

LAND USE BOARD MINUTES
June 1, 2011

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Old Turnpike School All Purpose Room, 171 Old Turnpike Road, Califon, New Jersey. The meeting was called to order at 7:31 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird arrived at 7:32 p.m., Shaun Van Doren, Bruce Mackie, Elizabeth Devlin, Shirley Czajkowski, Michael Moriarty, Arnold Shapack, Alt. #1, Eric Metzler, Alt. #2, Tom Dillon, Alt. #3 and Ed D'Armiento, Alt. #4,

Also present: Daniel S. Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Randall Benson, Zoning Officer.

Absent: Dana Desiderio and Ed Kerwin.

There were approximately seventy (70) 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 March 17, 2011.

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. Mr. Van Doren made a motion to approve the claims listed below and Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at May 18, 2011 meeting - invoice dated May 19, 2011 (\$400.00)
2. Maser Consulting – Land Use Board General Land Use Work – invoice #163573 (\$227.50)
3. Maser Consulting – Land Use Board Escrow – DeFelice (B36, L3.18), invoice #163574 (\$65.00)
4. Maser Consulting – Land Use Board Escrow – Johnson (B23, L23), invoice #163575 (\$65.00)
5. Maser Consulting – Land Use Board Escrow – Goss (B42, L9.04), invoice #163576 (\$130.00)
6. Maser Consulting – Land Use Board Escrow – Furlong (B23, L29.01), invoice #163577 (\$195.00)

7. Maser Consulting – Land Use Board Escrow – Sheft (B33, L7.18), invoice #163583 (\$130.00)
8. Maser Consulting – Land Use Board Escrow – AM Best Company (B46, L2.01, 5 & 6), invoice #163580 (\$877.50)
9. Maser Consulting – Land Use Board Escrow – PNC Bank (B45, L1), invoice #163581 (\$390.00)
10. Maser Consulting – Land Use Board Escrow – Ashton (47.02, L1), invoice #163578 (\$130.00)
11. Maser Consulting – Land Use Board Escrow – Wood (B10, L5.07), invoice #163579 (\$1,592.50)
12. Maser Consulting – Land Use Board Escrow – Kian (B34, L19.04), invoice #163584 (\$357.50)
13. Maser Consulting – Land Use Board Escrow – Fernandes (B32, L23), invoice #163585 (\$325.00)
14. Maser Consulting – Land Use Board Escrow – Pierson (B21, L3), invoice #163582 (\$845.00)
15. Banisch Associates – Professional Planning Services – invoice #P11-18711 (\$177.50)
16. Banisch Associates – Land Use Board Escrow – Johnson (B23, L23), invoice #P11-18710 (\$1,029.50)
17. Suburban Consulting Engineers – Land Use Board Escrow – Hill & Dale Farms (B51, L80), invoice #16462 (\$1,709.00)
18. Suburban Consulting Engineers – Land Use Board Escrow – Hill & Dale Farms (B51, L80), invoice #16410 (\$514.88)
19. Suburban Consulting Engineers – Land Use Board Escrow – Hill and Dale Farms (B36, L1, 1.01), invoice #16419 (\$1,181.00)
20. Suburban Consulting Engineers – Land Use Board Inspection – Pottersville WWTP (B24, Lot 17.01), invoice #16407 (\$507.00)
21. Suburban Consulting Engineers – Land Use Board Inspection – Sblendorio Tewksbury Holding (B45, L41), invoice #16408 (\$335.00)

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mr. Czajkowski, Mr. Moriarty, Mr. Shapack, Mr. Metzler, Mr. Dillon, Mr. D’Armiento and Mr. Johnstone

Nays: None

CORRESPONDENCE

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

1. A copy of a letter dated May 10, 2011 from David Cohen to Daniel Bernstein re: the Johnson Heliport Application, Block 23, Lot 23.
2. A letter dated May 19, 2011 from the Hunterdon County Planning Board re: PNC Bank, Block 45, Lot 1, conditional approval not to construct.

3. A letter dated May 19, 2011 from the Hunterdpm County Planning Board re: William Taggart, Block 23, Lot 26, conditional approval.
4. A letter dated May 22, 2011 from Paul Zanelli, Chief of the Tewksbury First Aid and Rescue Squad re: support of the proposed Johnson heliport, Block 23, Lot 23.
5. A copy of a letter from James Johnson dated May 23, 2011 re: a letter to the editor in support of the proposed Johnson heliport, Block 23, Lot 23.
6. A copy of a letter dated May 24, 2011 from Shana Goodchild to Miles Winder re: Application No. 09-05, Johnson Helistop, Block 23, Lot 23.
7. A letter dated June 1, 2011 from Daniel Bernstein to Miles Winder regarding the Johnson heliport, Appl. #09-05, block 23, Lot 23.

