

LAND USE BOARD MINUTES
January 8, 2014

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 7:30 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Dana Desiderio, Elizabeth Devlin, Bruce Mackie, Ed Kerwin, Michael Moriarty, Robert Becker, Alt. #1, Ed D'Armiento, Alt. #2, Kurt Rahenkamp, Alt. #3 and David Larsen, Alt. #4.

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

Absent: Shirley Czajkowski

There were four (4) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

Ms. Goodchild 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 December 5, 2013.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

REORGANIZATION

Ms. Goodchild announced the following appointments to the Land Use Board for the year 2014:

Shaun Van Doren	Class 1 Mayor	1 year term
Dana Desiderio	Class 3 Township Committee	1 year term
Shirley Czajkowski	Class 2 Township Official	1 year term
Blake Johnstone	Class 4 Citizen	4 year term
Edward Kerwin	Class 4 Citizen	4 year term
Ed D'Armiento	Class 4 Alt. #2	2 year term
Kurt Rahenkamp	Class 4 Alt. #3	2 year term

NOMINATION OF OFFICERS

➤ Chairman

Ms. Goodchild opened the meeting up for nominations for the Office of Chairman.

Mr. Blake Johnstone received the single nomination by motion of Ms. Desiderio, seconded by Mrs. Baird. There being no other nominations, Mr. Van Doren moved that nominations be closed and a unanimous ballot be cast electing Blake Johnstone as the 2014 Land Use Board Chairman. Mr. Moriarty seconded that motion. All were in favor.

➤ Vice Chairman

Mr. Johnstone opened the meeting up for nominations for the Office of Vice Chairman. Mrs. Mary Elizabeth Baird received the single nomination by motion of Mr. Johnstone, seconded by Mr. Van Doren. There being no other nominations, Mr. Van Doren moved that nominations be closed and a unanimous ballot be cast electing Mary Elizabeth Baird as the 2014 Land Use Board Vice Chairman. Ms. Desiderio seconded the motion. All were in favor.

APPOINTMENTS

➤ Secretary

A motion was made by Mrs. Baird and seconded by Mr. Van Doren to appoint Shana Goodchild as Secretary. Mr. Becker moved that nominations be closed. Mr. Van Doren seconded the motion. A unanimous ballot was cast appointing Shana Goodchild as the 2014 Land Use Board Secretary. All were in favor.

➤ Ordinance Reviewer

A motion was made by Ms. Desiderio to appoint Bruce Mackie as the 2014 Ordinance Reviewer. Mr. Van Doren seconded the motion. All were in favor. There being no other nominations, Ms. Desiderio moved that nominations be closed. Mr. Moriarty seconded the motion. All were in favor. A unanimous ballot was cast appointing Bruce Mackie as the 2014 Land Use Board Ordinance Reviewer.

The Board thanked Mr. Mackie for the thorough job he does reviewing and reporting on the ordinances.

RESOLUTIONS

➤ Resolution No. 14-01 – Official Newspaper and Meeting Dates

Mr. Van Doren made a motion to adopt the following resolution. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD TOWNSHIP OF TEWKSBURY RESOLUTION NO. 14-01

WHEREAS, the Open Public Meetings Act, Chapter 231, P.L. 1975, requires that certain notices of meetings be submitted to the press and other interested persons.

NOW, THEREFORE, BE IT RESOLVED, by the Land Use Board of the Township of Tewksbury, County of Hunterdon, State of New Jersey, as follows:

1. The schedule of regular meetings of the Land Use Board for 2014 is hereby approved.
2. The Secretary is designated as the person responsible for the distribution of the following list of regular meetings and those other than regular meetings to those persons and newspapers that request same.

January 8 and 15
February 5 and 19

July 2 and 16
August 6 and 20

March 5 and 19
April 2 and 16
May 7 and 21
June 4 and 18

September 3 and 17
October 1 and 15
November 5 and 19
December 3 and 17

3. The Secretary is also designated as the person responsible for posting the list of regular meetings and notice of any other meetings on the bulletin board in the Municipal Building and filing same in the Municipal Office.

4. The Hunterdon Review, Hunterdon County Democrat, Star Ledger and Courier News are hereby designated to receive all notices of meetings as required under this Act, as it is determined that these are newspapers which would fulfill the requirements of the Act.

5. Requests for notice made by interested persons and news media shall be granted without cost.

6. This resolution shall take effect immediately.

ROLL CALL VOTE

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Those Opposed: None

➤ Resolution No. 14-02 – Professional Services Contract (Attorney/Engineer/Planner)

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

LAND USE BOARD TOWNSHIP OF TEWKSBURY RESOLUTION NO. 14-02

WHEREAS, there exists a need for a (a) Land Use Board Attorney, (b) Land Use Board Engineer and (c) Land Use Board Planner

WHEREAS, the local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) requires that the resolution authorizing the award of contracts for “Professional Services” without competitive bids must be publicly advertised.

NOW, THEREFORE, BE IT RESOLVED by the Tewksbury Township Land Use Board, County of Hunterdon, State of New Jersey, as follows:

1. The Land Use Board Chairman and Secretary are hereby authorized and directed to execute an agreement with the following:

- a. Daniel S. Bernstein of Bernstein & Hoffman, Land Use Board Attorney
- b. William Burr of Maser Consulting, Land Use Board Engineer

c. Chuck McGroarty of Banisch Associates, Land Use Planner

2. These contracts are awarded without competitive bidding as a “Professional Service” under the provisions of the Local Public Contracts Law because these are recognized professionals licensed and regulated by law and it is not feasible to obtain competitive bids.

3. A copy of this resolution shall be published in the Hunterdon County Democrat as required by law within ten days of its passage.

ROLL CALL VOTE

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. D’Armiento, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Those Opposed: None

Mr. Johnstone thanked the professionals for their hard work in 2013.

➤ Resolution No. 14-03 – Appointment of Application Review Committee

Mr. Van Doren made a motion to adopt the following resolution. Ms. Desiderio seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD TOWNSHIP OF TEWKSBURY RESOLUTION NO. 14-03

RESOLUTION

WHEREAS, the Land Use Board of the Township of Tewksbury has reviewed at public hearings the completeness of applications which have been submitted to the Board, and

WHEREAS, it is difficult to make a completeness review at a public hearing while applicants, interested residents, and their professionals are awaiting public hearings, and

WHEREAS, N.J.S.A. 40:55D-10.3 states that a municipal agency “or its authorized committee or designee” shall certify that an application is complete or that it lacks information required on a checklist, and

WHEREAS, the Land Use Board finds that it is appropriate for the Land Use Board Chairman to appoint an **Application Review Committee**, to determine completeness, comprised of two employees of either the Land Use Board or the Township.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Tewksbury on this 8th day of January, 2014, that the Land Use Board Chairman be authorized to appoint an **Application Review Committee** for the Land Use Board and for the purposes of determining the completeness of application for development. The Application Review Committee shall be comprised of the Land Use Board Engineer, and two employees of either the Land Use Board or the Township.

ROLL CALL VOTE

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Those Opposed: None

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. New Jersey Planning Officials – 2014 Dues – invoice #MPJ-207262013 (\$315.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Cellco Partnership (B44, L26), invoice dated December 10, 2013 (\$562.50)
3. Maser Consulting – Land Use Board Escrow – Vliettown Farm (B43, L4), invoice #222206 (\$325.00)
4. Maser Consulting – Land Use Board Escrow – Moreira (B4, L6.11), invoice #220187 (\$130.00)
5. Maser Consulting – Land Use Board Escrow – Biedron (B31, L12), invoice #220181 (\$162.50)
6. Maser Consulting – Land Use Board Escrow – McCatharn (B16, L25.03), invoice #220182 (\$162.50)
7. Maser Consulting – Land Use Board Escrow – Noe (B34, L18), invoice #222209 (\$260.00)
8. Maser Consulting – Land Use Board Escrow – Noe (B34, L18), invoice #220185 (\$715.00)
9. Maser Consulting – Land Use Board Escrow – Natale (B33, L4), invoice #220184 (\$130.00)
10. Maser Consulting – Land Use Board Escrow – Beatrice Snyder (B11, L8.04), invoice #220183 (\$110.00)
11. Maser Consulting – Land Use Board Escrow – Koplowitz (B6, L24.18), invoice #222207 (\$455.00)
12. Maser Consulting – Land Use Board Escrow – Koplowitz (B6, L24.18), invoice #220180 (\$142.50)
13. Maser Consulting – Land Use Board Escrow – Wood (B10, L5.07), invoice #220178 (\$552.50)
14. Maser Consulting – Land Use Board Escrow – Stavola Quarries (B44, L24), invoice #220179 (\$130.00)
15. Maser Consulting – Land Use Board Escrow – Giello (B14, L41), invoice #222210 (\$227.50)
16. Maser Consulting – Land Use Board Escrow – Cellco Partnership/Verizon (B44, L26), invoice #222208 (\$975.00)
17. Maser Consulting – Land Use Board Escrow – Cellco Partnership/Verizon (B44, L26), invoice #220160 (\$3,997.50)
18. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.10 & 2.02), invoice 222211 (\$455.00)

19. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.10 & 2.02), invoice 220188 (\$127.50)

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. D’Armiento, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Nays: None

CORRESPONDENCE

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

1. A letter dated December 3, 2013 from Kathryn Walsh re: Friends of the Cold Brook Historic District and a motion to enjoin the use of the Johnson Helistop.
2. A copy of a letter dated December 3, 2013 from Kathryn Walsh to the Township Committee re: Friends of the Cold Brook Historic District and a motion to enjoin the use of the Johnson Helistop.
3. Information from the NJ League of Municipalities dated December 5, 2013 re: FCC Cell Tower Rule Could Threaten Local Land Use and Construction Controls.
4. An article written by Jonathan Drill re: how recent legislation will affect wireless approvals.
5. A letter dated December 30, 2013 from Robert Boak re: an informal discussion of the proposal to convert office space in the Oldwick General Store, Block 38, Lot 9.
6. An e-mail dated January 7, 2014 from Greg Meese requesting an adjournment of the January 15, 2014 Cellco Partnership public hearing.

PUBLIC PARTICIPATION

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

George Cassa, Guinea Hollow Road, asked if the public would have an opportunity to comment on the FCC Cell Tower Rule to be discussed by the Board. Mr. Johnstone agreed to allow public participation at that point.

There being no additional comments or questions, Mr. Johnstone closed the public participation portion of the meeting.

RESOLUTION

- Resolution No. 14-04 – Noe, Appl. No. 13-11, Block 34, Lot 18
Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Becker and Mr. Larsen

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 13-11

RESOLUTION # 14-04

WHEREAS, SCOTT and BARBARA NOE have applied to the Land Use Board of the Township of Tewksbury for permission to construct a detached garage on property which is located at 30 Bissell Road and designated as Block 34, Lot 18 on the Tewksbury Township Tax Map, which premises is located in Farmland Preservation (FP) Zone, and

WHEREAS, the application was presented by Scott and Barbara Noe at the November 20, 2013 Land Use Board meeting, 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 Board, after considering the evidence presented by the applicants and Mr. Burr, have made the following factual findings:

A. The Subject Property.

1. The subject property is a trapezoidal shaped parcel with 267.49 feet of frontage on Bissell Road and a rear property line of 117.80 feet.
2. The subject property contains 0.6052 net acres.
3. The site is improved with a single family residence, the remains of a detached garage which was destroyed during Hurricane Sandy, a slate walkway, and a gravel driveway.

B. The Proposal.

4. The applicants propose to replace the destroyed 612.44 square feet barn with a 36 feet wide by 24 feet deep garage. The first floor of the garage would have two garage doors and an 8 feet, 8 inch by 24 feet workshop. The second floor would serve as storage space and not living space.
5. The garage would neither be heated nor have water or plumbing service, but it could have electricity.

6. The two story garage would have a *barn like* appearance. The garage would have red hardy plank siding and white trim, with a metal roof.

C. The Requested Variances.

7. The subject property is undersized, containing .6052 acres while the minimum lot size in the FP Zone is 7 acres. The subject property is *grandfathered* as a lot pursuant to Section 706F.1 of the Development Regulations Ordinance (DRO).

8. The destroyed garage had a rear yard setback of 6.95 feet, the proposed garage will have a rear yard setback of 7 feet, while the DRO in Section 706F1(D) requires a minimum rear yard setback of 40 feet for the subject property.

9. The destroyed garage had a side yard setback of 25.17 feet, the proposed garage will have a side yard setback of 15 feet, while Section 706F1(D) requires a minimum side yard setback of 40 feet for the subject peroperty. The garage would be shifted to the east to facilitate access.

10. The variance plan which was submitted with the application states that the existing lot coverage of 21.74% will be reduced to 17.95%. That plan counts as existing lot coverage a gravel driveway which was removed in 2004 – 2005. The Board regards the existing lot coverage at 17.75%. The applicants agreed to reduce the paved area of the site by 51.29 square feet so that there would be no increase in impervious lot coverage.

11. The subject property is surrounded by two substantially larger lots, Lot 13 to the west and north which contains about 10 acres and Lot 15 to the north and east which contains about 3.002 acres. There was testimony that the proposed garage will be about 150 feet from the home on Lot 15.

12. The Board finds practical difficulty and undue hardship under N.J.S.A. 40:55D-70c(1) based on the shape and size of the subject property.

13. The Board finds that the replacement of the destroyed garage with a slightly larger but more attractive new one will be essentially maintaining the status quo.

14. The requested relief can be granted without substantial detriment to the public good and without 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 8th day of January 2014 that the application of Scott and Barbara Noe be approved in accordance with an engineer's plan titled: "VARIANCE PLAN PROPOSED BARN LOT 18 BLOCK 34 30 BISSELL ROAD TAX MAP SHEET NO. 12 TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY" prepared by Apgar Associates on February 11, 2013 and last revised July 24, 2013 consisting of 3 sheets and an architectural plan titled: "project title: outbuilding replacement project for barbara and scott noe 30 bissell road lot 18, block 34 tewksbury twp., nj drawing title: floor plans & elevations" prepared by Edward Matthew O'Brien on February 11, 2013 consisting of 1 sheet subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his report of November 14, 2013, as modified by the Land Use Board:

TECHNICAL REVIEW:

1. The applicants should describe in detail the proposed garage including the proposed use of the space and exterior style, materials, color, etc. Will the proposed garage be connected to the existing well? Will the garage be heated or air conditioned? *See factual findings 4 – 6 herein.*
2. The applicants and its professionals should provide testimony to support the proposed side and rear yard variances, including testimony as to the location of residential dwellings on adjoining properties and surrounding vegetation. Can the proposed garage be located so that the setbacks are not further exacerbated (from what exists today)? *See factual findings 8 – 9 and 12 – 14 herein.*
3. The applicants and its professionals should provide testimony to support the proposed lot coverage variance to construct the new garage. I note that the plans reference an existing lot coverage of 5,730.29 S.F. (21.74%) while taking credit for 1,049.63 S.F. of "gravel

driveway previously removed”. Upon review of aerial photographs of this property, it appears that a portion of the gravel driveway was removed prior to 2007. *The applicants agreed to reduce 51.29 square feet of impervious coverage so that there will be no increase in impervious lot coverage. The plans shall be revised accordingly.*

The Board should be aware that there is actually 4,680.66 S.F. (17.75%) of coverage existing on the property today and the proposed improvements will increase the coverage slightly to 4,731.95 S.F. (17.95%). *See factual finding 10 herein.*

4. The plans do not propose any stormwater management facilities to capture and infiltrate runoff from the proposed garage. As with previous lot coverage variance applications, the Board should consider whether or not to require the applicant to address stormwater management as part of this application. If the Board does not take into account the gravel driveway that was removed prior to 2007, then the application is proposing to increase the lot coverage slightly by about 52 S.F. Can any existing lot coverage areas on the property be eliminated/removed as a way to decrease the amount of coverage on this property? *The applicants agreed to reduce 51.29 square feet of driveway area so that the amount of impervious lot coverage will not be increased.*
5. The applicants should clarify if any trees or shrubs will be removed or impacted as a result of this project. *A single Lilac tree will be relocated elsewhere on the property. No other trees or shrubs will be disturbed.*
6. The applicants should clarify whether there is any other exterior lighting proposed as part of this application. If so, the applicant should provide information on the plans to confirm that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632. *There will be lights on the garage. The lights need comply with Section 632 of the DRO. The lights shall be shielded and shall not cause glare or sky glow. The applicant shall supply cut sheets to the Land Use Board Engineer for his approval.*
7. The variance plans should be revised to include a note that any existing impervious coverage to be removed will be restored with topsoil, grass seed and mulch. *The plans shall be revised accordingly.*
8. The proposed architectural plan calls for a second floor in the garage labeled as “unoccupied space” – what is this space intended to be used for? *The area shall be used for storage and not living space.*
9. What will be the height of the new garage compared to the existing garage/barn structure? *The destroyed garage had a height of 20 feet. The new garage will have a maximum height of 25 feet to the ridge line which is the same as the home on the lot.*
10. Per Chapter 13.12 of the Township Code of Ordinances, a Grading and Surface Water Management Plan (GSWMP) does not appear to be required for this application because the proposed improvements do not meet the threshold requirements for a GSWMP pursuant to Chapter 13.12. *The Board does not require any detention facilities with the application.*

2. The applicants shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may apply to the premises. The applicants shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

3. This resolution and the issuance of permits are conditioned on the applicants paying all escrows and fees.

4. The variance shall be utilized within one year of the date of the memorialization resolution. If it is not utilized within one year it shall become void and have no further effect.

5. The applicants shall supply a foundation location plan for the garage drawn by a surveyor showing the garage and the side and rear yard setbacks.

6. The detached garage shall be no higher than the existing residence.

7. The applicant shall remove 51.29 square feet of impervious lot coverage so that there is no increase in impervious lot coverage.

8. There shall be no heat, water, or plumbing in the garage but there may be electric service.

9. There shall be no living space in the garage.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mr. Moriarty, Mr. Kerwin, Mr. Becker and Mr. Larsen

Those Opposed: None

INFORMAL DISCUSSION

- Robert Boak – Oldwick General Store, Block 38, Lot 9

Mr. Van Doren noted that he is a property owner within 200 feet and so he recused himself from the meeting table.

Mr. Robert Boak, attorney on behalf of the Oldwick General Store was present along with owner Steve Roth. Mr. Boak explained that they are present to discuss a potential proposal to add a second apartment on the second floor of the General Store. He explained that there is currently one (1) apartment which was approved in 1991 along with several office spaces. One (1) of the

office spaces (formerly occupied by attorney David Bunevich) is now vacant and due to the economy Mr. Roth is having difficulty renting the space therefore he is looking at the possibility of converting that space into an apartment. Mr. Boak noted that the current ordinance stipulates that if there are two (2) apartments over a commercial use the second apartment must become an affordable housing unit. Mr. Boak opined that the first apartment constructed in 1991 was restricted as an affordable housing unit and he feels that provision has already been met. Mr. Boak asked the Board for some direction as to the type of information that would be required for a site plan and if a use variance would be necessary for the second apartment.

Mrs. Baird recalled that the intensity of use and parking on the site were always an issue.

Mr. Johnstone didn't have an issue with allowing a second apartment and opined that an apartment would not be as intense of a use as office space. When asked the number of bedrooms the apartment would be, Mr. Boak responded two (2).

Mr. Bernstein noted that the ordinance requires the second apartment to be restricted as an affordable housing unit for a period of ten (10) years; his interpretation of the ordinance is that the second unit must be deed restricted as an affordable housing unit for 10 years. Mr. Bernstein didn't agree that the property owner could receive past credit for the apartment that was deemed an affordable housing unit; the property owner could apply for a use variance from the terms of the ordinance. He also noted that the first resolution of approval contained a condition that any change of use occupancy shall be subject to site plan review. Mr. Bernstein opined that the property owner could either apply for a use variance for the second apartment or an interpretation from the Board if an affordable housing unit is required. He noted that site plan approval would be necessary but that the Application Review Committee could work with the applicant to figure out what information would be necessary for the application.

When asked what his recommendation is, Mr. Bernstein recommended that the owner apply for an interpretation as to the restriction on the second apartment. Alternatively, the owner could apply for a use variance for the second apartment as a market rate unit. Mr. Bernstein recommended that the owner meet with the Application Review Committee to figure out the minimum information required for the site plan; ideally the number of parking spaces that exist, etc.

When asked by Mrs. Baird if the original deed restriction for the affordable housing unit has expired, Mrs. Goodchild responded in the positive. Based on her interpretation of the ordinance, Mrs. Baird opined that the second dwelling unit would have to be an affordable housing unit to which Mr. Bernstein agreed.

Mr. Van Doren returned to the meeting table at this time.

Mr. Johnstone introduced the newest Board member, Kurt Rahenkamp, and welcomed him to the group.

LAND USE BOARD DISCUSSION

➤ FCC Cell Tower Rule

Mr. Van Doren explained that he asked for the item to be placed on the agenda because he feels that it is a continual erosion of local planning and zoning. He noted that the Board went through an extensive process with the substation and the decision was overturned by Board of Public

Utilities. Similarly, the decision of the helistop was also overturned by a State authority. He noted that his biggest concern is that the providers could erect equipment on existing structures without applying to the local Land Use Board. Mr. Van Doren suggested that the Land Use Board comment by the February 5, 2014 deadline and copy the local Congressman and two (2) Senators. Mr. Johnstone agreed and noted that the Board did an excellent job with both projects mentioned after which the decisions were overturned. Mr. Bernstein advised that the comments should come from the Township Committee since there is a pending cell tower application before the Board.

Mr. George Cassa, Guinea Hollow Road agreed with Mr. Van Doren's summary and encouraged the Township to go on record against the rule. He explained that his main concern is with the fact that the Township's present wireless ordinance provides the township with the authority to establish priority and alternate locations. He is concerned that the ordinance does not have similar provisions for alternate technologies. The way that the FCC rule reads is that in addition to streamlining and eliminating the approval process for alternate technologies it pre-empts the town from having any say so at all. Also, the FCC rule would eliminate the Township's ability to amend its ordinance to require an applicant to show alternative technology. Mr. Cassa suggested that the Township submit comments to the FCC expressing dislike for the loss of local control that the rule implies. But, if it must happen the Township would hope that it would have the authority to include in its ordinance the requirement that the applicant show that it has looked at alternative technologies.

Mr. Van Doren indicated that he would be writing the comments for the Township Committee and would provide a copy to the Land Use Board. Mr. Moriarty noted that it should include carriers as well as private individuals.

- Dan Bernstein to discuss Land Use Board jurisdiction and powers

Mr. Bernstein briefly reviewed for the Board the Land Use Board's powers and responsibilities. He went on to say that he believes that the Board has a positive impact on the development of the township. While the Board processes applications, more importantly the Master Plan and the Zoning Ordinances maintains lot sizes and limits development. With respect to applications, Tewksbury scrutinizes applications as thoroughly as any town he knows. With respect to hearings, the court says the Land Use Board is quasi-judicial and it acts as a judge with a regular hearing process. Board members know that they should not discuss applications outside of the hearing. Mr. Bernstein reminded Board members to provide, for the record, reasons for the denial or approval of an application; the applicant, opposition and residents have a right to know why an application is being approved or denied. If there is any situation that may impede a member's judgment, he or she should recuse themselves so as not to have a conflict of interest (personal or business relationships, etc.). Lastly, once the Board approves or denies an application a resolution is prepared and, if approved, conditions are included. Resolutions are sent to Ms. Goodchild, Mr. Burr and Mr. McGroarty for review and then to the applicant's attorney before being presented to the Board for approval.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:20 p.m. by motion of Mrs. Baird and seconded by Mr. Moriarty. All were in favor.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator