

**LAND USE BOARD MINUTES**  
**October 5, 2011**

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Lebanon, New Jersey. The meeting was called to order at 7:34 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Bruce Mackie, Shirley Czajkowski, Ed Kerwin, Arnold Shapack, Alt. #1, Eric Metzler, Alt. #2 and Tom Dillon, Alt. #3.

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

Absent: Dana Desiderio, Elizabeth Devlin, Michael Moriarty and Ed D'Armiento, Alt. #4.

There were approximately five (5) 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 6, 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. Mrs. Baird made a motion to approve the claims listed below and Mr. Van Doren seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 9/21/11 LUB Meeting – invoice dated September 22, 2011 (\$450.00)
2. Banisch Associates – Land Use Board Escrow – Johnson (B23, L23), invoice #P11-19273 (\$364.00)
3. Banisch Associates – Land Use Board Inspection – Pottersville WWTP (B24, L17.01), invoice #P11-19240 (\$142.00)
4. Suburban Consulting Engineers – Land Use Board Inspection – Pottersville WWTP (B24, Lot 17.01), invoice #17197 (\$154.00)

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. Dillon 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 September 28, 2011 from Shaun C. Van Doren, Township Historian re: Vliettown Farm Subdivision, Appl. No. 11-14, Block 43, Lot 3.
2. A letter dated September 30, 2011 from William Burr, Maser Consulting re: Regan, Appl. No. 11-11, Block 40, Lot 5.
3. The New Jersey Planner, Vol. 72, No. 3 – August 2011.
4. A copy of a letter dated September 14, 2011 from Eileen Swan, Executive Director of the Highlands Council re: Petition for Plan Conformance.
5. A letter dated September 30, 2011 from William Burr, Maser Consulting re: Vliettown Farm, Appl. No. 11-14, Block 43, Lot 3.
6. An e-mail dated September 9, 2011 from Kurt Rahenkamp, Chairman of the Scenic Roads and Bridges Commission, re: Appl. No. 11-14, Vliettown Farm, Block 43, Lot 3.
7. Memorandum dated September 29, 2011 from the Environmental Commission re: Vliettown Farm, Appl. No. 11-14, Block 43, Lot 3.
8. A memo dated October 5, 2011 from Roberta Brassard re: Regan, Appl. No. 11-11, Block 40, Lot 5.

### **ORDINANCE REPORT**

Mr. Mackie noted that the Township of Clinton made a mistake on one of their maps and have proposed an ordinance to amend the map; he had no recommendations.

### **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 participation portion of the meeting.

### **PUBLIC HEARING/EXTENSION REQUEST**

- Frances Schmitt  
LUB Application No. 09-21/Application No. ZBA03-17  
Block 11, Lots 5.02, 5.03 & 6

William Schurtz, attorney for the applicant, was present to request an extension for relief that was granted in 2004. The lot owned by Mrs. Schmitt on Sutton Road is technically a land locked parcel; the legal access to the property is by means of a driftway which crosses adjacent Lots 5.02 and 5.03. In 2004 Mrs. Schmitt received a variance because the property does not contain sufficient depth as well as relief that was necessary to grant a building permit for a lot that does not abut a public street. A condition of the approval was that Mrs. Schmitt procure a joint driveway maintenance agreement with the owners of Lots 5.02 & 5.03. The process proved to be a very difficult thing to do and took

several years. Ultimately Mrs. Schmitt was able to secure the agreement with the help of another law firm and the document was finally fully executed last year. Mr. Schurtz noted that his client made a solid effort to sell the property however the market for vacant lots has been slow. Mr. Schurtz requested another one year extension from the October 21, 2011 expiration date of the last extension. When asked if the home has been constructed, Mr. Schurtz replied in the negative.

Ms. Randee Caren Zyzyck, Realtor for the applicant, was present and sworn in by Mr. Bernstein. She explained that housing sales have been down since 2007 and land sales in Tewksbury are down also; only 2 lots have sold since March, 2010. The price has dropped from \$275,000 down to \$199,000 and the property owner is willing to offer owner financing. When asked by Mr. Shapack if it would be better to grant an extension for longer than a year Mr. Bernstein noted that the notice requested a one (1) year extension.

Mr. Johnstone opened the meeting up to the public. There being no one in the public, Mr. Johnstone closed the public hearing.