MINUTES

➤ April 6, 2011

The minutes of April 6, 2011 were approved by motion of Mr. Moriarty and seconded by Mr. Shapack. All were in favor. Mr. Van Doren, Mrs. Baird, Mrs. Devlin and Mr. Metzler abstained.

➤ April 20, 2011

The minutes of April 20, 2011 were approved by motion of Mrs. Devlin and seconded by Mr. Van Doren. All were in favor. Mr. Metzler abstained.

ORDINANCE REPORT

Mr. Mackie had no ordinances to report on.

PUBLIC PARTICIPATION

Mr. Johnstone asked the public if there were any questions or comments regarding anything not on the agenda. There being no questions, Mr. Johnstone closed the public portion of the meeting.

RESOLUTIONS

- Resolution No. 11-12 - Hill and Dale Farms, Inc., Appl. #11-02, Block 51, Lot 80, *Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Dillon, Mr. D'Armiento and Mr. Johnstone*

Mrs. Renu Shevade and Mr. Michael Rothpletz were present on behalf of Hill and Dale Farms, LLC. Mr. Rothpletz provided the Board with a copy of the resolution with some highlighted changes on page 4, 7, 9 and 10. Mr. Bernstein had no issue with the proposed changes. Mr. Moriarty made a motion to approve the resolution with the amendments requested. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 11-02
RESOLUTION # 11-12

WHEREAS, HILL AND DALE FARMS, INC. has applied to the Land Use Board of the Township of Tewksbury for a minor subdivision and variances under N.J.S.A. 40:55D-70(c) and (d) for property which is located on Hill & Dale Road, Rockaway Road, and Parsonage Lot Road and designated as Block 51, Lot 80 on the Tewksbury Township Tax Map, which premises are located in HL (Highlands) Zone, and

WHEREAS, Hill and Dale Farms, Inc. had previously applied to the Tewksbury Township Planning Board, a predecessor to the Land Use Board, for a minor subdivision to subdivide its 145.175 acre Lot 80 into three lots, and

WHEREAS, located on Lot 80 were three small farm cottages, and

WHEREAS, the application sought to create 3.046 acre Lot 80.05 and 7.530 acre flag Lot 80.06, with both parcels having frontage on Parsonage Lot Road and conforming with the requirements of the then applicable R-3 Zone, and

WHEREAS, the three cottages would remain on the 134.199 remaining Lot 80, which would be minimally reduced by the creation of Lots 80.05 and 80.06, and

WHEREAS, under Razberry's Inc. v. Kingwood Tp., 250 N.J. Super 324 (App. Div. 1991), the reduction in the size of a lot containing a prior nonconforming use would require a use variance under N.J.S.A. 40:55D-70d, as the nonconforming use would be intensified by being located on a smaller parcel, with the caveat that a *de minimis* reduction in the lot size might not require a use variance, and

WHEREAS, attorneys for both the Planning Board and Board of Adjustment provided written opinions that the minor subdivision would result in a *de minimis* reduction in the size of remaining Lot 80, which would not necessitate a *de* variance, and

WHEREAS, the prior application was presented and approved at the July 16, 2003 Planning Board Meeting and a memorialization resolution was adopted on August 6, 2003, and

WHEREAS, the current application was presented at the May 4, 2011 Land Use Board meeting by Attorney Renu A. Shevade, Esq. of the law firm Day Pitney, LLP; Michael Rothpletz, the president of Hill and Dale Farms, Inc.; Civil Engineer Craig Villa, P.E. of the firm of Yannaccone, Villa & Aldrich, LLC,; Professional Planner Elizabeth McKenzie, P.P.; Beth Davisson, the Project Manager for the New Jersey Conservation Foundation; and Greg Romano, the Assistant Director and Director of Statewide Land Acquisition, New Jersey Conservation Foundation, and

WHEREAS, the application was reviewed by Township Engineer Andrew S. Holt, P.E., CME of the firm of Suburban Consulting Engineers, Inc., as the Land Use Board Engineer recused himself from the application, and

WHEREAS, the Board, after considering the evidence presented by the applicant, Tewksbury Township Engineer Holt, and residents, has made the following factual findings:

- A. The Subject Property.
 - 1. The northern portion of the site is heavily wooded and steep.
 - 2. The parcel is actively farmed with hay and corn/soybean fields, pastures, and large barns. There was an active equestrian operation with stables containing approximately 50 stalls. In anticipation of the sale of the property, the number of horses within the stable was reduced to about four horses owned by the Rothpletz family.

3. Located on the eastern and western sides of the tract are *C-1* streams with 300 foot wide riparian buffers.

4. The Rockaway Creek is south of the site. The 100 year flood hazard line associated with the creek impacts a small area of the site along Rockaway Road.

5. The three cottages remain on the property.

B. The Proposed Subdivision.

6. The applicant proposes to subdivide its property along hedge rows and farm fields into two lots.

7. Proposed 41.721 acre Lot 80.07 would be located along the eastern side of the tract along Hill & Dale Road and Parsonage Lot Road. It would encompass a detached garage and two cottages. A farm driveway on Lot 80.07 provides access to the fields on both lots.

8. Remaining 89.751 acre Lot 80 will include the farm fields, pastures, barns (including stables), and a single cottage.

9. The well on Lot 80 serves the three cottages, two of which will be located on Lot 80.07.

10. No new improvements are contemplated with the present application.

11. The New Jersey Conservation Foundation anticipates purchasing remaining Lot 80 and Lot 80.07. Lot 80 will be purchased with Green Acres funds, except for a 14-20 acre parcel encompassing barns, and a cottage. It is anticipated that the New Jersey Conservation Foundation will seek a future subdivision from this Board

of the 14 – 20 acre parcel which will be sold to a private party. There are not assurances that any future subdivision application will be approved by this Board.

Lot 80.07 will be acquired with State Agricultural Development Commission (SADC) funds, if such funds are available.

12. New Jersey Conservation Foundation intends that remaining Lot 80 will be restricted to passive recreational use, after being acquired with Green Acres funds. Passive recreational uses may include hiking, snow shoes, pedal bicycles (but not motorized bicycles), hunting and fishing, and camping. Lot 80.07 would be restricted to agricultural use with a small residential exception area, after the development rights are acquired by SADC.

13. While it is contemplated that the New Jersey Conservation Foundation will be acquiring Remaining Lot 80 and proposed Lot 80.07, the within subdivision and variances are not contingent on that occurrence and are not contingent upon and do not require that any restrictions be imposed. The proposed minor subdivision creates lots that are substantially larger than the 12 acre lots which are permitted in the HL Zone.

C. Requested Variances.

14. The Tewksbury Township Development Regulations Ordinance (DRO) requires structures to have a minimum front yard setback of 100 feet in the HL Zone. An existing cottage on Lot 80 will have a front yard setback of 12.2 feet, and one of the two cottages on Lot 80.07 will have a front yard setback of 29.4 feet after a dedication for road widening along Hill & Dale Road. These are existing conditions which will not be exacerbated by the requested subdivision. A barn on remaining Lot 80

will have a side yard setback of 62.3 feet while the DRO requires a side yard setback of 100 feet in the HL Zone.

15. The Land Use Board finds that front yard variances are not required for the cottages on remainder Lot 80 and Lot 80.07 to remain on the property. If a variance were required, one would be justified and the Board approves these variances under Hawrylo v. Board of Adjustment, 249 N.J. Super. 568 (App. Div. 1991) on the basis of retaining a useful structure on the property. The front yard setback variances are for the existing structures only and not for any new structures which may be built on the property.

16. The Board finds that the deficient side yard for the barn is *de minimis* and a pre-existing condition.

17. Unlike the 2003 minor subdivision application, a variance is required under N.J.S.A. 40:55D-70d(1) for two cottages on proposed 41.721 acre Lot 80.07. The Board in 2003 found that the retention of three cottages on 134.199 acre Lot 80 was a *de minimis* condition. The Board finds that the retention of two cottages on Lot 80.07 is not *de minimis*. Nevertheless, the application is justified under N.J.S.A. 40:55D-70d(1) by advancing the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2.

“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 existence of two small cottages containing no more than 2,000 square feet on a 41.721 acre tract where a 12 acre lot size is permitted results in a conservative density of one dwelling unit for 20 acres.

“f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;”

&

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;”

It would be inappropriate to require the destruction of one of the cottages, which are structurally sound, in order to require strict compliance with the DRO.

“g. To provide sufficient space in appropriate locations for a variety of residential and open space . . . uses, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey Citizens;”

The proposed acquisition of the site by the New Jersey Conservation Foundation will promote both agricultural use and open space. This is a subsidiary grounds for the grant of the d variance, as the acquisition of remaining Lot 80 and Lot 80.07 by the New Jersey Conservation Foundation are anticipated, but may not occur. As previously noted, the within approval is not conditional upon the New Jersey Conservation Foundation acquiring one or both of the lots, nor does it require that any restrictions on its use be imposed.

“i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement”

The cottages create an attractive rural appearance.

