggi and FFHD Attorney Neil Yoskin agree with our position that the installation of the wall is a requirement of the Highlands Exemption issued by the DEP on February 4, 2011.*

*JCP&L disagrees and says that it need only install the tree and shrub landscape plan prepared by Joseph Savona, Certified Landscape Architect.*

*However, on Page 4 of the March 30, 2011 Order Denying Request for Stay, DEP said:*

On February 4, 2011, the Department issued its "review and final decision" rejecting the Highlands Council's recommendation and approving the landscape plan (Approval), finding: (a) that the proposed landscape plan complied with Condition One of the Amended HAD to the greatest extent practical given the limits on the height of vegetation under wires and in the border areas of the easement; (b) that the landscape plan, through its crumbling stone wall façade and its on-site and off-site plantings in nearby residential properties, would screen the control cabinet and switches and virtually all of the 19-foot-tall transformer from the view of adjacent homes and roadways, but could not reasonably be expected to conceal the 65-foot pole that connected the substation to the existing 230 KV wires already in place; (c) that the RMP and DEP permit rules cited by the Highlands Council were inapplicable to the landscape plan since DEP had found the entire project exempt from the permit requirements of the Act in the July 15, 2009 Amended HAD; and (d) that concerns over emergency egress from two houses over 300 feet from the substation would be addressed by JCP&L's construction of an alternate exit from the homes on the far side of the lots onto Fox Hill Road. Because DEP rejected the Council's recommendation, it took no action on JCP&L's request for an administrative hearing to challenge it.

*Page 9 of the Stay Denial provides further evidence that DEP assumes a wall will be built:*

DEP did not impose a condition upon the JCP&L exemption that is inherently unachievable. As DEP found in its Approval, the landscape plan screens the substation from adjacent homes and roadways and complements the character of the existing historic district to the greatest extent practical. The landscaping JCP&L proposes will screen the control cabinets and switches, and virtually all of the transformer, from view. It cannot practically be expected to screen from view the 65-foot tower pole which will connect the substation to nearby (existing) 150-foot-tall towers. To better screen the pole from viewing by District homeowners, the landscape plan calls for extensive planting throughout the Lower Fairmount Historic District area and on practically every residential property (Approval, p.4).

In addition, to further screen the view of the substation from the roadway, and to complement the character of the existing historic district, JCP&L proposes to construct a crumbling façade wall in front of the substation on Fox Hill Road. *Id.* When viewed as a whole and in light of the limitations on vegetation under and around electrical installations, it was reasonable for DEP to conclude that the landscape plan satisfies Condition One of the Amended HAD.

*It is clear to us, Mr. Selvaggi, and FFHD attorney Neil Yoskin, that NJDEP expects a crumbling façade wall to be built. The problem is that no one has reviewed and approved plans for such a wall. There was a discussion about a wall during the Land Use Board review of JCP&L's plans but the idea was rejected. A wall was discussed at the BPU hearings, but the Order did not include a wall in the approved site plan. JCP&L submitted a schematic of a crumbling façade wall to the Highlands Council but it was not approved. The NJDEP included the crumbling façade wall in its Highlands Exemption approval, yet there were no specific design plans-- just referral to the schematic that had been submitted to the Highlands Council. So, we have a NJDEP- required wall. However, since it was not included in the BPU approved site plan, we believe that JCP&L will need to submit an application and design plans to the Tewksbury Land Use Board to seek the variances it will require (the JCP&L wall proposal calls for a wall from 8 to 12 feet high). Also, to install the wall will require adjustments to the tree and shrub landscaping that is part of the NJDEP- approved landscaping requirements. The wall would also need to meet the landscaping and perhaps other requirements of the Township's public utility facility ordinance.*

*We're not sure why JCP&L is taking the position that it need not build the wall. It is clearly part of the NJDEP approved landscaping plan. And, the Highlands Act exemption JCP&L received states that "Failure to implement the landscape plan shall constitute a violation of this Exemption and the Highlands Act."*

*We bring this to your attention as the Chairman and LUB counsel may want to discuss this issue with JCP&L to learn how and when they intend to meet the NJDEP requirements that a crumbling façade wall be constructed at the JCP&L substation.*

When asked by Mr. Johnstone if there has been a review of the plan referenced by Mr. Holt, Mr. Burr responded in the negative.

There being no questions or comments from the public Mr. Johnstone closed the public portion of the session.

**RESOLUTION**

- **Resolution #12-08** – Vliettown Farm, Appl. #11-14, Blk 43, L3  
*Those eligible: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mr. Kerwin, Mr. Shapack and Mr. Johnstone*

Mr. Bernstein noted that the applicant’s attorney, Rob Simon had an issue with the vacated right of way being shown on the final plan.

Rob Simon, attorney for the applicant, was present and explained that they do not have an issue depicting the earthen mound but felt it was unnecessary to show the vacated right of way. He noted that legally it should not be shown on a final plat for reasons related to the regulations that surveyors have to follow as well as the NJ Map Filing Law which speaks to all existing easements. Mr. Simon also expressed concern that by depicting a vacated right of way it will create a major title issue in the future. In conclusion, Mr. Simon asked that the resolution not contain a condition requiring the vacated right of way to be shown on the final plat. Mr. Bernstein opined that Mr. Simon was overacting and didn’t believe it would create a title issue. Mr. Simon offered to put a note on the recorded plat that there was at one time a railroad that was vacated. Mr. Bernstein agreed to a notation so long as it stated the approximate location, to which Mr. Simon agreed.

Mrs. Baird made a motion to adopt the following resolution, seconded by Ms. Desiderio. The motion carried by the following roll call vote:

LAND USE BOARD  
TOWNSHIP OF TEWKSBURY  
APPLICATION # 11-14  
RESOLUTION # 12-08

WHEREAS, the Trust Dated 10/30/44 By John Seward Johnson for Jennifer U. Johnson (the “JUJ 1944 TRUST or “Applicant”) has applied to the Land Use Board of the Township of Tewksbury for preliminary and final subdivision approval, a variance under N.J.S.A. 40:55D-70c, and a planning variance under N.J.S.A. 40:55D-35

for property known as *Vliettown Farm* which is located at 77 Vliettown Road and designated as Block 43, Lot 3 on the Tewksbury Township Tax Map, which premises are located in the Farmland Preservation (FP) Zone, and

WHEREAS, the application was presented by Attorney Robert F. Simon, Esq. of the firm of Herold Law, P.A. and Civil Engineer and Professional Planner Ronald A. Kennedy, P.E., P.P. of the firm of Gladstone Design Inc. at the October 5, 2011 and December 7, 2011 Land Use Board meetings, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, P.E. of the firm of Maser Consulting, P.A.; Township Engineer Andrew S. Holt, P.E. of the firm of Suburban Consulting, Inc.; and Professional Planner Charles (Chuck) McGroarty, P.P. of the firm of Banish Associates, which serves as the Township Planner, and

WHEREAS, Board Members conducted an *on-site* investigation of the property on October 9, 2011, and

WHEREAS, the Board, after considering the evidence presented by the Applicant, the Municipal Consultants, and Kurt Rahenkamp, Chairman of the Tewksbury Township Scenic Roads and Bridges Commission, and President of the Tewksbury Historical Society has made the following factual findings:

A. The Subject Property.

1. The subject property is part of the Johnson Family holdings in Tewksbury Township.

2. The site contains 360.627 gross acres and 356.304 net acres. It has 3,311.72 feet of gross frontage on Vliettown Road, 1,173.35 feet of gross frontage on Black River Road, and 1,259.33 feet of gross frontage on Cold Brook Road.

3. Located on the northeastern quadrant of the property are a single family residence, barns, garages, farm sheds, a concrete feed pad, and a fenced-in cattle pasture. A large barn has been renovated with compatible material from a barn in Ontario Canada. The barn, which includes two silos and a small conference room, is used for equipment storage.

4. The principal access to the site is through a well maintained stone driveway with varying widths between 12 – 18 feet which extends from Vliettown Road about 3,500 feet into the property. There are other gravel driveways, pathways and equestrian trails on the site.

5. Most of the gravel driveway is located within a 20 foot wide AT&T & Co. access easement that provides access to the 16.5 foot wide AT&T easement that runs parallel to and intersects with Vliettown Road.

6. Farming activity on the site includes beef cattle, the growing of soy, corn and hay, and open meadows.

7. The Lamington River follows the eastern border of the property, which is the boundary between Tewksbury Township and Bedminster Township. The Cold Brook bisects the southwestern portion of the site and generally runs between 300 – 800 feet north of Cold Brook Road. Both water courses are Category-One (c-1) streams with 300 foot riparian buffers, attendant wetlands, 150 foot wetlands transition areas (anticipated), and flood hazard areas. The Cold Brook is designated as a FW2, Trout

Production, Category 1 stream. The Lamington River is designated as a FW 2, Trout Maintenance, Category 1 Stream. Both designations denote clean streams. The Cold Brook and its adjoining riparian buffer and wetlands essentially preclude access to Cold Brook Road.

8. The environmental limitations on the subject property include steep slopes, wetlands, wetlands transition areas, flood hazard areas, and c-1 streams with their attendant 300 foot riparian buffers, which restrict the development of the site. The JUJ 1944 Trust has taken this into account by proposing a low density subdivision. The use of the existing main driveway as a common driveway will limit disturbance to the site.

B. Subdivision Application.

9. The JUJ 1944 Trust is subdividing the property for estate planning.

10. The Applicant proposes to subdivide its property into four oversized lots which substantially exceed the minimum lot size of seven acres in the FP Zone as follows:

<u>Remaining Lot 3</u>	<u>Proposed Lot 3.04</u>	<u>Proposed Lot 3.05</u>	<u>Proposed Lot 3.06</u>
76.222 acres	67.186 acres	106.448 acres	106.448 acres

11. Proposed Lot 3.04 is located in the northwest quadrant of the property and consists of farm fields. The Applicant does not anticipate the construction of a home at the crest of the hill, as it would impact the views of the existing home on adjacent Lot 23.01 in Block 23, which is owned by the Applicant. This will be the sole

lot served by an individual driveway to Vliettown Road and not the common driveway. There are steep slopes associated with two existing agricultural ditches located on Proposed Lot 3.04 which generally run in a west-east direction.

12. Remaining Lot 3 is located at the northeast quadrant of the property and contains the existing home, barns, garages, farm sheds, a concrete feed pad, and a fenced-in cattle pasture. The common driveway bisecting the property runs directly adjacent to the existing home. Approximately 19 acres on the eastern perimeter of this lot along the Lamington River are environmentally constrained. There are some steep slope areas along the western portion of Remaining Lot 3 to the west or uphill of the existing dwelling and other accessory structures.

13. Proposed Lot 3.05 is a flag lot at the center of the tract. As originally proposed, it had a mast 50 feet wide which extended for 2,600 feet to Cold Brook Road. The Applicant agreed to reduce the width of the flag mast from 50 feet to 35 feet, which is the narrowest width permitted for a flag lot in the Tewksbury Township Development Regulations Ordinance (DRO). The Cold Brook along with wetlands, wetlands transition areas, a 300 foot riparian buffer, and some steep slopes preclude access from the flag mast to Cold Brook Road. The eastern and southern portions of this lot are constrained. Access to the lot will be provided through the common driveway across remaining Lot 3. Approximately 80.448 acres of this lot are environmentally constrained with wetlands, wetlands transition areas and riparian buffers and about 26 acres are unconstrained.

14. The common driveway terminates at proposed Lot 3.06 which is located at the southern quadrant of the site. Both the eastern and southern portions of the

lot are constrained with steep slopes, wetlands, wetlands transition areas, riparian buffers, and flood hazard areas. The Cold Brook traverses the rear (south) of the site and blocks access to Cold Brook Road. Approximately 71 acres of this lot are environmentally constrained with wetlands, wetlands transition areas, and riparian buffers and about 35.5 acres are unconstrained.

15. The homes will be served with onsite septic systems and wells. The Applicant had submitted soil logs and permeability tests for the primary and reserve disposal fields for the septic systems. The Hunterdon County Department of Health found that the soil log and permeability tests met the applicable standards with the exception of five tests which require approval by the Tewksbury Township Board of Health. No Septic systems are proposed in the wetlands or wetlands transition areas, which would also require N.J.D.E.P. approval.

16. The Applicant applied for a Letter of Interpretation (LOI) from the NJDEP in June of 2011. As of December 7, 2011 when the application was approved, an LOI was not issued.

C. Rockaway Valley Railroad Right-of-Way.

17. Township Historian Shaun C. VanDoren wrote a report dated September 28, 2011 concerning a right-of-way of the Rockaway Valley Railroad, also known as the Rock-a-Bye Baby Railroad, running through Vliettown Farm. According to the report, the primary business of the railroad was transporting peaches from Morris, Somerset, and Hunterdon Counties to New York City. The railroad also carried passengers from Morris County to Peapack and Pottersville and Somerset County to

Oldwick, terminating at Whitehouse Station. The report notes the remnants of the railroad on the subject property including portions of the railroad bed.

18. The report noted certain goals and objectives of Tewksbury Township's existing and prior master plans:

“6. Identify and preserve historic structures, landmarks, village and hamlets. Protect buildings, hamlets and the village and scenic roadways that remind us of our historic legacy. . .

13. Plan for and preserve a system of protected, interconnected open space lands, and corridors throughout the Township for conservation, wildlife habitat, and recreation purposes. We will encourage linking this system with the Garden State Greenways being developed cooperatively with NJDEP Green Acres Program and New Jersey Conservation Foundation, and to encourage the collaboration of citizens and equestrian enthusiasts in maintaining a trail network throughout the Township.”

The report recommended:

“1. Survey that portion of the Rockaway Valley R.O.W. on the subject property, providing a metes and bounds description to the Township and including the designation and description on the final plat;

2. Provide a 50 foot easement for and include language granting public access for a walking path to follow as close as possible to the existing Rockaway Valley R.O.W.; if the proposed 50 foot easement for the driveway covers any portion thereof of the existing R.O.W. no further easement would be needed so long as the easement language allows for public access for the walking path.”

19. Kurt Rahenkamp, in his capacity as President of the Tewksbury Historical Society, testified in support of Mr. Van Doren's recommendations at the December 7, 2011 Land Use Board Meeting.

20. Board Members conducted an on-site inspection of Vlietown Farm on October 9, 2011 and reported their findings at the December 7, 2011 meeting.

Board Members noted an earthen mound along the former railroad right-of-way at the rear of the property on Lot 3.05 but an absence of tracks or other railroad relics.

21. Mr. Kennedy testified that most of the former railroad right-of-way within the subject property is environmentally constrained with wetlands and *c-1* stream riparian buffers. He also said the right-of-way has been vacated.

22. The Applicant's counsel did not agree to an easement on the right-of-way, but agreed that the aforementioned earthen mound along the railroad right-of-way at the rear of Lot 3.05 would not be disturbed.

D. Waivers, Variance and Planning Variance.

23. Waivers are required from the standards in the Tewksbury Township Driveway Ordinance. Discretion to grant waivers from the Driveway Ordinance is vested with the Township Engineer.

24. Section 12.08.060(C) of the Driveway Ordinance requires driveways to be at least 10 feet from the property line. The common driveway will traverse lot lines without any setback.

25. Township Engineer Andrew Holt, P.E. in his letter dated December 7, 2011 approved this waiver, subject to conditions which are included in condition 24 herein, on the basis of:

“As the proposed subdivision proposes to utilize an existing driveway to serve a limited number of lots, in order to limit the overall disturbance, limit the disturbance of environmentally sensitive areas, and limit the driveway entrances along designated scenic roads consistent with the goals and purposes of Township's Scenic Roads ordinance, and as no visual or esthetic impact to either lots is created as a result of the proposed driveway configurations, I approve this design waiver request, subject to the conditions listed below in this letter.”

26. Section 12.08.060(E) requires driveways longer than 500 feet requires pull-offs every 300 feet. The proposal is to have pull-offs a minimum of every 800 feet.

27. Township Engineer Andrew Holt, P.E. in his letter dated December 7, 2011, approved this waiver, subject to conditions which are repeated in condition 24 herein, on the basis:

“As this requested design waiver for the proposed common driveway is being justified by specific topographic conditions (horizontal and vertical characteristics of the existing driveway), by the environmental constraints conditions specific to this lot, and limits the driveway entrances along designated scenic roads consistent with the goals and purposes of the Township’s Scenic Roads ordinance, I approve this design waiver request, subject to the conditions listed below in this letter.”

28. Section 12.08.040(A) limits driveways to a grade of 4% within the right-of-way. The common driveway has a grade of approximately 6.4% within that area which will be re-graded to 4% in order to comply with the Driveway Ordinance.

29. The common driveway does not need to be paved as its grades do not exceed 8%.

30. The Tewksbury Township (DRO) in Section 706D.2 requires flag lots to have access to an existing public street. This will not occur as flag Lot 3.05 will have frontage on Cold Brook Road but will only access the common driveway to Vlietown Road. The justification for this variance under N.J.S.A. 40:55D-70c(2) is that precluding direct access to Cold Brook Road within the flag mast will promote the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

*“a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;”*

The Land Use Board Engineer has determined that the common driveway is appropriate to provide ingress and egress to the three lots for the residents, their guests, and emergency service vehicles.

*“e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;”*

The proposed subdivision will create substantially larger lots than the minimum lot size of 7 acres in the FP Zone. This low density development and the use of existing driveways, along with the conditions in this resolution, will better preserve the environment than the construction of a municipal road.

*“h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;”*

The common driveway will preserve the bucolic character of remaining Lot 3 and proposed Lots 3.05 and 3.06.

*“m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of*

*lessening the cost of such development and to the more efficient use of land;”*

31. The aforementioned benefits from the deviation substantially outweigh any detriments.

32. The requested variance is also justified under N.J.S.A. 40:55D-70c(1)(c):

“(c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property . . . , the strict application of any regulation pursuant to article 8 of this act [40:55D-62 et seq.] would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship;”

33. The extraordinary and exceptional situation affecting Lot 3.05 is the Cold Brook traversing that parcel and the associated environmental constraints.

34. The use of the common driveway, and the minimization of access to Vlietown Road, is consistent with the purposes of the Scenic Road Ordinance, which is to limit the number of access points on scenic roads and to retain the natural beauty of scenic roads. Kurt Rahenkamp, Chairman of the Tewksbury Township Scenic Roads and Bridges Commission in a note to Land Use Administrator Shana Goodchild dated September 9, 2011 said:

“As the above mentioned applications include no new road openings on scenic roads and have no discernable impacts which would be contradictory of the [sic] township’s Scenic Roads ordinance, the Scenic Roads and Bridges Commission of Tewksbury Twp finds the applications consistent with goals and purposes of the ordinance, and offers no negative comments thereon.”

35. The requested flag lot variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

36. N.J.S.A. 40:55D-35 requires buildings or structures to have access to an improved, approved public street. Lots 3, 3.05, and 3.06 will not have direct access to a public street but to a common driveway.

37. N.J.S.A. 40:55D-36 provides:

*“Where the enforcement of section 26 of P.L. 1975, c. 291 (C.40:55D-35) would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to be related to a street, the board of adjustment may upon application or appeal, vary the application of section 26 of P.L. 1975, c.291 (C.40:55D-35) and direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map or on a general circulation plan element of the municipal master plan pursuant to paragraph (4) of subsection b. of section 19 of P.L. 1975, c.291 (C.40:55D-28).*

*Sections 59 through 62 of P.L. 1975, c.291 (C.40:55D-72 through C.40:55D-75) shall apply to applications or appeals pursuant to this section. In any municipality in which there is no board of adjustment, the planning board shall have the same powers and be subject to the same restrictions as provided in this section.*

*The board of adjustment shall not exercise the power otherwise granted by this section if the proposed development requires approval by the planning board of a subdivision, site plan or conditional use in conjunction with which the planning board has power to direct the issuance of a permit pursuant to subsection c. of section 47 of P.L. 1975, c.291 (C.40:55D-60).”*

38. The proposed subdivision will create large lots at an extremely low density. Land Use Board Engineer Burr and Township Engineer Holt approved of using the main existing driveway as a common driveway for three new lots.

39. Engineers Holt, Burr, and Kennedy felt that the common driveway provided adequate access for emergency service vehicles necessary for the protection of health and safety

40. Based on the foregoing, the Board concludes:

A. The current application is brought for estate planning purposes rather than for the immediate development of the four lots. It is anticipated that homes will not be constructed on the lots for a number of years.

B. Approximately 47% of the overall site is constrained with steep slopes, wetlands, wetlands transition areas, flood hazard areas, and c-1 streams with their attendant 300 feet riparian buffers.

C. The Applicant proposes to use the existing main driveway to serve three of the four proposed lots, including remaining Lot 3 and proposed Lots 3.05 and 3.06. A new driveway to Vlietown Road is proposed to be constructed for access to Lot 3.04.

D. Township Engineer Holt has conditionally approved the waivers from the driveway ordinance.

E. The Applicant has proposed minimal subdivision improvements.

F. This Board finds that the request for the creation of four lots on 360.627 gross acres in the FP zone justifies the requested relief.

G. Aside from the common driveway and its accompanying drainage facilities, the improvements to the site which are necessary for development will occur on a lot by lot basis in compliance with a plot plan which needs to be approved pursuant to Condition 1 herein.

H. The current Land Use Board would not approve a more dense subdivision without substantially more site improvements.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 4<sup>th</sup> day of April 2012 that the application of JUJ 1944 TRUST be approved in accordance with plans titled: “VLIETTOWN FARM BLOCK 43 LOT 3 TEWKSBURY TOWNSHIP HUNTERDON COUNTY, NEW JERSEY – PRELIMINARY AND FINAL MAJOR SUBDIVISION PLANS” prepared by Gladstone Design Inc. on August 1, 2011, last revised August 17, 2011, consisting of 7 sheets and plans titled “PROJECT VLIETTOWN FARM 77 VLIETTOWN ROAD BLOCK 43 LOT 3 TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY – PRELIMINARY AND FINAL MAJOR SUBDIVISION PLAT”, prepared by Gladstone Design Inc. on August 1, 2011, last revised August 17, 2011, consisting of 4 sheets, and a plan titled “VLIETTOWN FARM COMMON DRIVEWAY PLAN” prepared by Ronald A. Kennedy of Gladstone Design, Inc, dated August 1, 2011, last revised August 17, 2011, consisting of 1 sheet, subject, however, to the following conditions:

1. Prior to the issuance of a building permit for a residence on any lot, the property owner must submit and obtain written approval from the Township Engineer for a plot plan (Grading and Surface Water Management Plan) which locates to scale on the lot:

- a. Building envelope, proposed dwelling, accessory structures, driveway and electric, telephone, television and other communication facility locations both within the subject lot and, if applicable, outside the subject lot.
- b. Other paved areas, swimming pools, tennis courts, etc.
- c. Septic system.

- d. Reserve septic system.
- e. Fire protection measures including either a 30,000 gallon underground storage tank with a hydrant, or pond, or a swimming pool with a dry hydrant in close proximity to a driveway/parking area which must be approved in writing by the Chief of the Oldwick Fire Company and the Township Engineer.
- f. Common driveways, other driveways, bump outs, and walkways.
- g. Agricultural activities and structures.
- h. State Open Water, wetlands, wetlands transition areas, wetlands transition averaging plan areas, riparian zones, slopes over 25%, rivers, tributaries, creeks. No development shall occur in these areas without the approval, if required, of the Tewksbury Township Land Use Board and/or the appropriate State agency. These items shall be shown on the plot plan based on the approved subdivision plans without the necessity for a new survey for these items.
- i. Boundary markers to be shown on the plans for items in paragraph h and photographs shall be required to document same. A "Carsonite" boundary marker, or approved equal, shall be installed to the approval of the Township Engineer and the Zoning Officer at intervals not exceeding one hundred feet (100) or where there is a change in direction of more than sixty (60) degrees (within an area a maximum distance of 500 feet from the proposed residence on each lot). The markers shall be labeled with permanent sign decals to indicate the type of constraint. The markers shall be a plastic composite, a minimum width of 2.5 inches and a length of 6 feet, with at least 4 feet exposed above ground.
- j. For the disturbed areas, topography at a scale of no less than 1 inch = 50 feet, with slopes based on a two foot analysis. For the undisturbed areas, topography shall be shown on the plot plan based on approved subdivision plans without the necessity for a new survey.
- k. Limits of disturbance.

l. Significant individual (over 8" caliper) and stands of trees in the disturbed areas.

m. Drainage improvements including but not limited to swales and drywells designed to store 3" of runoff from the roof areas for each lot.

n. Grading plan.

o. Pursuant to the environmental impact statement, the lot plan shall incorporate NJDEP Best Management Practices including limiting lawn areas, maximizing natural vegetation, and minimizing impervious lot coverage.

p. As to Lot 3.05, the aforementioned earthen mound along the railroad right-of-way, shown by the Applicant to be vacated, with notation that these areas shall not be disturbed without prior approval of the Land Use Board.

2. Prior to the issuance of a building permit for a residence on any lot, the property owner must obtain approval for a fire protection measure including either a 30,000 gallon underground storage tank, pond, or swimming pool pursuant to condition 1e herein from the Chief of the Oldwick Fire Company and the Township Engineer. The property owner must properly maintain the fire protection measure and arrange for a yearly inspection by the homeowner's insurance company (or other inspector approved by the Chief of the Oldwick Fire Company) and obtain a certificate or letter of proper maintenance which shall be provided upon request to the Township Zoning Officer and the Chief of the Oldwick Fire Company. Prior to the issuance of a Certificate of Occupancy, a Declaration of Covenants and Maintenance specifying the fire protection measure which has been approved by the Chief of the Oldwick Fire Company which shall also specify the location of the fire protection measure, the required maintenance and the inspection and reporting required herein. The form of the Declaration shall be submitted

to the Land Use Board Attorney, the Township Engineer, and the Chief of the Oldwick Fire Company for their approval. After the Declaration is approved, it shall be filed with the County Recording Office, which must take place prior to the issuance of a Certificate of Occupancy.

3. Prior to the issuance of a building permit for a residence on any lot, the common driveway must be improved and approved by the Land Use Board Engineer, the Township Engineer, and the Chief of the Oldwick Fire Company.

4. Prior to the issuance of a building permit for a residence on any lot, a final septic approval must be obtained for that lot.

5. The common driveway and maintenance easement which is subject to the approval of the Land Use Board Attorney and the Land Use Board Engineer shall be approved and executed prior to the signing of the final subdivision plat.

a. The common driveway shall be the sole means of access for Lots 3, 3.05, and 3.06 in Block 43. No other lots shall have access to the common driveway unless said access is approved by the Tewksbury Township Land Use Board and as set forth in the common driveway easement.

b. “The Township of Tewksbury shall neither maintain nor snow plow nor remove ice nor construct nor reconstruct nor have any responsibility or obligation with respect to the common driveway which shall be the sole responsibility of the owners of Lots 3, 3.05, and 3.06 in Block 43 (the owners) (See common driveway easement). The owners shall have the following obligations upon the issuance of the first building permit by the Township of Tewksbury in connection with Block 43, Lots 3, 3.05, and 3.06.

- Those sections of common driveway which are paved shall be kept free of potholes and ruts. Any potholes, ruts or other visible pavement failure shall be repaired by the owners of the affected lots within thirty (30) days of said pavement failure.
- Those sections of common driveway which are unpaved shall be maintained with a minimum stone base of 6" (compacted thickness) of 1-1/2" quarry process (blend) stone or 3/4" dense graded aggregate (DGA) thoroughly rolled and compacted at the specified width. These stone driveways shall also be kept free of potholes and ruts.
- All drainage appurtenances required by the Land Use Board shall be properly maintained and shall keep same free from grass, weeds, leaves, tree branches, rubbish and other obstructions so as to control water quality and runoff.
- The brush and vegetation along the common driveway shall be cut in order to maintain a clear width of at least 15 – 20 feet. The common driveway shall be kept clear of tree limbs and other obstructions to a height of at least fourteen (14) feet from the driveway surface for the first twenty-five (25) feet of the driveway as it leads from the public road and thereafter to a height of at least thirteen (13) feet from the driveway surface.
- No debris or material shall be permitted on the common driveway.
- No parking shall take place on the common driveway. Blocking shared driveways is prohibited. No person shall impede, block or prevent ready

access to, over, in or through a common driveway, whether by parking vehicles, erecting barriers or other means.

- Snow plowing and ice removal to provide effective access for Police, Rescue Squads, Fire Departments and other emergency service vehicles. All snow and ice shall be removed from the common driveways, and in the event of ice which may be so frozen as to make removal impractical, shall cause the ice to be thoroughly covered with sand or ashes, within twelve (12) hours of daylight after the snow fall ends or the ice forms thereon.

Upon the issuance of the first building permit for one of the lots, the Township Officials, employees, and consultants shall have the right to traverse the common driveway and the adjoining areas in order to inspect the maintenance, snow plowing, and ice removal. Township Officials, employees, and consultants shall have the right to traverse the common driveway and adjoining areas prior to the issuance of a building permit in order to make required inspections of the common driveway and the lots as may be contemplated by this Resolution, and the DRO.

c. Upon the issuance of the first building permit for one of the lots, and upon finding a lack of maintenance or snow removal or ice removal, the Township Zoning Officer shall send or deliver a letter to each of the owners advising them of the specific lack of maintenance or snow plowing or ice removal. The failure of the owners to correct a maintenance item in the Zoning Officer's letter within 10 days or a snow plow or ice removal within 24 hours shall result in a violation of condition 5 and Land Use Board resolution 12-08 adopted on April 4, 2012 which approved the aforesaid lots,

and the easement. Each day the maintenance or snow plowing or ice removal is not corrected shall result in a separate violation.

d. Penalties – Any person or persons, firm or corporation, violating any section of any condition in Land Use Board Resolution 12-08 including but not limited to condition 5 relating to the maintenance, snow plowing and ice removal shall be subject to the penalties set forth in the Tewksbury Township Development Regulations Ordinance.

e. No structures nor debris including leaves and branches nor material shall be placed or permitted within the common driveway right-of-way other than the common driveway and associated improvements including the drainage facilities and public utilities. Personal driveways and walkways may be installed within the right-of-way as part of the lot plan required in Condition 1 of this resolution.

Unless otherwise set forth in the chain of title to Lots 3, 3.04 or 3.05, the owner of any lot shall have the right to make improvements to the common driveway, including widening the driveway, bring it to municipal road standards, which are required by the Land Use Board and Land Use Board Engineer in order to further develop their property. In such an event, the owners of the other lots shall cooperate with the permitting process.

f. Any damage to the common driveway caused by an owner, an owner's family, or an owner's guest, or cause by vehicles or equipment whose destination is the owner's property, shall be repaired within 30 days of the date when damage occurred, to the approval of the Township Engineer.

6. The following Right to Farm language shall be placed within the conveying for lots and plans and deed:

“Grantee is hereby given notice that there is, or may in the future be, farm uses adjacent or in close proximity to the within described premises from which may emanate noise, odors, dust and fumes associated with agricultural practices permitted under the Right to Farm Ordinance. Chapter 5.08 of the Code of the Township of Tewksbury.”

The above language shall be included in all subsequent deeds.

7. The deed required in Condition 16 shall be submitted to and approved by the Township Engineer and the Township Attorney and recorded prior to the signing of the final subdivision plat.

8. Certification by the Applicant in writing to the Land Use Administrator that all necessary approvals from other governmental agencies have been obtained.

9. Compliance with all applicable federal, county and municipal legislative enactments, rules, and regulations.

10. Submission of metes and bounds descriptions for review and approval by the Land Use Board Engineer including for the new lots and various easements.

11. The plans are to be revised consistent with the within resolution (including reducing the width of the flag mast for Lot 3.05 to 35 feet) and the technical comments of the Land Use Board Engineer, Township Engineer, and the Chief of the Oldwick Fire Company within one hundred twenty (120) days of the adoption of the within resolution. Subsequent revisions suggested by either the Land Use Board Engineer, Township Engineer or Chief of the Oldwick Fire Company are to be made within sixty (60) days of the request to the approval of the appropriate Municipal professional.

12. Procurement of outside agency approvals or waivers thereof – i.e. New Jersey Department of Environmental Protection, Hunterdon County Soil Conservation

District, Hunterdon County Planning Board, Hunterdon County Board of Health, Tewksbury Board of Health, etc.

13. The applicant shall make the improvements required by the Land Use Board Engineer, the Township Engineer, and the Chief of the Oldwick Fire Co., and the improvement along the existing roads, if any, required by the Township Engineer. Alternatively, the applicant shall post performance guarantees and inspection fees for the improvements. The work must be accomplished or a performance guarantee need be posted prior to the signing of the final plat. A two-year maintenance guarantee must also be posted. The performance and maintenance guarantees are subject to the approval of the Township Engineer and Township Attorney.

14. Applicant will comply with the Township of Tewksbury Tree Removal Ordinance.

15. Driveway improvements, bump outs, and drainage shall be completed to the approval of the Land Use Board Engineer, Township Engineer and the Chief of the Oldwick Fire Company.

16. Road dedications along the frontage of Vliettown Road, Black River Road and Cold Brook Road to the approval of the Township Engineer and Township Attorney. Off-tract improvements to these roads are subject to the requirements of the Township Engineer.

17. Payment of all fees, escrows, inspection fees, affordable housing fees, as well as tax map revision fees.

18. Compliance with all Municipal and State affordable housing measures.

19. Computer disk (electronic file) of approved subdivision compatible with GIS ARC/VIEW.

20. Individual driveways will require a driveway permit to the approval of the Superintendent of Public Works.

21. The final plat shall not be signed until the conditions in the within resolution are satisfied.

23. Obtaining *will serve* letters for each lot from the electric, telephone, and cable companies as well as any other applicable utilities.

24. The within subdivision is subject to the conditions imposed by Township Engineer Andrew S. Holt in his report of December 7, 2011 wherein he approved the waivers from the driveway ordinance subject to the following conditions:

“i. Furnish revised plan and profile drawings for the common driveway for review and approval, depicting existing conditions and proposed improvements, including pull-off areas, stationing on plan view and re-grading.

ii. Surveyed details and dimensions of the existing areas proposed as pull-off area shall be provided to demonstrate adequacy of the areas within the proposed common driveway easement. Should the existing areas located within the proposed common driveway easement proposed to be utilized as pull-off areas not meet the dimension requirements in the driveway ordinance, all pull-off areas shall be designed to comply at a minimum with the dimensions in the driveway ordinance.

iii. Additional pull-off areas will be provided with justification for their location and spacing to the satisfaction of this office.

iv. All pull-offs shall become part of the driveway design, be constructed and maintained as part of the driveway, and all pull-off areas and all turning radii and turn-around areas for emergency vehicles depicted on the plan and shall be approved by the Chief of Oldwick Fire Company.

v. The common driveway shall be protected by maintenance easement and deed restriction to be reviewed and approved by the appropriate Land Use Board and Township Professional and recorded prior to the signing of the final subdivision plat. *Approval by Land Use Board Attorney and Land Use Board Engineer is required.*

vi. The common driveway improvements must be constructed before the recordation of the subdivision plat or must be bonded.

vii. A driveway permit application must be submitted for driveway permit approval.”

25. The following shall be included in a deed restriction to the approval of the Land Use Board Engineer and Land Use Board Attorney.

There are currently utility lines (electric, telephone, cable, etc.) existing in a portion of the common driveway. In order to obtain these utilities, lines must be extended through the common driveway rights of way to each lot, or through other locations from adjacent properties, or directly from Vliettown Road within separate utility easements. Pursuant to Section 611 of the DRO: “Underground Wiring – which reads All electric, telephone, television and other communication facilities, both main and service lines servicing new developments, shall be provided by underground wiring within easements or dedicated public rights of way, installed in accordance with the prevailing standards and practices of the utilities or other companies providing such services.” The cost of extending and installing the utilities and obtaining the necessary permits and the paying of the required fees shall be borne by the owners of the lots.

The foregoing shall be included as a note on the plans.

26. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E., in his report of September 30, 2011 as modified by the Land Use Board:

**“TECHNICAL REVIEW:**

## **A. Planning/Zoning**

According to DRO Section 706D.2, flag lots may only be created with access to an existing public street. According to the submitted plan, access to proposed Lot 3.05 will be gained via the common driveway easement from adjacent proposed Remaining Lot 3, not the flag lot access strip as required; therefore, a variance is required. *The variance was considered by and approved by the Board. See factual findings 30 -35. herein.*

## **B. Policy**

1. The applicant is proposing to utilize the existing farm driveways for the access to the proposed individual lots. The applicant is proposing improvements to the driveways to comply with the Township Driveway Ordinance – Chapter 12.08 since these driveways are pre-existing and have been used regularly as part of the on-going farm operations. According to the plans, the existing driveways average 12 ft. in width, which is the minimum driveway width allowed by Chapter 12.08.

I note however that these improvements would not comply with the Township street specifications as described in DRO Section 601 which states that the Residential Site Improvement Standards (RSIS) shall govern any site improvements carried out in connection with any application for any subdivision. This classification would require an 18 ft. wide traveled way, instead of the 12 ft. width as permitted by the Township Driveway Ordinance, and requires certain geometric criteria to be addressed as well. *The RSIS is inapplicable, as the common driveway will only serve three lots. Both Township Engineer Holt and Land Use Board Engineer Burr have found the driveway adequate to serve three lots.*

The Board should obtain input/testimony from the applicants' professionals, in making a determination as to what standards the farm driveways should meet.

2. If the Board permits the driveways to comply with the provisions of the Township Driveway Ordinance (Chapter 12.08), then the applicant has requested three (3) design waivers as follows:
  - a. Chapter 12.08.040(A) – Finished grade of driveway within right of way less than 4%.
  - b. Chapter 12.08.060(C) – Driveway less than 10 ft. from property line.
  - c. Chapter 12.08.060(E) – Driveway longer than 500 ft. shall have bump-outs every 300 ft.

The applicant is requesting these waivers since the existing driveways are pre-existing (presently in use) and no modifications are being proposed. Testimony should be provided by the applicant to support these waiver requests. If the Board agrees, then the above waiver requests would need to be reviewed and approved by the Township Engineer pursuant to Chapter 12.08 of the Township Code. *Township*

*Engineer Holt has approved the waivers (see factual findings 23 - 29 herein). His conditions are incorporated in Condition 24 herein.*

3. A discussion should take place regarding the future disposition of the various driveways, pathways and trails on the property. As shown on the submitted plans, there are numerous drives, paths and trails on the property and the applicant should clarify if they are proposing to allow these trails to remain in or will they be removed at the time of the individual lot developments? *Engineer Kennedy testified that the existing drives, paths and trails are to remain as is until such time as the individual lots are developed.*
4. The subject property is encumbered by several environmental constraints including: Category One (C-1) streams/stream tributaries, the associated 300 ft. special water resource protection areas, freshwater wetlands and wetlands buffers. The applicant should advise the Board as to the status of application for the NJDEP Letter of Interpretation. Would any other NJDEP permits be needed for the proposed subdivision and related common driveway improvements? *The application for a LOI has been submitted in June 2011, but approval has not been obtained prior to the approval of the application.*
5. I note that the surrounding roadways (i.e. Vlietown Road, Black River Road and Cold Brook Road) are all designated scenic roads and comment should be sought from the Scenic Roads Committee on the proposed subdivision application. *The Scenic Road and Bridge Committee has no problem with the application. See factual finding 34 herein.*
6. This office is in receipt of a report, dated September 29, 2011, from Shaun C. Van Doren, Township Historian, regarding the historical significance of the old railroad right of way traversing the property. The applicant should clarify if they would be willing to comply with the suggested recommendations, including surveying/describing the limits of the Rockaway Valley Railroad right of way on the final plat, as well as, providing an easement granting public access for a walking path? *The Board considered Mr. Van Doren's comprehensive report and the supporting testimony by Mr. Rahenkamp. See factual findings 17 – 22 herein.*
7. A discussion should take place regarding whether any off-tract improvements will be necessary along the adjacent Township roadways? *See condition 16 herein.*

### **C. Lot Layout, Site Circulation, etc.**

1. The applicant should clarify what, if any, improvements are proposed to the farm driveway as part of this subdivision. Is there any driveway widening or paving necessary/proposed? *Engineer Kennedy testified that there are minimal improvements proposed to the existing farm driveway. Improvements will include re-grading and paving the portion of driveway within the Vlietown Road right-of-way and constructing the driveway pull-off areas.*

2. The applicant is proposing to utilize the existing farm driveway through Remaining Lot 3 to access the proposed Lots 3.05 and 3.06. I note that this driveway currently runs right past the existing dwelling and accessory farm structures on Lot 3. The applicant should provide testimony to clarify whether they anticipate any conflicts with the future owners of Lots 3.05 and 3.06 since they will have to travel in such close proximity to the main farming operations? *Engineer Kennedy did not envision any problems with the proximity of the driveway to the home and other structures on remaining Lot 3.*
3. The plans should be provided to the Township Fire Department (Oldwick) for review and approval of site circulation and building accessibility for firefighting purposes. Comment should also be provided on the quantity and location of proposed driveway pull-off areas. *The application was submitted to the Oldwick Fire Company. No response was received.*
4. The proposed driveways should be designed to accommodate a large fire truck, and to provide adequate turning radii and turn-around areas for emergency vehicles. Will a fire truck be able to navigate the common driveway, as well as, proposed driveway stems and circular driveways at the front of the proposed dwelling on Remaining Lot 3? *Engineer Kennedy testified that fire trucks and other emergency vehicles will be able to access and navigate the proposed home sites.*
5. The applicant should clarify why a new driveway opening is proposed to Vliettown Road for Lot 3.04, instead of utilizing the existing farm driveway on Remaining Lot 3? *Engineer Kennedy testified that there is a significant grade change between the existing farm drive and proposed home site.*
6. The plans reflect an overlap of the proposed common driveway easement in the same area as the existing AT&T easement and JCP&L right of way. The applicant should clarify if there is any language in those easement/right of way documents which would preclude the common driveway easement from being located there as well. *Engineer Kennedy testified at the October 5, 2011 meeting that there is a solid lead line approximately 4 inches with copper wire that is broken in approximately 50 pieces within the AT&T easement. Engineer Kennedy said there is no prohibition in the easement regarding the driveway use. The engineer noted there is also a JCP&L easement along the driveway.*
7. The applicant's engineer should clarify if the proposed lot coverage calculations include all of the existing farm driveways, pathways, etc.? *Engineer Kennedy testified at the October 5, 2011 meeting that gravel and pavement were included within the lot coverage calculations, but that grass paths used for farm equipment were not counted.*

#### **D. Survey Details**

1. Metes and Bounds descriptions, with supporting closure calculations, must be provided for the existing and proposed lots, as well as, all proposed easements and right of way dedications.
2. A draft “Common Access, Utility and Maintenance Easement” will need to be submitted for review and approval.
3. Upon review of the “Preliminary and Final Major Subdivision Plat” (consisting of 4 sheets), we have the following comments:
  - a. The plat must be revised to reflect tie dimensions from the proposed common driveway easement to the property line(s).
  - b. Metes and bounds descriptions must be provided along the limits of the common driveway easement. *Only the earthen mound within the vacated railroad right-of-way must be shown on the final plat. It is not necessary to show the vacated railroad right-of-way on the final plat. The Board requires, however, that the vacated railroad right-of-way and the restriction on the earthen mound be described in a note on the final plat. These items must be done to the approval of the Land Use Board Engineer.*
  - c. Per Comment B.6 above, the plat would need to be revised to reflect the railroad right of way if required by the Board. Upon receipt of the NJDEP LOI, the plat will need to be revised to update the label for the wetlands buffer to remove reference to the word “anticipated”. *The earthen mound within the former railroad right-of-way must be shown on the final plat with the notation that the earthen mound may not be disturbed without the approval of the Land Use Board*

#### **E. Grading/Drainage/Utilities**

According to the applicant’s engineer, the proposed stormwater management improvements on each lot are conceptual and designed to meet the intent of the Township’s Stormwater Control Ordinance (DRO Section 625). Since this application is unlike most major subdivision applications in that there are minimal site improvements proposed (no new roadway, etc.) and since development of the single family lots could be completed over an extended period of time, the applicant has requested that final design plans and supporting stormwater management calculations for the individual lots be reserved until such time as building permits for each lot are sought.

Since there are minimal site improvements proposed at this time (assuming the Board agrees that the farm driveway(s) meet the Township Driveway Ordinance and not the Township street specifications pursuant to DRO Section 601) and since a conceptual stormwater design has been provided on each lot which would address the Township stormwater requirements, I would have no objection to the final design/details being deferred until the building permit stage. That being said, I do have the following comments relative to the submitted plans:

1. Note 27 on Sheet 1 of 7 should be revised to also state that a Grading and Surface Water Management Plan in accordance with Township Code Chapter 13.12 shall be secured prior to issuance of individual building permits.
2. Sheet 5 of 7 indicates that the first floor elevation of the proposed dwelling on Lot 3.04 is 170.3. This appears to be an error and should be corrected – perhaps to 270.3.
3. There is a note on Sheet 7 of 7 in the northern corner of proposed Lot 3.06 indicating the “Limit of Driveway Widening for Common Driveway Construction”. Additional information (i.e. hatching, etc.) should be provided along the common driveway to indicate any areas of widening or in the alternative, remove this notation if there is no widening proposed.
4. Stormwater Management Maintenance Plans must be submitted in accordance with DRO Section 625 and Chapter 8 of the NJ BMP Manual.

**F. Miscellaneous:**

1. Note #22 on Sheet 1 of 7 of the plans should be revised to indicate that “Fire protection measures for proposed lots shall be determined on an individual basis at the time of lot development to the approval of the Township Fire Department and Township Engineer”.
2. The applicant shall obtain approvals from the following outside agencies:
  - a. NJDEP (LOI)
  - b. Hunterdon County Soil Conservation District
  - c. Hunterdon County Planning Board;
  - d. Hunterdon County Board of Health.
  - e. Any other agencies as necessary.”

27. The following shall be in a recordable document which is subject to the approval of the Land Use Board Attorney and Land Use Board Engineer:

“Present and prospective owners of the lots created by the within subdivision are hereby granted notice that the variances and waivers from the Driveway Ordinance and zoning standards were granted to allow access to three lots from a common driveway. Since this right of access was authorized in response to the low density of the three lots, present and prospective owners should not assume that any additional parcels can be subdivided from the within premises requiring access on the common driveway. ”

28. A deed restriction or easement must be submitted to the Land Use Board Attorney and Land Use Board Engineer for their approval which incorporates conditions 5, 6, 10, 25, and 27 herein. A deed or easement must be submitted to the Township Attorney and Township Engineer for their approval which incorporates conditions 7 and 16. The final plat shall not be signed until the documents are approved.

**Roll Call Vote**

Those in Favor: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mr. Shapack and Mr. Johnstone

Those Opposed: None

**MASTER PLAN RE-EXAMINATION REPORT**

- Board Review of the Draft of the 2012 Master Plan Re-examination Report

Mr. McGroarty, Township Planner, was present and explained that the Land Use Board adopted a Re-examination report approximately 14 months ago (December of 2010). The report being considered tonight was prepared as part of the Highlands Plan Conformance requirements. It sets the stage for a Highlands Master Plan and subsequent to that the Highland Land Development Ordinance. The Re-examination report recognizes that the Township Committee has decided to fully conform for both the Preservation Area and the Planning Area. Mr. McGroarty noted that not much has changed from the 2012 Re-examination report.

Mr. Johnstone opined that recommendations should be included regarding the need to keep options open concerning commercial development south of Route 78 for future ratables. Ms. Desiderio asked about a receiving zone and Mr. McGroarty explained that by going ahead with full plan conformance the area South of 78 is in the Highlands Protection Zone which would generally not anticipate new infrastructure. He noted that a reference has been made in the report about the Bellemead NJPDES permit. Mr. McGroarty explained that the Highlands Regional Master Plan does not recognize receiving districts in an area like the protection zone however, the past Executive Director was open to some possibilities. The TDR report is still in draft form and could identify the area south of 78 as a receiving area as long as it could accommodate the kind of growth the township has in mind.

Mrs. Devlin asked what the benefits would be to including any reference to the area south of 78. Mr. Johnstone opined that it is important to give notice and recommendation that the area south of 78 is the area for development when it is needed.

Mr. Van Doren opined that by including a reference to the area south of 78 the Re-examination report would then contain language that is potentially in conflict with the

Regional Master Plan based on the zoning that the Highlands has created (i.e. the Protection Zone).

Ms. Desiderio noted that when she spoke to Eileen Swan she explained that since the Township received the grant money for the TDR Study and if the area south of 78 was identified as a receiving zone that the township would be permitted to have density in that area. Mr. McGroarty explained that the language now is that the receiving zones areas should go in existing community zones where infrastructure is encouraged and is prohibited in the Protection Zone. He noted that the Highlands have been looking for ways to be flexible and this may be one of the ways.

The consensus was to keep reference to the area south of 78 out of the Re-examination report.

When asked by Mr. Shapack the status of the TDR Study, Mr. McGroarty explained that the study is in draft form but has not been finalized because the Township is waiting to see what happens with the NDPDES permit on the Bellemead property. If there is no sewer permit, the report will conclude that the area cannot support a receiving area.

The Board reviewed the following changes to the Draft Master Plan Reexamination Report:

1. Daniel Bernstein's name should be corrected under Tewksbury Land Use Board.
2. Page 3 should include #19 to read "The 2010 Reexamination Report recommended the elimination of the Rockaway Village Overlay zone as applied to the Piedmont District to the south of Interstate 78."
3. Page 4, 1. Highlands Water Planning and Protection Act, third paragraph shall read as follows: Tewksbury completed the requirements of "basic plan conformance" and followed with a Petition for Plan Conformance that included both its Preservation and Planning Areas, which was approved by the Highlands Council at their public meeting on February 17, 2011. On February 13, 2012 the Township's Environmental Commission adopted the Highlands Environmental Resource Inventory. The Township's Land Use Board and Township Committee are now engaged in meeting the various remaining requirements of Plan Conformance which includes this Reexamination Report and the following tasks:
  - Planning Area Petition Ordinance
  - Highlands Area Checklist Ordinance
  - Highlands Environmental Resource Inventory (complete per Environmental Commission (review as of February 13, 2012)
  - Highlands Master Plan Element
  - Highlands Area Land Use Ordinance
  - Wastewater Management Plan
  - Zoning Map Modification (to show Highlands overlay zones)
4. Page 8, 3<sup>rd</sup> paragraph – strike the following language: The Bellemead Development Corp. site has a NJPDES permit pending with NJDEP for a wastewater treatment plant, however; there is no approved site plan for this

project and the current PM Piedmont District permits only low density residential development, agriculture and a limited range of public facilities. Located in the Highlands Planning Area, the site in question falls within the Highlands Protection overlay zone, that is, within the “priority preservation investment area”.

5. Page 8, 3. Affordable Housing – strike the following language: “endorsed the Highlands HE/FSP.
6. Page 9, 2<sup>nd</sup> paragraph shall read as follows: On August 29, 2011 Governor Christie’s Re-organization Plan 001-2011 abolished COAH and transferred its responsibilities to a new entity known as Local Planning Services with the Department of Community Affairs. On March 8, 2012 the Appellate Division of the Superior Court of New Jersey invalidated the Governor’s Re-organization Plan and reinstated COAH as the authority over municipal fair share obligations. Pending an appeal by the Governor by to the Supreme Court, no specific changes are recommended in the HE/FSP until such time as the Supreme Court issues a decision and appropriate rule changes are instituted.
7. Page 14, 1. Highlands shall read as follows: Tewksbury will implement the requirements of the Highlands Plan Conformance applicable to both the Preservation Area and Planning Area portions of the Township.
  - Planning Area Petition Ordinance
  - Master Plan Reexamination Report
  - Highlands Area Checklist Ordinance
  - Highlands Environmental Resource Inventory
  - Highlands Master Plan Element
  - Highlands Area Land Use Ordinance
  - Zoning Map Modification (to show Highlands overlay zones)

The Highlands Area Checklist Ordinance is to be adopted as an interim protective measure to be retained until such time as the Highlands Area Land Use Ordinance is completed and adopted by the Township Committee.

Page 14, 2. Wastewater Management Plan, 1<sup>st</sup> paragraph shall read: By virtue of full plan conformance the Highlands Council will assume responsibility to prepare a draft wastewater management plan for the entire Township.

Mr. Johnstone opened the meeting up to the public. There being no questions or comments, Mr. Johnstone closed the public portion of the meeting.

## **RESOLUTION**

- **Resolution #12-09** – 2012 Master Plan Re-examination Report

A motion was made by Ms. Desiderio to adopt the following resolution to adopt the 2012 Master Plan Re-examination report with the corrections as outlined above. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD

TOWNSHIP OF TEWKSBURY  
RESOLUTION No. 12-09

WHEREAS, THE TEWKSBURY TOWNSHIP PLANNING BOARD, a predecessor to the TEWKSBURY TOWNSHIP LAND USE BOARD, adopted a Master Plan on October 22, 2003, and

WHEREAS, the Tewksbury Township Land Use Board last adopted a re-examination report in 2010, and

WHEREAS, since the adoption of the re-examination report, there have been changes in the assumptions, policies, and objectives of the Master Plan, and

WHEREAS, while a new re-development plan is not statutorily required under N.J.S.A. 40:55D-89 until 2020, the Land Use Board has considered a re-examination report based on the critical issues raised by the Highlands Water Planning & Protection Act, the New Jersey Development and Re-Development Plan, affordable housing and renewable energy, and

WHEREAS, the Township Planner's office prepared a draft Re-examination Report which was considered at the April 4, 2012 Land Use Board meeting at which time the public and Land Use Board Members suggested revisions, and

WHEREAS, the report with the revisions was found to be appropriate.

NOW, THEREFORE, BE IT RESOLVED by the LAND USE BOARD OF THE TOWNSHIP OF TEWKSBURY on this 4<sup>th</sup> day of April 2012, that the report titled "2012 PERIODIC REEXAMINATION REPORT OF THE MASTER PLAN AND DEVELOPMENT REGULATIONS, Township of Tewksbury, Hunterdon County, New Jersey, April 4, 2012", prepared by Banisch Associates, Inc. 111 Main Street Flemington,

NJ 08822 and signed by Charles T. McGroarty, PP, AICP with the revisions noted on the attached sheet is hereby adopted as the Tewksbury Township Re-examination Report.

BE IT FURTHER RESOLVED that a copy of the within resolution and Re-examination Report with the revision sheet be forwarded to the Hunterdon County Planning Board, the Clerk of each adjoining municipality and the governing body of the Township of Tewksbury.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

**MASTER PLAN CONSISTENCY REVIEW**

- Ordinance No. 02-2012 in accordance with 40:55D-26a

A motion was made by Ms. Desiderio to find Ordinance No. 02-2012 not inconsistent with the Master Plan. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Nays: None

**MISCELLANEOUS BOARD DISCUSSION**

- Release of Bond - Staller Landscape Bond - \$1,223.60

Mr. Van Doren made a motion to authorize release of the bond referenced above. Ms. Desiderio seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone.

Nays: None

- Sub-Committee - Two (2) LUB volunteers to review the draft Highlands Ordinance

Ms. Desiderio asked for two (2) volunteers from the Land Use Board to be involved with the Township Committee and staff to review the draft Highlands Ordinance. Mrs. Baird and Mr. Mackie volunteered with Mr. Johnstone as an alternate.

## **PUBLIC HEARING**

- JCP&L
  - Appl. No. 12-04
  - Block 17, Lot 2.01 & 2.02
  - Modification to a prior approval and Variance
  - Action Deadline – 7-11-12**

Dana Desiderio recused herself from the meeting at 8:20 p.m.

Mr. John Beyel, attorney for the applicant, was present and explained that the application seeks permission to install two (2) driveways, one (1) on Lot 2.01 and the other on Lot 2.02. As indicated in the application material the applicant is seeking Preliminary and Final Site Plan approval as well as a variance with respect to Lot 2.01 for the slight increase in lot coverage. There is an overall decrease in lot coverage because of the proposed removal of a considerable portion of the Hernick's paved driveway as well as a portion of the driveway near the substation from Fox Hill Road. When asked by Mr. Johnstone if it was the original intent of JCP&L to maintain the driveway and to erect a wall, Mr. Beyel explained that there was a discussion at several Board meetings regarding screening of the substation by the use of a wall however the Board rejected the idea. Mr. Beyel noted that this application has nothing to do with Lot 2 or screening Lot 2. Mr. Beyel explained that in 1986 the subdivision approval for these three (3) lots contained a provision that those lots could not have direct access to County Route 517 so the application also seeks to modify that resolution or waive that condition so that the Hernick's and Kalb's may have access to County Route 517. He noted that there are a number of other approvals necessary and they include: Township driveway permit, County permit, County Planning Board and NJDEP due to the wetlands. Mr. Beyel called his first witness Mr. John Anderson.

John Anderson, 6 Beaver Brook Road, Annandale, was sworn in by Mr. Bernstein. Mr. Anderson provided the Board with his background which includes a B.S. degree from Rutgers University and a Certified Tree Expert in the State of NJ. He is employed by JCP&L as an Area Manager. When asked by Mr. Bernstein if he was testifying as an expert witness, Mr. Beyel responded in the negative.

Mr. Anderson explained that after JCP&L received approval to build the substation he began thinking about some of the testimony given during the hearings and both the Hernick's and the Kalb's expressed concern about access to their property. Using the plans filed with the application, Mr. Anderson described the existing common driveway as well as the proposed individual driveways. When asked if he discussed with the Kalb's and Hernick's a common driveway to the County road, Mr. Anderson responded in the positive however noted that with this scenario one (1) property owner must cross underneath the 230 KB transmission line and so both property owners rejected that

concept and were adamant that they wanted two (2) separate driveways. When asked if there were also environmental constraints preventing a common driveway, Mr. Anderson responded in the positive. When asked if the common portion of the existing driveway is gravel, Mr. Anderson responded in the positive and he explained that in order to get the power from the substation to County Route 517 JCP&L is offering to construct a manhole and duct system for the wires to run underground. The proposal is to run a manhole and duct system down the existing common driveway that. When asked if the gravel will be removed, Mr. Anderson explained that top soil would be deposited on top of the gravel and then seeded and allowed to return to a pervious surface. When asked if the existing driveway will be turned into a foot path, Mr. Anderson responded in the positive and explained that it would basically be a grassy driveway to support the weight of a truck when the manholes need to be accessed. When asked how frequently the grassy driveway will be used by a truck inspecting the manholes, Mr. Anderson opined once every few years. When asked by Mr. Johnstone who would maintain the grassy driveway, Mr. Anderson explained that it would be allowed to naturalize; if ruts and damage are caused JCP&L will make the repairs.

Mr. Anderson marked several photographs into the record and provided a brief description as follows:

- Exhibit A-1 – Drainage easement adjacent to existing Hernick driveway looking towards Rt 517  
Looking West towards Route 517 - taken from the existing Hernick driveway where the culvert is under the driveway and it then discharges the water into the wetlands area
- Exhibit A-2 – Existing culvert on east side of Route 517 between proposed driveways  
On the east side of Route 517 by the existing storm drain
- Exhibit A-3 – Existing driveway entrance from Fox Hill Rd  
Standing on Fox Hill Road looking down the common driveway
- Exhibit A-4 – Existing shared driveway looking towards Fox Hill Road  
Standing on the common driveway facing Fox Hill Road
- Exhibit A-5 – Hernick proposed driveway entrance from Route 517  
Mr. Anderson noted that the driveway is sited just far enough to the north to get the driveway permitted with the NJDEP because of the wetlands
- Exhibit A-6 – View of side yard gate of substation from the existing driveway  
Standing on the shared driveway looking at the substation in the area of an existing gate
- Exhibit A-7 – View of proposed Kalb driveway looking towards Route 517  
Standing at the edge of the existing Kalb driveway looking straight down where the new driveway is proposed towards Route 517. The concept is to add enough of a soil berm to block vehicular traffic but also to visually break the up the visual to connect to the existing forsythia hedgerow and plant the berm with landscaping
- Exhibit A-8 – View of proposed Hernick driveway looking towards Route 517  
Looking through the Hernick yard at Route 517 to where the driveway will intersect with Route 517

- Exhibit A-9 – View of existing Hernick paved driveway looking towards Hernick home  
Standing on the paved portion of the Hernick driveway looking towards the home
- Exhibit A-10 – Proposed Kalb driveway entrance looking from Route 517  
Standing on the western side of Route 517 looking in an easterly direction at where the mouth of the driveway would be
- Exhibit A-11 – Looking south on Route 517 from proposed Kalb driveway entrance  
Standing at the mouth of Kalb’s proposed driveway looking south
- Exhibit A-12 – Looking south on Route 517 from proposed Hernick driveway entrance  
Standing at the mouth of Hernick’s proposed driveway looking south
- Exhibit A-13 – Looking north on Route 517 from proposed Kalb driveway entrance
- Exhibit A-14 – Looking north on Route 517 from proposed Hernick driveway entrance
- Exhibit A-15 – photos of gates to provide different design concepts for gates for the entrance onto Fox Hill Road
- Exhibit A-16 - photos of gates to provide different design concepts for gates for the entrance onto Fox Hill Road
- Exhibit A-17 - photos of gates to provide different design concepts for gates for the entrance onto Fox Hill Road

Mr. Beyel noted that if the consensus of the Land Use Board was to not install a gate JCP&L is fine with that.

There being no further testimony from Mr. Anderson, Mr. Johnstone opened the meeting up to the Board for questions.

When asked to confirm that JCP&L will repair any ruts or damage to the grassy area used by their trucks, Mr. Anderson responded in the positive. When asked if the neighbors agreed to the gate, Mr. Anderson explained that during the conceptual discussions it was explained that in order to make the manhole and duct system function the idea was to continue to utilize the mouth of the existing driveway and the gate would limit access to the property unless the property owners consented.

Mrs. Baird asked for clarification on how the electricity gets from the substation to Route 517 through the manholes. Mr. Anderson explained that it is underground PVC pipe that runs underneath the driveway to County Route 517 and rises up to the wooden poles. Mr. Beyel explained that the purpose of the substation is to take the power from the 230 lines to a level that can be sent out for distribution. He explained that JCP&L is considering it so that it could be done in a way that wouldn’t require additional poles in the transmission right of way. When asked why an easement is necessary, Mr. Beyel explained that they felt it was appropriate to get an underground easement from the Kalb’s and the Hernick’s.

Mr. Van Doren asked if any informal discussions have been held with the County Engineer regarding the driveways. Mr. Anderson explained that they have had informal conversations with the County and the County suggested starting with Tewksbury first. Mr. Bernstein noted that if there is a substantial change in the plan required by the County the applicant will need to return to the Land Use Board for amended approval. Mr. Van Doren asked about the underground wiring to which Mr. Anderson explained that there will be three (3) concrete boxes for the manholes and the duct bank is built in the trenches and backfilled. The manhole will be flush to the ground and the cover is lifted which exposes a built in ladder. When asked if the fire department or other emergency rescue can gain access, Mr. Anderson responded in the positive and explained that that was the reason JCP&L wanted to maintain the access from Fox Hill Road rather than accessing it through the existing substation; only certain personal have clearance to access the area of the substation.

Mr. Johnstone asked Mr. Anderson if he would coordinate with Mr. Burr about the amount of top soil and grass seed to be placed on the existing common driveway to which Mr. Anderson responded in the positive. Mr. Burr noted that when he spoke with the applicant's engineer he agreed to make some requested amendments to the plan. When asked by Mr. Johnstone if the proposed individual driveways will be gravel or paved, Mr. Anderson explained that the Hernick driveway will be paved and the Kalb property will be gravel; both are in-kind replacements. Mr. Johnstone expressed concern about erosion from the Kalb driveway if it is gravel. When asked if they would consider paving the driveway, Mr. Anderson opined that it would not be necessary and suggested that the engineer explain why during his testimony.

Mr. Mackie asked why the Hernick driveway is proposed in the location shown on the plan. Mr. Anderson explained that the wetlands and the slope dictated the location to avoid disturbing wetlands and unnecessary soil disturbance. When asked why the driveway wasn't moved a little more to the south to avoid some of the tree removal, Mr. Anderson suggested that the engineer answer the question.

Mr. Shapack asked if the manholes are locked to which Mr. Anderson responded in the positive.

Mr. McGroarty asked if the County required such a large sight triangle to which Mr. Anderson responded in the positive. When asked if all of the trees and the stone row within the sight triangle need to be removed, Mr. Anderson explained that if the stone row is less than 18 inches it can remain.

Mr. Johnstone opened the meeting up to the public.

Mr. Jonathan Holt, 2 Fox Hill Road, distributed to the Board his January 17, 2012 letter and marked the letter as **Exhibit H-1**. When asked by Mr. Holt if the manholes are inspected monthly, Mr. Anderson was unsure of the inspection cycle of a distribution manhole but opined it would be far less than monthly. When asked if it is the same team of people inspecting the manholes as would inspect the substation, Mr. Anderson

responded in the negative. When asked how tall the proposed gate will be, Mr. Anderson explained that it would depend on the style of gate chosen by the Hernick's and what the ordinance would allow. When asked if he was familiar with the February 4, 2011 decision by NJDEP, Mr. Anderson responded in the positive. When asked if he thought NJDEP encouraged the driveways in their decision, Mr. Anderson explained that he was not given any directive based on the NJDEP decision. He explained that he pursued the driveways based on the concerns voiced by the Kalb's and Hernick's. Mr. Holt asked to submit the NJDEP decision letter into the record to which Mr. Beyel objected. When asked what the purpose of the submission is, Mr. Holt explained that the decision by NJDEP acknowledges the safety issues and he would like to point out that the NJDEP encouraged the driveway. Mr. Beyel continued to object and opined that the letter is not relevant to the application nor has he had a chance to read the letter. Mr. Bernstein was unsure of its relevancy but allowed Mr. Holt to enter it into the record as **Exhibit H-2**.

When asked to point out where the JCP&L easement ends, Mr. Anderson did so on the map. When asked if the driveway to be used by JCP&L is within the JCP&L easement, Mr. Anderson responded in the negative. When asked whose property the driveway access is on and if they have rights to use it, Mr. Anderson explained that it is located on the Hernick property and no deeded rights exist. Mr. Holt entered four (4) photographs into the record marked as Exhibits H-3 through H-6. Using H-6, Mr. Holt asked Mr. Anderson to mark where the proposed gate would be located. Mr. Holt noted that Exhibits H-3, H-4 and H-5 depict the area of the existing substation gate. When asked the purpose of the existing gate, Mr. Anderson explained that currently the manhole duct system comes from the equipment and runs down the inside of the fence of the substation and stops just outside of the fence. A decision was made to temporarily install the gate to allow JCP&L to continue the manhole duct system once approval was received. Once the manhole duct construction is complete the gate is closed and becomes part of the fence line. Marked as Exhibit H-7 was a photocopy of a portion of the soil and sediment control plan which Mr. Holt explained showed the proximity of the manhole cover (shown in yellow) to the gate (shown in yellow). When asked if he is aware of conservation easements on either the Kalb or Hernick property, Mr. Anderson responded in the positive and explained that there is a conservation easement on the Hernick property. When asked if the electrical conduit will run through the conservation easement, Mr. Anderson replied in the negative. When asked about the boulders that would be used at the entrance onto Fox Hill Road, Mr. Anderson explained that there are some existing boulders on site that will be moved over with the equipment to flank either side of the proposed gate. When asked if JCP&L would have to maintain the site triangle at the entrance onto Fox Hill Road, Mr. Beyel indicated that they would not because it is not an active driveway. When asked how a truck will turn around, Mr. Anderson explained that the truck would either back into the site or back out of the site.

Mary Kalb, 6 Fox Hill Road, noted that after four (4) years of stress over the substation her husband suffered a stroke. When asked if he ever mentioned fire engines when discussing the proposed driveway with the property owners, Mr. Anderson responded in the negative and explained that if a JCP&L worker gets hurt on site a rescue vehicle would need access. When asked if he said he could deal with the entrance to Fox Hill

Road at another time so that the driveways could be approved, Mr. Anderson responded in the positive. When asked if he was aware that Mrs. Kalb preferred that the entrance onto Fox Hill Road be removed, Mr. Anderson responded in the positive.

George Cassa, 14 Guinea Hollow Road, asked Mr. Anderson about the 30 foot wide easement for the conduit. Mr. Anderson explained that it starts at the first manhole near County Route 517 and runs up the proposed driveway for the Kalb property and then along the old driveway adjacent to the substation. Mr. Cassa noted that there is no easement beyond that point. When asked if the JCP&L trucks could travel from County Route 517 to the substation, Mr. Anderson responded in the negative. When asked if JCP&L has an easement from Fox Hill Road, Mr. Anderson responded in the negative and explained that if the Hernick's chose to close it down JCP&L would have no access.

Debbie Close, 5 Hollow Brook Road, asked if anything with the proposed application alters the approved landscape plan to which Mr. Anderson responded in the negative.

Robin Love, 7 Wildwood Road, asked the height of vegetation allowed in the 150 easement to which Mr. Anderson explained that there are two (2) zones that allow for plantings up to 3 feet and 15 feet with some discretion by the utility forester. When asked if the mouth of the driveway has any vegetation restrictions, Mr. Anderson responded in the negative. When asked if additional buffering could be planted there if the driveway were closed off, Mr. Anderson responded in the positive. When asked if there is another path that JCP&L could use to access the manhole system, Mr. Anderson responded in the negative.

Debbie Close, 5 Hollow Brook Road, asked if JCP&L could install the lines underground if the Hernick's denied access. Mr. Anderson was unable to answer that without looking at a redesign. When asked the size of the poles that would be used if the lines were overhead, Mr. Anderson explained that they would be 45 to 50 feet tall and 18 inches wide. Mr. Anderson reiterated that the application attempts to provide access to the Kalb's and the Hernick's as well as to provide underground installation of the line.

Angela Holt, 2 Fox Hill Road, asked why JCP&L couldn't access the manhole duct system through the substation to which Mr. Anderson explained that it is an energized location and certain groups are not trained to have access to the substation. When asked if he remembers the discussions he had with the Holt's regarding the plantings to buffer their home from the substation, Mr. Anderson responded in the positive and explained that as recently as a few days ago he spoke with Mr. Holt and reaffirmed that commitment. Mr. Beyel noted that the landscape plan has nothing to do with the current driveway application. Mr. Bernstein suggested that the neighbors meet with representatives from JCP&L before the next hearing and iron out the landscaping issues.

Wilma Frey, 23 Water Street, asked that the plans be made clearer through the use of color to show where the various easements are on the property. The applicant agreed to provide a colored version of the plan at the next hearing.

Jon Holt, 2 Fox Hill Road, asked Mr. Anderson if municipal approval is required for the underground conduit, Mr. Anderson responded in the negative.

There being no additional questions from the public, Mr. Johnstone closed the public portion of the meeting.

Mr. Shapack asked if the mouth of the driveway onto Fox Hill Road could be shifted to the northwest to leave space for additional plantings for a buffer. Mr. Anderson explained that it hasn't been discussed because the area in question is already densely forested.

Mr. Van Doren asked Mr. Anderson if the poles for the overhead lines are as large as the existing poles on Lamington Road. Mr. Anderson responded in the negative and explained that the poles would be the same as the poles that are currently on County Route 517; the Lamington Road poles are for a sub-transmission line. When asked if accessing the manhole duct system from County Route 517 was an option, Mr. Anderson opined that the Kalb's would not want their driveway used for that access and so it was not discussed or looked into. When asked if they will have an access agreement or easement with the Hernick's, Mr. Beyel explained that there is an agreement with the Kalb's and the Hernick's for the underground conduit but that agreement does not cover the area from the upper most manhole to Fox Hill Road. Mr. Beyel agreed to discuss it with his client.

Mr. Bernstein noted that if the application is approved he will likely include a condition to require the conduit to be installed underground and an agreement between the Kalb's and Hernick's to provide access to maintain the underground manhole duct system.

Mr. Johnstone suggested that JCP&L meet with the homeowners involved to iron out access agreements, buffering along Fox Hill Road and solutions to issues of the driveway mouth at Fox Hill Road. He suggested trying to resolve the issues prior to the next meeting and to include Mr. Burr in the meetings.

The next hearing was scheduled for May 16, 2012, 7:30 p.m. with no new notice required.

#### **ADJOURNMENT**

There being no further business, the meeting adjourned at 10:40 p.m. by motion of Mrs. Baird and seconded by Mr. Mackie.

Respectfully submitted,

Shana L. Goodchild  
Land Use Administrator