Mr. Van Doren made a motion to grant a one (1) year extension to October 21, 2012. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. Dillon and Mr. Johnstone.

Nays: None

## **PUBLIC HEARING**

- Regan  
Appl. No. 11-11  
Block 40, Lot 5  
Variance – Front and Side Setbacks and Impervious Coverage  
**Action deadline – 12-9-11**

Mrs. Czajkowski left the meeting at this time as she was recused from the Regan and Vlietown Farm applications.

Mr. Brian Regan, applicant, was sworn in by Mr. Bernstein. He explained that he and his wife Michelle have owned 11 James Street since July of 2008. With two (2) young children they decided that more space is needed. The primary objective in putting an addition on the home is to retain the aesthetic and historic integrity of the residence and so they chose John Beatty, Architect, to prepare the plans.

John Beattie, Architect, was sworn in by Mr. Bernstein. Mr. Beattie provided the Board with his credentials and he was accepted as an expert.

Mr. Beattie explained that there is a cinder block garage to the west that was built in approximately 1975 and is attached to the dwelling; that garage is proposed to be removed as part of the application. The 16 x 32 addition would be to the rear of the existing house for a family room and kitchen space and master bedroom suite on the second floor. The existing kitchen is tiny and rundown and the plan is to provide an updated space. The second floor currently has 4 bedrooms; the bedroom count will not change. The existing master bedroom will become a den and a study and the addition will accommodate a new master bedroom suite, bathroom and walk-in closet. When asked if the number of bathrooms will change, Mr. Beattie responded in the negative. Mr. Regan noted that a bathroom is being removed and added on both floors but the total number will not change. Mr. Beattie noted that the Historic Preservation Commission approved the addition; the materials proposed will be sympathetic to the existing conditions (cedar clapboard, wooden windows, etc.). Mr. Beattie noted that the orientation of the roof in the back faces south and at some time in the future the applicant may want to put solar panels on that roof which was received favorably by the Historic Preservation Commission.

Mr. Beattie noted that the variances requested are for front and side yard setbacks and an impervious coverage variance. When asked if the configuration in the front of the house will change, Mr. Beattie responded in the negative and added that the addition will not come any closer to the neighbors.

Mr. Burr asked the height of the addition to which Mr. Beattie explained it is 22 feet and the existing structure is six (6) feet higher than that. When asked about the three (3) new exterior doors, Mr. Beattie explained that there is a patio French door going out to the backyard, a French door which leads to an existing patio and a mudroom door in the rear. Mr. Beattie provided the Board with the cut sheets for the proposed lighting which was marked as **Exhibits A-1 and A-2** and represents the type of lighting proposed.

Mr. Bernstein asked if the lights would be shielded. Mr. Beattie noted that the lights proposed are not shielded but if they need to be shielded the applicant would agree. When asked if there will be a garage on the property, Mr. Beattie responded in the negative.

Mrs. Baird asked where cars will park to which Mr. Beattie explained that they park along James St. or enter the property from Cow Alley. Mr. Regan explained that the garage was never used to park vehicles and noted that they park in a gravel area off of Cow Alley primarily during snow storms so that the Township can plow the street.

Mr. Kerwin asked if the parking area was included in the lot coverage to which Mr. Beattie responded in the negative. When asked the size of the area, Mr. Regan responded 10 x 15 at the most (space for one car).

Mr. Dillon asked if the garage to be removed is on a slab to which Mr. Beattie responded in the positive and indicated that the slab would be removed.

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

Christian Kastrud, Engineer for the applicant, was sworn in by Mr. Bernstein. Mr. Kastrud provided his education and qualifications and was accepted by the Board.

Mr. Kastrud presented a colored rendering of the plan which was marked at **Exhibit A-3**. Mr. Johnstone asked Mr. Kastrud if his client agrees to all of the comments in Mr. Burr's report. Mr. Burr asked for clarification from the Board on the remediation, if the Board preferred that the applicant remediate to 15%. He noted that to accommodate that the applicant would have to capture the runoff from the existing house as well as the addition. When asked if he would be willing to mitigate to 15% Mr. Regan asked for a brief recess to consult with his professionals. Upon returning Mr. Kastrud indicated that his client agreed to remediate to 15% coverage. When asked if any trees or shrubs will be removed, Mr. Regan noted that there are three (3) small Christmas trees planted next to home by the previous owners and those will be relocated to the rear of the lot.

Mr. Bernstein noted that the Board will require a deed restriction that the dry wells will be installed to Mr. Burr's approval and will be maintained in perpetuity. Mr. Regan agreed to that condition.

Mr. Van Doren asked that the plan be updated to reflect the gravel parking pad near Cow Alley.

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

Mrs. Baird made a motion to approve the application with the conditions outlined by Mr. Bernstein. Mr. Van Doren seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. Dillon and Mr. Johnstone

Nays: None

#### **PUBLIC HEARING**

- Vlietown Farm  
Appl. No. 11-14  
Block 43, Lot 3  
Prel./Final Major Subdivision w/Variance and Waivers  
**Action deadline – 12-20-11**

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

Mr. Rob Simon, Herold Law, Attorney for the applicant, was present on behalf of the applicant. Mr. Simon noted that the property is located at 77 Vliettown Road. He went on to explain that the applicant is seeking approval to create four (4) single family residential building lots from the property which is in excess of 360 acres. The application is also for a planning variance with regard to access, a bulk variance for the flag lot since it will not have direct access to an existing approved road and various driveway waivers.

Ronald Kennedy, Professional Engineer for the applicant was present. Mr. Kennedy presented an exhibit, marked as **Exhibit A-1**, described as Proposed Subdivision Aerial Rendering and **Exhibit A-2**, described as Proposed Common Access & Homesite Plan.

Using Exhibit A-1, Mr. Kennedy explained that on the right side of the sheet is Black River Road as it intersects with Vliettown Road. On the left side of the sheet is Cold Brook Road which is a gravel road connecting Vliettown to Lamington Road. The predominant features on the site are the open fields and Lamington River which separates Tewksbury and Bedminster Township's. The property is in the Farmland Preservation Zone which is a seven (7) acre minimum. There are environmental constraints on the property including wetlands, wetland buffers, riparian buffers, floodplain and some steep and critical slopes. The Cold Brook intersects with the Lamington River just off tract; both stream corridors are C-1 waters with the most restrictive buffers. The primary farming activity is beef cattle and soy, corn and hay in the open meadow fields; this has been the historic use of the property. The structures for the property are located off of the common driveway just northwest of the intersection of Vliettown and Black River Roads. The structures consist of an old farmhouse, a barn structure that has two (2) silos associated with it, farm sheds for equipment storage and a concrete feed pad. The barn on the property was substantially renovated approximately two (2) years ago. The original barn had structural components missing and with some architects from New York City the property owner restored it completely by finding a barn in Ontario and taking components from that barn and matching it with the barn on this property. It is used as a working barn for equipment storage as opposed to livestock.

Mr. Kennedy explained that the subdivision is a result of estate planning discussions. The application proposes four (4) lots, the smallest being 67 acres, two (2) lots at 106 acres and the fourth lot at 76 acres. Using the same techniques used on other Johnson subdivisions the property owners propose to use the existing driveway as a common driveway for three (3) of the four (4) proposed lots. The existing driveway is a minimum of 12 feet wide in places but up to 14, 16 and 20 feet wide in some segments.

Using Exhibit A-2, Mr. Kennedy explained that the lighter shaded areas are the cultivated fields, the lighter green areas are grasslands that are monitored by the NJ Audubon; they plant grassland species to use for some of the hunting on the property and a tool to protect the watershed.

Mr. Kennedy noted that the house location on proposed Lot 3.04 is not at the crest of the hill because there is a beautiful vista that the applicant did not want to disturb. The

driveway for proposed Lot 3.04 will come in off an existing path from Vliettown Road that is currently used for farming activities. The other three (3) proposed lots generally utilize the rear fields for the home sites; all three (3) lots will use the existing driveway off of Vliettown Road. The applicant did look at bringing a driveway in off of Cold Brook Road but that idea was dismissed because it would need to traverse the middle of an area of heavy environmental constraints. The remaining lot has the existing house, barn and farm structures. A new house site could be shown on the remaining lot however it is likely that if houses are built on the other two (2) lots along the common driveway the farm house and complex will be a gateway or front house for the other lots.

Mr. Kennedy explained that the Letter of Interpretation (LOI) was filed in June and with all of the rain the DEP didn't start inspecting until today; within a month they will likely issue the LOI. He noted that a little over four (4) acres will be dedicated to the Township for road right of way purposes. The common driveway will contain pull offs in accordance with the Driveway Construction Ordinance, the maximum distance proposed between those pull offs is 800 feet. Mr. Kennedy noted that he spoke with the Chief of the Oldwick Fire Department and he is satisfied with the location of the pull offs. Mr. Simon noted that the distance between pull offs is one of the waiver requests. Mr. Kennedy noted that there was a waiver request for the driveway as it enters Vliettown Road for the incline but the Township Engineer has asked that the applicant make it comply so work will be done to comply. The final waiver is for the distance of the driveway from property lines; because it traverses property lines in some areas the driveway does not comply and relief will be needed. Mr. Kennedy noted that the Township Engineer will rule on the waiver requests after the Land Use Board takes action on the application.

Mr. Kennedy explained that a detailed drainage analysis was prepared for each lot even though they are conceptual by design; a Grading and Surface Water Management Plan will be prepared at the time of actual construction.

Soil testing was conducted on all four (4) lots and passing results were achieved for primary and reserve systems. Individual wells would be used for each of the proposed lots.

With regard to the Residential Site Improvements Standards (RSIS), Mr. Kennedy noted that a maximum of three (3) lots would have access and therefore the RSIS do not apply. Mr. Simon noted that he spoke to Mr. Bernstein about this issue and both agreed that the RSIS do not apply in this situation.

Mr. Kennedy noted that all of the lots meet the zoning bulk requirements however proposed Lot 3.06 has frontage along Cold Brook Road but it does not have a driveway to Cold Brook Road so it requires a planning variance from the Municipal Land Use Law. Proposed Lot 3.05 is a flag lot to Cold Brook Road and complies with the flag lot ordinance but it does not gain its access through the flag staff so it requires relief from the Municipal Land Use Law and Section 706D.2 of the Development Regulations Ordinance (the access for a flag lot should be through the flag staff). Mr. Kennedy noted

that the applicant could widen the frontage of the flag lot (proposed Lot 3.05) so that it is not, by definition, a flag lot and would not require relief. Mr. Bernstein noted that it still would not be used for access and felt it was a moot point.

Mr. Kennedy provided planning testimony in support of the variances requested. Mr. Kennedy noted that by using the common driveway the applicant minimizes the disturbance to constrained areas; one driveway versus four (4) separate driveways is another way to minimize disturbance and is a more efficient use of the land. By using these techniques the benefits outweigh the detriments.

Mr. Johnstone asked if Mr. Kennedy was being offered as an Engineer and a Planner to which Mr. Simon responded in the positive. Mr. Kennedy noted that he is a licensed Planner in the State of New Jersey. Mr. Bernstein noted that Mr. Kennedy does Planning in connection with his Engineering work. Mr. Kennedy stated that he regularly testifies on Planning issues. When asked if he has been a Township Planner for any municipalities, Mr. Kennedy responded in the negative. Mr. Johnstone noted that if the application was controversial the Board would not accept Mr. Kennedy as a Planner however, it is not so his testimony will be accepted. When asked if he has testified before other Boards providing professional Planning testimony, Mr. Kennedy responded in the positive. Mr. Kennedy noted that for the other Johnson applications he was qualified as a Professional Engineer and Planner. The Board did not object to Mr. Kennedy providing testimony.

Mr. Kennedy reviewed the purposes of zoning that would be enhanced by the granting of the application and also the negative criteria noting that the application could be approved without substantial detriment to public good, without substantial impairment to the intent and purpose of the zone plan and the zone ordinance within the Township. Tewksbury's ordinance speaks to the use of common driveways, minimizing disturbances and less curb cuts to the road.

As for the planning variance needed for the lots that don't gain access from their frontage, Mr. Kennedy explained that the conditions that need to be assessed are adequate access for emergency vehicles necessary to protect health and safety and that the proposed access does not impact any future street layout. The driveway proposed is wide enough and, with proposed pull offs, will provide adequate access for emergency vehicles. Mr. Kennedy noted that he will gain a letter from the Fire Chief to support that.

Mr. Kennedy reviewed Mr. Burr's review letter and noted that the applicant is not proposing cross easements. He noted that the only improvements to the driveway will be the pull offs, the slope at the driveway entrance at Vlietown Road and the apron will be paved. When asked why proposed Lot 3.04 was not being accessed by the common driveway, Mr. Kennedy explained that there is a significant grade change between the common driveway and any house location on that lot and switch backs would be necessary to create that driveway. When asked about the existing AT&T easement, Mr. Kennedy explained that it contains an approximate 4 inch solid lead line with copper wires, it is broken in about 50 places so it is no longer active; there is nothing proposed

by the applicant that will impact the easement. There are also AT&T easements along the driveway which provides access to the line and there is no prohibition about using it for a driveway. He noted that there is also a JCP&L easement along the driveway for service to the property so they get less line loss.

When asked about how coverage was calculated, Mr. Kennedy explained that anything that was gravel, pavement, etc. was counted in the lot coverage calculations; the grass paths used for farm equipment were not counted.

Mr. Kennedy agreed to address the drainage and grading comments in Mr. Burr's letter.

Mr. Burr asked Mr. Kennedy if he had a chance to review the letter from Shaun Van Doren to which Mr. Kennedy responded in the positive. He explained that there is no right of way that exists on the property; the rights to any of the railroads were all deeded over with the Brady Security Purchase in 1932. When asked if the railroad exists on the property, Mr. Kennedy responded in the negative and explained that you can see where the old trail was but there are no remnants that remain. When asked if his client would be willing to grant a preservation easement, Mr. Kennedy explained that there are significant concerns about public access. He added that there are no plans to remove anything and whatever is there will remain. When asked if a preservation easement could be imposed without public access, Mr. Bernstein responded in the positive.

Mr. Burr noted that the stormwater calculations submitted for each lot is based on the conceptual layout and appear to address the ordinance.

Mr. Bernstein noted that the conditions placed on this approval would be similar to the conditions placed on the prior approvals for the Johnson subdivisions. At the request of Mr. Bernstein Mr. Kennedy demonstrated the environmental constraints on each of the proposed lots.

Mr. Mackie asked if the driveway pull offs would disturb wetlands to which Mr. Kennedy responded in the negative. Mr. Mackie noted that some of the plan sheets seem to indicate disturbance. Mr. Kennedy agreed to look into the matter.

Mr. Johnstone asked if the applicant would agree to a restriction against further subdivision. Mr. Kennedy responded in the negative but agreed that any further subdivision would return to the Board because of the use of the common driveway by more lots than the four (4) proposed by this application.

Mr. Kennedy asked about off tract improvements and Mr. Johnstone opined that the Board should take the site walk first before commenting. Mr. Bernstein also suggested that Mr. Kennedy speak to the Township Engineer about his expectations.

Mrs. Baird noted that the minimum flag staff width is 35 feet and she suggested that the applicant revise the plan to propose a 35 foot flag staff. She explained that the Township has always tried to avoid a 50 foot wide flag staff so that a property owner could not

propose a roadway. The applicant agreed to revise the plan. When asked if access would be restricted to the common driveway for proposed Lots 3.05 & 3.06, Mr. Kennedy responded in the positive.

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

A site walk was scheduled for Sunday, October 9, 2011 at 2 p.m. and everyone was instructed to meet at the red barn. Ms. Goodchild noted that she would extend the invitation to the Environmental Commission and the Scenic Roads and Bridges Commission. Mr. Bernstein noted that the public is also invited and Ms. Goodchild agreed to have it posted on the Township webpage. Mr. Kennedy agreed to stake out the conceptual house locations and the wetlands markers.

Ms. Goodchild noted that the Township Planner was not asked to review the application given the scope of the project and asked if the Land Use Board wanted to involve him at this stage. The consensus of the Board was that there was no need.

The next hearing date was scheduled for November 16, 2011, 7:30 p.m. with no new required.

**Escrow Closing**

- Kerry Morris – Appl. 10-01 - \$187.50

Mrs. Baird made a motion to close the above referenced escrow and return the balance to the applicant. Mr. Shapack seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Mackie, Mr. Kerwin, Mr. Shapack and Mr. Johnstone

Nays: None

**ADJOURNMENT**

There being no further business, the meeting adjourned at 9:55 p.m. by motion of Mrs. Devlin and seconded by Mr. Moriarty.

Respectfully submitted,

Shana L. Goodchild  
Land Use Administrator