18. An applicant for a *d* 1 variance must prove that the general welfare is promoted by the particular suitability of the subject property for the proposed use. Kohl v. Fair Lawn, 50 N.J. 268 (1967), Medici v. BPR Co., 107 N.J. 1 (1987), and New Brunswick Cellular v. Bd. of Adj., 160 N.J. 1,21 (1999).

19. The Land Use Board finds that the subject property is particularly suitable for two dwelling units:

- The substantial size of the tract.
- There are two existing cottages in good condition on proposed Lot 80.07. No new construction will result by the grant of the *d* variance.
- The cottages are particularly appropriate on a farm such as the Hill and Dale Farm.
- In the event that the New Jersey Conservation Foundation acquires Lot 80.07, the cottages will be used in their operation.
- The cottages add to the rural and bucolic character of the property.

20. The Board finds that the requested *c* and *d* variances are minimal and may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plans and zoning ordinance (DRO) of the Township of Tewksbury.

21. The farm driveway which traverses Lot 80.7 to Lot 80 is within 10 feet of the property line, contrary to the Tewksbury Township Driveway Ordinance.

22. Michael Rothpletz testified that the so-called driveway was in reality a dirt path which was used for spreading manure on the fields and for access for other agricultural purposes. He testified that the path could be moved, if required.

23. The ability to grant waivers from the Driveway Ordinance is vested with the Township Engineer.

E. Road Dedication.

24. Township Engineer Holt recommended a dedication of 25 feet to the center line of Hill & Dale Road, which is the typical required dedication. Mr. Villa pointed out that the last Hill & Dale subdivision in 2007 required a half width dedication of 16.5 feet to the center line, as it was not anticipated that this rural road which is constrained with three bridge easements would be wider than 33 feet.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 1st day of June 2011 that the application of HILL AND DALE FARMS, INC. for a minor subdivision, and variances under N.J.S.A. 40:55D-70c and d be approved in accordance with a plan titled: “HILL AND DALE FARMS, INC. MINOR SUBDIVISION HILL AND DALE ROAD, LOT 80 ~ BLOCK 51, TAX MAP SHEET 14, TEWKSBURY TOWNSHIP, HUNTERDON COUNTY NEW JERSEY” , prepared by Yannaccone, Villa & Aldrich, LLC on February 22, 2011 and revised March 23, 2011, consisting of 7 seven sheets, subject, however, to the following conditions:

1. Conditions recommended by Township Engineer Andrew Holt in his report of April 28, 2011, as modified by the Land Use Board:

Technical Review comments:

1. A copy of the referenced survey must be provided. Copy of the referenced survey not on our file – Land Use Administrator to confirm if on file. *Land Use Board*

Administrator Shana Goodchild confirmed that a survey was on file with the Land Use Board Office.

2. It has been agreed that the wetlands be provided on a separate map (not overlaid on the proposed subdivision plans) – however, the wetlands map is not on our file – Land Use Administrator to confirm if on file. *It was determined during the completeness review of the application that submission of a wetlands map is not required since no construction or disturbance is proposed in connection with this application.*

3. Applicant should provide testimony on “bridge maintenance easements” depicted on plan; the plans should be revised accordingly (to annotate easements as existing or proposed). *Three easements will be dedicated to Hunterdon County.*

4. Variances requested on pre-existing, nonconforming conditions – the zoning table should be revised to reflect pre-existing conditions prior to the right-of-way dedication. *Variances were submitted. The applicant agreed to revise the zoning table on the plans accordingly.*

5. The plans should include a summary of existing lot area, proposed lots areas, proposed right-of-way dedication area, etc. *The requested information is provided on Sheet 2 of the plans.*

6. To be consistent with the Township of Tewksbury Master Plan, all frontages should be dedicated to 25 feet from the centerline for a total of 50-foot right-of-way. Annotation on Sheet 2 of 7, “Existing Road R.O.W. – Easement along Hill and Dale Road (33’ wide) – 16.5’ from centerline of pavement” – should be explained or revised. Applicant to provide testimony on why the proposed ROW is considered to be adequate. The Board to decide if the ROW as proposed is acceptable. *The Board agreed to a 16.5 foot dedication with accompanying exceptions to 10 feet of dedication along the front of the existing cottages on Hill & Dale Road, as shown on the Minor Subdivision Map. The deed descriptions and deeds are subject to the approval of the Township Engineer and the Township Attorney. See factual finding 24.*

7. For the existing farm driveway proposed to be located on proposed Lot 80.07 to serve Remainder Lot 80, Applicant to provide testimony on the farm driveway width slope, and future use and on why an access easement is not being proposed. Applicant should indicate if driveways are in compliance with all other Tewksbury Township Driveway Ordinance requirements and, if warranted, request design waivers or propose improvements. *The existence of the farm driveway/dirt path, and the requirements for same, are subject to the approval of the Township Engineer under the Tewksbury Township Driveway Ordinance. Unless the Township Engineer either finds that the access way is not a driveway, or grants waivers, the driveway must be moved so that it is not within ten feet of the property line or discontinued. This relocation or discontinuation, if necessary, does not need to occur prior to perfecting the subdivision.*

8. Sight distances for all existing driveways – Applicant to provide testimony. *Civil Engineer Villa testified that the sight distances were adequate for Lot 80, as the driveway was at the elbow in the road, and for Lot 80.07, as the speed limit on that street is 20 miles per hour and sight distances are not an issue. Michael Rothpletz testified there were no problems with access.*

9. As the existing farm driveway floods Hill and Dale Road and transports sediment onto the road, Applicant must indicate methods to remediate the flooding issue in this area, and depict the proposed improvements on plans. *Michael Rothpletz testified that the culvert was not being maintained. Gravel and swales will be added to the driveway as required by the Township Engineer. The applicant is to satisfy this condition prior to the filing of the subdivision deed, unless a bond or other performance guarantee is posted in an amount subject to the approval of the Township Engineer and in a form subject to the approval of the Township Attorney. As an alternative to the improvements, the applicant may abandon the driveway at its election.*

10. Applicant to provide testimony on the well serving three homes, two located on same lot, and the third dwelling located on a different lot. *The testimony on the well is contained in finding 9 herein. The well on Remainder Lot 80 may continue to service the two cottages on Lot 80.07 for so long as the New Jersey Conservation Foundation has contractual right to acquire that property, and if New Jersey Conservation Foundation acquires both Remainder Lot 80 and Lot 80.7, the well may continue to serve all three (3) residences. If New Jersey Conservation Foundation no longer has contractual rights to acquire Lot 80.07, then the applicant shall decommission the pipes leading from the existing well on remaining Lot 80 to Lot 80.07 and shall drill a new well on Lot 80.07 to serve the two cottages on that property within the time period required by its agreement with New Jersey Conservation Foundation. This condition shall be set forth in the subdivision deed.*

2. The following notice shall be placed in the subdivision deeds:

There is, or may be, farm uses adjacent or in close proximity to Lots 80 and 80.07 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 declaration shall attach to and run with the land and shall bind all subsequent owner of Lots 80 and 80.07 and their heirs, executors, administrators, successors and assigns.

3. Certification by the applicant in writing to the Secretary of the Tewksbury Township Land Use Board that all necessary approvals from other

governmental agencies have been obtained, with copies of said approvals or write-offs or letter of non-jurisdiction attached to said certification. A copy of all approvals and write-offs or letter of non-jurisdiction shall also be provided to the Township Engineer.

4. The plans are to be revised to the approval of the Township Engineer within 90 days of the adoption of the within resolution. Subsequent revisions are to be made to the Township Engineer within 30 days of subsequent request.

5. Payment of all outstanding escrows and fees.

6. Approval of the subdivision deeds by the Township Engineer and Land Use Board Attorney.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Shapack, Mr. Dillon, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- Resolution No. 11-13 - Hill and Dale Farms, Inc., Appl. #11-01, Block 36, Lots 1 & 1.01
Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Dillon, Mr. D'Armiento and Mr. Johnstone

Mrs. Renu Shevade and Mr. Michael Rothpletz were present on behalf of Hill and Dale Farms, LLC, and Mr. Greg Romano was present on behalf of the NJ Conservation Foundation.

Mr. Dillon and Mr. Bernstein noted some revisions to which Mr. Rothpletz agreed.

Mr. Romano expressed concern with some of the limitations in the resolution regarding public access and advertising. Mr. Bernstein agreed to remove the language. Mrs. Baird opined that language should be included that any signs meet the sign ordinance. Mr. Romano agreed.

Mr. Rothpletz had a correction on page 6 regarding trails. The Board agreed to modify the language.

Mrs. Baird made a motion to adopt the resolution with the amendments requested. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 11-01
RESOLUTION # 11-13

WHEREAS, HILL AND DALE FARMS, INC. has applied to the Land Use Board of the Township of Tewksbury for a minor subdivision and variances under N.J.S.A. 40:55D-70(c) for property which is located on Meadow Lane and Rockaway Road and designated as Block 36, Lots 1 and 1.01 on the Tewksbury Township Tax Map, which premises are located in HL (Highlands) Zone, and

WHEREAS, the present application was presented at the May 4, 2011 Land Use Board meeting by Attorney Renu A. Shevade, Esq. of the law firm Day Pitney, LLP; Michael Rothpletz, the president of Hill and Dale Farms, Inc.; Civil Engineer Craig Villa, P.E. of the firm of Yannaccone, Villa & Aldrich, LLC,; Professional Planner Elizabeth McKenzie, P.P.; Julie Hajdusek, Property Administrator, New Jersey Water Supply Authority; and Greg Romano, of the New Jersey Conservation Foundation, and

WHEREAS, the application was reviewed by Township Engineer Andrew S. Holt, P.E., CME of the firm of Suburban Consulting Engineers, Inc., as the Land Use Board Engineer recused himself from the application, and

WHEREAS, the Board, after considering the evidence presented by the applicant, Township Engineer Andrew Holt, P.E., and residents, has made the following factual findings:

A. The Subject Property and Adjoining Lands Owned by the Applicant.

1. Block 36, Lots 1, 1.01, and Block 34, Lot 11 are owned by Hill and Dale Farms Inc.

2. Lots 1.01 is an 8.304 acre lot improved with a two-story dwelling, an attached garage, and a wood shed. Access to the home is through a driveway on Meadow Lane. There is a driveway easement from Meadow Lane through Lot 1.01 providing access to adjoining vacant Lot 1. Lot 1.01 has 1,077.25 feet of frontage along Meadow Lane and 469.61 feet of frontage along Rockaway Road.

3. Lot 1 is a 14.075 acre parcel with 1,289.98 feet of frontage along Rockaway Road, a maximum lot depth of 1,026.89 feet where the property adjoins Lot 1.01 to the west, and an easterly lot depth of 153.54 feet.

4. The C-1 Rockaway Creek traverses the frontage of both Lots. The parcels are constrained with a 300 foot riparian buffer and a flood hazard area.

5. Lot 11 is located within and immediately adjacent to the Rockaway Creek.

B. Proposed Subdivision.

6. The applicant proposes to subdivide Lot 1.01 into two lots. Lot 1.02 will consist of a 0.856 acre parcel along the Rockaway Road frontage. It will be transferred by the applicant to the New Jersey Conservation Foundation or its designee, which is anticipated to be the New Jersey Water Supply Authority, in order to provide pedestrian access from Meadow Lane to Lot 1 which will be sold to the New Jersey Conservation Foundation or its designee, which intends to manage the parcel with restrictions limiting use of the property to passive recreation which may include hiking,

snow shoes, pedal bicycles (but not motorized bicycles), and fishing. However, such restrictions are not conditions of this resolution.

7. Michael Rothpletz the President of Hill and Dale Farms Inc. will impose certain restrictions on Lot 1.02 for the protection of his sister and her family, who reside in the home on Lot 1.01, as set forth on Exhibit A which is attached hereto.

C. Requested Variances.

8. A lot area variance is required for the reduction in the size of Lot 1.01 from 8.304 acres to 7.448 acres, while the minimum lot size in the HL Zone is 12 acres.

9. The residence on Lot 1.01 has a rear yard setback of 52.9 feet and the shed has a rear yard setback of 34.9 feet, while the zoning ordinance requires a minimum rear yard setback of 100 feet in the HL Zone. The Board finds that a variance is not required, as these are existing conditions which will not be exacerbated by the proposed subdivision. If a variance were required, it would be justified under Hawrylo v. Board of Adjustment, 249 N.J. Super. 568 (App. Div. 1991) on the basis of retaining a useful structure on the property. The variance would solely apply to the existing structures and not for new structures.

10. Proposed Lot 1.02 will be substantially deficient in lot size, containing 0.856 acres while the zoning ordinance requires minimum lot size of 12 acres. The HL Zone requires a minimum lot depth of 300 feet while the lot will have a depth of 51 feet. The Development Regulations Ordinance requires a minimum improvable area of 14,000 square feet while the improvable area for Lot 1 is less than 14,000 square feet.

D. Justification for Variances.

11. The requested bulk and dimensional variances are justified under N.J.S.A. 40:55D-70c(2) by advancing the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

“c. To provide adequate light, air and open space;”

The development of Lot 1.02 will be severely limited by its location within a CI Stream Corridor and by the development restrictions placed on the lot by Hill and Dale Farms Inc.

“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 conveyance of Lot 1.02 to the New Jersey Conservation Foundation or its designee, with the restrictions on development, will result in the subdivision creating no increase in density.

“f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies”

&

“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;”

The conveyance of Lot 1.02 to the New Jersey Water Supply Authority or its designee will be for no consideration.

“g. To provide sufficient space in appropriate locations for . . . open space, both public and private, according respective environmental requirements in order to meet the needs of all New Jersey citizens.”

The within subdivision will create a pedestrian corridor from Meadow Lane to Lot 1 at no cost to the State of New Jersey.

12. The benefits from the deviations substantially outweigh the detriments.

13. The within variances 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 (DRO) of the Township of Tewksbury

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 1st day of June 2011 that the application of HILL AND DALE FARMS, INC. for a minor subdivision, and variances under N.J.S.A. 40:55D-70c be approved in accordance with a map titled: “HILL AND DALE FARMS, INC. MINOR SUBDIVISION 7 MEADOW LAND, LOTS 1 & 1.01 – BLOCK 36, TEWKSBURY TOWNSHIP, HUNTERDON COUNTY NEW JERSEY”, prepared by Yannaccone, Villa & Aldrich, LLC on February 22, 2011 and last revised March 23, 2011, subject, however, to the following conditions:

1. Conditions recommended by Township Engineer Andrew Holt, P.E., CME in his report of April 28, 2011, as modified by the Land Use Board:

Technical Review comments:

1. A copy of the referenced survey must be provided. Copy of the referenced survey not on our file – Land Use Administrator to confirm if on file. *Land Use Board Administrator Shana Goodchild confirmed that a survey was on file with the Land Use Board Office.*

2. It has been agreed that the wetlands be provided on a separate map (not overlaid on the proposed subdivision plans) – however, the wetlands map is not on our file – Land Use Administrator to confirm if on file. *Land Use Board Administrator Shana Goodchild confirmed that a separate wetlands map has been submitted.*

3. Testimony is required for the existing pedestrian access on proposed Lot 1.02. *Access will be provided over Lot 1.02 but no sidewalk or paved trails will be constructed.*

4. Testimony is required in referenced to sight easements on Lot 1.01 depicted on the key map (on Sheet 1), but not depicted on the Minor Subdivision Map. *The testimony was that sight easements are not required to be filed.*

5. Dimensions of driveways are not annotated. Applicant should indicate if driveway meets existing driveway ordinance. *The testimony was that the driveway would meet the Township Driveway Ordinance. If it doesn't meet the driveway ordinance, than the applicant or future owners of Lot 1 must meet the ordinance or obtain an exception from the Township Engineer.*

6. Testimony is required in reference to the following information noted in the Zoning Schedule table:

a. Required improvable areas for

i. Existing Lot 1.01 – 0 sq. ft.) – existing non-conforming condition.

ii. Remaining Lot 1.01 – 0 sq. ft. – design waiver is requested – (waiver request not on our file – Land Use Administrator to confirm if on file); clarify annotation on plan (Sheet 2) – “Required Improvable Area, 14,000 sq. ft.”

iii. Proposed Lot 1.02 – 0 sq. ft. – variance is required and requested.

b. Minimum lot depth.

i. For existing Lot 1.01 = 302 ft., for Remaining Lot 1.01 = 360 ft. – (if error – plans must be revised).

The applicant will clarify the mistakes on the schedule and revise its plans accordingly.

2. The New Jersey Conservation Foundation or its designee will not create any public parking areas on Lots 1 or 1.02. The Land Use Board recommends to

the Township Committee that it place “no parking” signs at appropriate locations along the Meadow Lane and Rockaway Road frontages of Lots 1 and 1.02. Any signage placed on Lots 1 or 1.02 shall conform with the Tewksbury Township Development Regulations Ordinance unless a variance is obtained.

3. The Township of Tewksbury is given the right to install drainage improvements along the portion of the property which is within the County Bridge Easement area. The Township will be given an easement to this effect, which will be subject to the County Bridge Easement.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Dillon, Mr. D’Armiento and Mr. Johnstone

Those Opposed: None

- Resolution No. 11-14 – Goss, Appl. #09-10, Block 42, Lot 9.04
Eligible to vote: Mr. Van Doren, Mrs. Devlin, Mr. Shapack, Mr. Metzler and Mr. Dillon

Mr. Van Doren made a motion to adopt Resolution No. 11-14. Mr. Metzler seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 09-10
RESOLUTION # 11-14

WHEREAS, ROBERT and PAMELA GOSS had previously applied to the Land Use Board of the Township of Tewksbury for submission waivers and bulk variances under N.J.S.A. 40:55D-70c for the construction of an in-ground swimming pool, a concrete patio around the swimming pool, a pool house, and a circular driveway for property which is located at 43 Joliet Street and designated as Block 42, Lot 9.04 on

the Tewksbury Township Tax Map, which premises is located in FP (Farmland Preservation) Zone, and

WHEREAS, the initial request was outlined in Factual Finding 8 in the November 3, 2010 memorialization resolution:

8. *The applicants initially proposed a 20 feet by 40 feet swimming pool with a 97.6 feet front yard setback, a concrete patio around the swimming pool with a 91.3 feet front yard setback, and a 16 feet by 32 feet pool house with a front yard setback of 95.4 feet, while the FP Zone requires a minimum front yard setback of 100 feet.*

AND, WHEREAS, the subsequent revisions to the application which were discussed at the second public hearing are listed in Factual Findings 14 and 15:

14. *The application and the revisions were discussed at the October 20, 2010 Land Use Board meeting:*

- *A barn on the property had been removed, decreasing the existing impervious lot coverage to 5.46%.*
- *The pool house was removed from the plans.*
- *The in-ground swimming pool was reduced in size to 15 feet x 38 feet. The concrete patio was replaced with a small coping area. The area of the swimming area and coping area was 17.67 feet x 40.67 feet.*
- *The elimination of the front yard setback variance for the swimming pool.*
- *Two drywells were proposed to manage stormwater runoff.*

- *The proposed shared driveway between the subject property which is owned by Robert and Pamela Goss and Lot 28 which is owned by a Trust for the benefit of Robert Goss was shown on the plans.*

15. *The amendments to the plan reduced proposed lot coverage to 6.69%.*

AND, WHEREAS, the application was approved on October 20, 2010 and a memorialization resolution was adopted on November 3, 2010, and

WHEREAS, the swimming pool was excavated and partially formed with a front yard setback of 98.12 feet, which necessitated a front yard setback variance as the minimum requirement in the FP Zone is 100 feet, and

WHEREAS, the applicants sought an amendment of the prior approval by the inclusion of a variance to allow a pool to be partially located in a required front yard and provided Municipal Land Use Law (MLUL) notice, and

WHEREAS, the application was presented at the May 18, 2011 Land Use Board Meeting by Attorney Sophia Furriss, Esq. of the law firm of Herold Law, P.A. and Civil Engineer Paul Fox, P.E. of the firm of Apgar Associates, 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., and

WHEREAS, the applicants propose to remove the slate patio and walkway, thus reducing the previously approved lot coverage from 6.69% to 6.53%, while the ordinance limits lot coverage to 5% in the F.P. Zone, and

WHEREAS, Engineer Fox testified that there was an existing drainage system which could be utilized in the grading and stormwater management plan in lieu of the prior plan which had been approved by the Township Engineer, and

WHEREAS, the justification for the front yard setback variance was the appearance of the swimming pool from the home, and

WHEREAS, the *de minimis* relief 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.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 1st day of June 2011 that the application of ROBERT and PAMELA GOSS be approved in accordance with the plans titled: “GRADING, DRAINAGE, SOIL EROSION & SEDIMENT CONTROL PLAN, 43 JOLIET STREET, BLOCK 42, LOT 9.04, TEWKSBURY TOWNSHIP, HUNTERDON COUNTY, NEW JERSEY”, “BOUNDARY, TOPOGRAPHIC AND WETLAND DELINEATION SURVEY, 43 JOLIET STREET, BLOCK 42, LOT 9.04, TEWKSBURY TOWNSHIP, HUNTERDON COUNTY, NEW JERSEY”, and “CONSTRUCTION DETAILS, 43 JOLIET STREET, BLOCK 42, LOT 9.04, TEWKSBURY TOWNSHIP, HUNTERDON COUNTY, NEW JERSEY”, prepared by Apgar Associates on June 9, 2010 and last revised May 5, 2011, subject, to the following conditions :

1. The applicants must submit and receive approval from the Township Engineer for a new Grading and Stormwater Management Plan which shall reduce water runoff to no more than that produced by 5% impervious lot coverage.

2. The applicants shall file a new deed restriction to the approval of Land Use Board Engineer and Land Use Board Attorney requiring:

a. The continued maintenance of the grading and stormwater management plan required in condition 1 herein.

3. The plans shall be revised within 90 days to the approval of the Land Use Board Engineer.

4. All conditions in the November 3, 2010 memorialization resolution.

Roll Call Vote

Those in Favor: Mr. Van Doren, Mrs. Devlin, Mr. Shapack, Mr. Metzler and Mr. Dillon

Those Opposed: None

PUBLIC HEARING

- Johnson
Application No. 09-05
Block 23, Lot 23 – Preliminary and Final Site Plan and Use Variance
Action Deadline – June 15, 2011

Mr. Van Doren, Mr. Dillon, Mrs. Czajkoswki and Mr. Metzler recused themselves from the meeting.

Please see transcript.

A brief recess was taken at 9:35 p.m. The Board reconvened at 9:41 p.m.

The next public hearing was scheduled for Wednesday, August 3, 2011 at 7:30 p.m. with the location to be announced at the June 15, 2011 Land Use Board meeting. The site walk will be scheduled during the week of June 27, 2011, the exact date and time will also be announced at the June 15, 2011 Land Use Board meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:51 p.m. by motion of Mrs. Baird and seconded by Mr. Moriarty.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator