

**LAND USE BOARD MINUTES**  
**May 4, 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, Mountainville, New Jersey. The meeting was called to order at 7:30 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Dana Desiderio arrived at 7:36 p.m., Bruce Mackie, Shirley Czajkowski, Elizabeth Devlin, Michael Moriarty arrived at 7:35 p.m., Ed Kerwin, Arnold Shapack, Alt. #1 arrived at 7:35 p.m., Tom Dillon, Alt. #3 and Ed D'Armiento, Alt. #4,

Also present: Daniel S. Bernstein, Land Use Board Attorney, Andrew Holt, Township Engineer and Shana L. Goodchild, Land Use Administrator.

Absent: Shaun Van Doren and Eric Metzler, Alt. #2.

There were approximately seventeen (17) 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 Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 4/20/11 LUB Meeting – invoice dated April 21, 2011 (\$562.50)
2. Bernstein & Hoffman – Land Use Board Escrow – Ashton (B47.02, L1) - invoice dated April 18, 2011 (\$375.00)
3. Bernstein & Hoffman – Land Use Board Escrow – PNC Bank (B45, L1) - invoice dated April 18, 2011 (\$1,710.00)
4. Maser Consulting – Land Use Board General Land Use Work – invoice #162099 (\$617.50)
5. Maser Consulting – Land Use Board Escrow – Johnson (B23, L23), invoice #162088 (\$1,332.50)
6. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #162089 (\$97.50)

7. Maser Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #162090 (\$1,300.00)
8. Maser Consulting – Land Use Board Escrow – Johnson (B23, L36), invoice #162091 (\$97.50)
9. Maser Consulting – Land Use Board Escrow – Johnson (B23, L2), invoice #162092 (\$422.50)
10. Maser Consulting – Land Use Board Escrow – Catalano (B6, L25.01), invoice #162093 (\$130.00)
11. Maser Consulting – Land Use Board Escrow – Blauvelt (B39, L8), invoice #162096 (\$325.00)
12. Maser Consulting – Land Use Board Escrow – Sheft (B33, L7.18), invoice #162097 (\$325.00)
13. Maser Consulting – Land Use Board Escrow – AM Best Company (B46, L2.01, 5 & 6), invoice #162101 (\$1,397.50)
14. Maser Consulting – Land Use Board Escrow – PNC Bank (B45, L1), invoice #162095 (\$1,865.00)
15. Banisch Associates – Land Use Board Escrow – Johnson (B23, L23), invoice #P10-18454 (\$884.00)
16. Banisch Associates – Land Use Board Escrow – A.M. Best Company (B46, L5, 6 & 2.01), invoice #P10-18455 (\$142.00)
17. Banisch Associates – Land Use Board Inspection – Oldwick Animal Hospital (B45, L28), invoice #P11-18472 (\$213.00)
18. Banisch Associates – Land Use Board Escrow – Johnson (B23, L23), invoice #P11-18473 (\$340.80)
19. Banisch Associates – Land Use Board General Planning – invoice #P11-18474 (\$274.00)
20. Suburban Consulting Engineers – Land Use Board Escrow – Hill & Dale Farms (B51, L80), invoice #16284 (\$154.00)

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Dillon, Mr. D’Armiento and Mr. Johnstone

Nays: None

**CORRESPONDENCE**

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

1. A letter dated April 28, 2011 from Andrew Holt, Suburban Consulting re: LUB Application 11-02, Hill and Dale Farms, Block 51, Lot 80.
2. An e-mail from Robin Love re: Utility Pole Mounted Solar Panels in NJ.
3. An e-mail from Jess Landon re: Ordinance No. 06-2011 for Master Plan Consistency Review.

4. Memorandum dated April 20, 2011 from Chief Holmes re: Application No.'s 11-01 and 11-02, Hill and Dale Farms subdivisions, Block 36, Lots 1 & 1.01 and Block 51, Lot 80.
5. A copy of a letter dated April 26, 2011 from NJ Highlands Council re: Hill and Dale Farms Subdivision Appl. No. 11-02, Block 51, Lot 80.
6. A copy of a letter dated April 28, 2011 from NJ Highlands Council re: approval Petition for Plan Conformance.
7. A memo dated April 19, 2011 from Roberta Brassard re: Petition for Substantive Certification.
8. An e-mail dated April 21, 2011 from the County Department of Health re: the Hill and Dale Subdivisions, Appl. No.'s 11-01 and 11-02, Block 36, Lots 1 & 1.01 and Block 51, Lot 80.
9. A letter dated April 28, 2011 from Andrew Holt, Suburban Consulting re: LUB Application 11-01, Hill and Dale Farms, Block 36, Lots 1 & 1.01.

### **ORDINANCE REPORT**

Mr. Mackie had no ordinances to report on.

Mr. Kerwin reported on an ordinance from Pohatcong Township regarding solar/wind energy. The Board asked Ms. Goodchild to forward the ordinance to Mark Warner of SunFarm Network for his review.

### **PUBLIC PARTICIPATION**

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

Mr. Ed O'Brien was present and spoke on behalf of Mr. and Mrs. Goss who recently received approval from the Board for a swimming pool. Mr. O'Brien displayed for the Board a plan and explained that the pool cannot be constructed in the way it was approved. Mr. O'Brien noted that the plan on display is a copy of a plan prepared by Apgar Associates with a tracing paper sketch he prepared superimposed over the plan. He noted that he had nothing to do with the project and the engineer was not present because he didn't feel that he could participate in the discussion. Mr. O'Brien explained that the porch and chimney on the side of the house are in the center of the wall and so when Mr. and Mrs. Goss decided to construct the pool the emphasis was on a 20 x 40 foot pool on center with the house. The engineers encouraged Mr. and Mrs. Goss to reduce the width of the pool to 15 feet. In order to stay away from the 100 foot front setback line the pool started getting away from the centerline of the house which Mr. and Mrs. Goss accepted at the time of the approval. The pool company prepared a survey and determined that the engineers had not accurately measured the end of the house; the porch and chimney are not where they were portrayed on the plans prepared by Apgar. Mr. O'Brien explained that work has stopped and that they will be filing an amended plan rather than starting the process over.

Mr. Bernstein read the following portion of the approving resolution into the record "the applicants initially proposed a 20 foot by 40 foot 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 foot by 32 foot pool house with a front yard setback of 95.4 feet, while the FP Zone requires a minimum front yard setback of 100 feet”. He then read Finding 14 “the application and the revisions were discussed at the October 20, 2010 Land Use Board meeting: the in-ground swimming pool was reduced in size to 15 x 38 and the elimination of a front yard setback variance for the swimming pool”. He noted that it was agreed at the meeting that the pool would be pulled back 100 feet. Mr. Bernstein explained that if the pool does not conform to the approval it would require an amendment to the Board’s prior approval and requires a variance which requires new notice to property owners. Mr. Bernstein suggested that if the survey was skewed that the applicant provide the Board with an accurate survey. Mr. O’Brien noted that that existing house encroaches into the setback by approximately 18 feet and the new pool will not encroach any more than the original house. Mr. Bernstein advised the Board against ignoring the need for a variance. Mr. Johnstone advised Mr. O’Brien to apply for revised approval and a front yard setback variance and to contact Ms. Goodchild regarding scheduling.

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

#### **Master Plan Consistency Determination**

- Ordinance No. 06-2011 – 40:55D-31

Ms. Goodchild explained that the ordinance is for capital improvements that involve chip and seal for various roads as well as public improvements.

Mrs. Baird made a motion to find Ordinance No. 06-2011 not inconsistent with the Master Plan. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

#### Roll Call Vote:

Ayes: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Dillon, Mr. D’Armiento and Mr. Johnstone

Nays: None

#### **PUBLIC HEARING**

- Hill and Dale Farms, Inc.  
Appl. No. 11-02  
Block 51, Lot 80 – Hill and Dale Road  
Minor Subdivision with Variances  
**Action Deadline – 8-11-11**

Ms. Desiderio recused herself at 7:47 p.m.

Mrs. Renu Shevade, attorney for the applicant, was present and explained that the application is to subdivide Lot 80 into two (2) lots in order to facilitate a sale to the NJ Conservation Foundation. Ms. Shevade explained that the 133 acre lot would be subdivided into two (2) lots, proposed Lot 80.07 will be approximately 41 acres and remaining Lot 80 will be approximately 89.7 acres. The newly created lot will have two (2) pre-existing cottages; no new improvements or disturbance is proposed. There are bulk variances as well as a D variance required as part of this application. Ms. Shevade made note of a letter that the Board was copied on from the NJ Highlands Commission dated April 26, 2011 which confirms that Highlands approval is not required since no disturbance is proposed.

Michael Rothpletz, Hill and Dale Farms, was sworn in by Mr. Bernstein. Mr. Rothpletz explained that the project with the NJ Conservation Foundation involves the subject property as well as two (2) lots, Lot 80.06, an eight (8) acre flag lot and Lot 80.05 a three (3) acre lot. The NJ Conservation Foundation is under contract to purchase Lot 80 plus Lots 80.05 & 80.06 with the intent to preserve it as open space. The subdivision is necessary so that the NJ Conservation Foundation can secure financing. Mr. Rothpletz explained that the best way to facilitate the project is to use agricultural preservation funds for the 40 acre lot (proposed Lot 80.07). If the subdivision is approved by the Land Use Board they would close quickly on the balance of the property (everything but proposed Lot 80.07). The remainder Lot 80, Lot 80.06 & 80.05 would be conveyed within a few months. Proposed Lot 80.07 would be acquired if the farmland preservation application is approved. Mr. Rothpletz explained that, with the NJ Conservation Foundation's assistance, they applied in December to the SADC and have received preliminary approval. He noted that the State Agricultural Development Committee (SADC) is very motivated because of the relationship with the NJ Conservation Foundation as well as the fact that they recognize that it is part of a much larger preservation effort noting that there is also an application to preserve another 150 acres on the other side of Hill and Dale Road as well as the River Parcel which will be discussed in the 2<sup>nd</sup> public hearing tonight. He explained that on the outside chance that the funding falls through, the NJ Conservation Foundation has the right under the contract to use other resources to buy the property or elect to not purchase the property and Hill and Dale Farms would retain ownership of that parcel.

Mr. Bernstein asked how the properties would be restricted. Mr. Rothpletz explained that the NJ Conservation is required by their funding to restrict however, it cannot be a condition of the subdivision approval or they will not get funding.

Mr. Dillon opined that the DEP is the deciding factor on the Highlands question rather than the Highlands Council. If the NJDEP determines that the Highlands does need to weigh in Mr. Dillon asked if it would be a condition that would impact financing. Mr. Rothpletz asked that the Board handle it as it has in the past by requiring that all necessary governmental approvals be obtained. The Board agreed.

When asked if the building lots are vacant, Mr. Rothpletz responded in the positive. The south westerly portion of Lot 80 has large barns and a few outbuildings. There are three

(3) small cottages that were historically used for workers when it was an operating dairy farm; they are now rental cottages. He added that there are pasture areas and agricultural fields which are all farmed by Scott Clucas.

Mr. Kerwin asked what would be in place to prevent the property from being developed. Mr. Rothpletz noted that the land would be encumbered by the agricultural easement which requires that it be actively farmed; there will only be a small exception area around the two (2) cottages. When asked if it will be in perpetuity, Mr. Rothpletz responded in the positive.

Mr. Johnstone opened the meeting up to the public.

Mr. Ron Giaier, 22 Parsonage Lot Road, noted that he owns the property that abuts the proposed preserved area. He explained that adjacent to his property is an area that was for the proposed driveway to one of the vacant building lots created by Mr. Rothpletz and asked if the driveway would now serve as the access point for the public. Mr. Rothpletz could not answer the question but indicated that the NJ Conservation Foundation could.

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

Mr. Greg Romano, Assistant Director of the NJ Conservation Foundation, was sworn in by Mr. Bernstein. Mr. Romano explained that the State Agriculture Development Committee has issued preliminary approval (Lot 80.07) under the State Direct Easement Purchase program which means that the State will pay 100% of the development rights and no contribution from the County or Township is necessary. It is a permanent easement and requires that the land be made available for agriculture lease and production. The remainder of the land will be funded through the Green Acres program (Lot 80) and a deed of conservation restriction is filed which is held by the State Green Acres program. The deed of conservation is more restrictive than the standard Green Acres restrictions which allows for active and passive recreation. The deed of conservation will limit the property to passive recreation (hiking, walking, horseback riding, etc.). When asked if the development rights are striped from the property, Mr. Romano responded in the positive. Mr. Romano noted that there is an area (approximately 14 to 20 acres) to be subdivided around the barn which will be sold to a private owner in order to finance the acquisition. When asked about the use of the cottages, Mr. Romano explained that the anticipated short term use would be as rentals. He explained that eventually there will be a meeting with stakeholders, neighbors etc. to determine how to best manage the property.

Mr. Bernstein asked Mr. Romano to confirm that the resolution cannot contain a condition requiring conservation easements. Mr. Romano agreed and explained that the condition would impact the appraisals and funding. When asked if he would agree that one (1) of the cottages be a COAH cottage, Mr. Rothpletz disagreed. Mr. Romano also expressed concern with that condition.

Mr. Moriarty asked if the deal is dependent upon the subdivision of the southwest corner (creating the 14 to 20 acre parcel). Mr. Romano responded in the negative. Mr. Rothpletz noted that the NJ Conservation Foundation will be closing with Hill and Dale Farms within 60 days of the Land Use Board approval (minus the 41 acre farmland parcel).

Mr. Kerwin asked if Lots 80.05 and 80.06 would be purchased. Mr. Romano responded in the positive.

Mr. Shapack asked if a soccer field could be located on the preserved portion. Mr. Romano responded in the negative. When asked if a camp site for Boy Scouts could be located there, Mr. Romano opined that that use is typically considered passive recreation.

Mr. Dillon asked for an explanation of the difference between the restrictions from the two (2) funding sources. Mr. Romano explained that the land encumbered by the agricultural easement could be used for passive recreation but that activity could not impact the agricultural operation (for example a new trail could not be cut through an existing farm field). The fundamental restrictions are that any development for non-ag purposes are prohibited. When asked if a riding ring could be constructed, Mr. Romano explained that it would be permitted if the activity is ancillary to production agriculture (pasturing and breeding). Mr. Rothpletz reminded the Board that there is a 3% coverage limit because the property is within the Highlands. Mr. Dillon opined that more protection should be granted to the small tributary. Mr. Romano explained that within a year of the closing the owners of the property have to receive a farm conservation plan from the Natural Resources Conservation Service; the long term objectives have to conform with that plan.

When asked by Mr. Johnstone how confident he was about securing the state funding, Mr. Romano explained that the SADC has a special allocation for farms in the Highlands area so the full funding for the farm has been earmarked. When asked if he was confident that the funding will come through, Mr. Romano responded in the positive. When asked what would happen if the funding did not come through, Mr. Romano explained that it is possible that if the funding fell through they would not complete the transaction; another funding source would need to be found.

When asked by Mr. Moriarty if they have a prospective purchaser for the southwest piece to be sold, Mr. Romano responded in the negative. He explained that the plan is to market the property after the subdivision and closing. When asked what the prospective uses are for the lot, Mr. Romano explained that the existing structures lend themselves to some type of equine activity.

When asked by Mr. Kerwin if the NJ Conservation Foundation would agree to restrict all of the sites from becoming solar or windmill farms, Mr. Romano asked that it not be a condition of approval but the foundation has no intention of having solar or windmill operations on the farm with the exception of individual systems on the structures. Mr. Rothpletz asked for the ability to preserve the right to have minor solar facilities and so

he did not wish to agree to a restriction during the Hill and Dale Farms ownership period. Mr. Romano noted that Green Acres does not consider solar arrays a passive or active use.

Mr. Johnstone opened the meeting up to the public.

Mr. Ron Giaier, 22 Parsonage Lot Road, asked if the NJ Conservation Foundation would be acquiring Lot 80.05. Mr. Romano responded in the positive. When asked if the passive recreation could include a parking area, Mr. Romano responded in the positive. He explained that every property owned by the NJ Conservation foundation has a management plan and stakeholders and neighbors are asked to comment on that plan.

There being no further questions, Mr. Johnstone closed the meeting to the public.

Beth Davisson, Land Project Manager, NJ Conservation Foundation, was sworn in by Mr. Bernstein. Ms. Davisson spoke to the use of the cottages and explained that the NJ Conservation Foundation will use them as rental units for the near future until a Master Plan for the property is developed. At that point potential uses include farm manager housing and/or preserve manager housing.

Addressing Mr. Giaier's question, Ms. Davisson explained that they have not developed a full management plan but will do that in cooperation with the stakeholders, funding partners and neighbors and interested parties. Ms. Davisson explained that the gravel driveway is a very likely point of access for the property. She went on to explain that, at this point, the NJ Conservation Foundation does not have a vision to create a parking lot there but it is not disallowed by the funding or easement restrictions.

Mr. Holt noted that the existing houses are served by one (1) well and asked how or if it will be addressed. Mr. Rothpletz indicated that the engineer would address the question during his testimony.

When asked by Mr. Mackie if the cottages would be considered income producing units, Ms. Davisson explained that for the short term they would continue to rent the units for income to try and defer the cost of taxes and maintenance of the property.

Mr. Johnstone opened the meeting up to the public.

Kathy Kamine, Meadow Lane, noted that there appears to still be a funding gap of approximately \$480,000 and asked how it will impact the ability to close on the properties. Ms. Davisson explained that the NJ Conservation Foundation has all of the State and County funding for the easement rights and that the only gap is for the fee simple purchase.

There being no further questions, Mr. Johnstone closed the meeting to the public.

Mr. Craig Villa, Yannaccone, Villa and Aldrich, was sworn in by Mr. Bernstein. Mr. Bernstein noted that Mr. Villa had testified before the Land Use Board and was accepted in the past. When asked by Mr. Johnstone if his license had been revoked or suspended since his last appearance, Mr. Villa responded in the negative.

Mr. Villa explained that Lot 80 consists of 133.2 acres and the applicant is proposing a 41.7 acre lot and an 89.7 acre lot. He explained that because the deed goes to the centerline of both Rockaway and Hill and Dale Roads the applicant is proposing a right of way dedication in fee to the Township. Mr. Villa explained that dedications of 16.5 feet were provided on the opposite side of the road in 2007, which technically differs from what the ordinance requires, but the Board decided that 16.5 feet would be appropriate since this portion of Hill and Dale Road has been identified as a Scenic Road and therefore not likely to be widened or improved. He went on to explain that a ten (10) foot wide dedication is proposed in the areas in front of the existing cottages and houses to avoid encroachment onto the actual building. A proposed twenty (25) foot dedication is proposed along Rockaway Road to be consistent with past practice.

Addressing the variances, Mr. Villa explained that there is an existing farm path/driveway that runs to the east of the two (2) cottages. The proposed lot line follows the farm path; the path does not access any structures but provides tractor access to some of the farm fields. Mr. Villa indicated that they would request a waiver from the driveway ordinance because portions of the path are within ten (10) feet of the newly created lot line. Mr. Villa noted that due to the roadway dedication some front yard setback variances are created and an existing side yard setback adjacent to Lot 81 (for the barn) which is not being intensified. Mr. Villa reminded the Board that there is no development proposed as part of the application.

When asked by Mr. Holt the criteria used to establish the proposed lot line, Mr. Rothpletz explained that the lines were drawn to capture the large agricultural fields to the south and also to respect the hedgerow and create enough size to make it appealing to the SADC. When asked if the line could be drawn to allow for greater than 10 feet from the driveway and the lot, Mr. Rothpletz explained that the path is not a driveway. He went on to explain that it is not improved and is used by tractors. He suggested that the tractors use an area 10 feet further from the line if it is an issue for the Board. Mr. Villa noted that the path is not gravel or blacktop.

When asked by Ms. Goodchild if the applicant would agree to a condition that the driveway would need to be moved to a conforming location if improved, Mr. Rothpletz responded in the positive.

When asked by Ms. Devlin the lot yield of the property, under current conditions, Mr. Rothpletz suspected approximately three (3) homes.

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

Elizabeth McKenzie, Professional Planner, was sworn in by Mr. Bernstein. Mr. Bernstein noted that Ms. McKenzie had testified before the Board and was accepted in the past. Ms. McKenzie noted that her license is still current and has never been revoked.

Ms. McKenzie explained that the purpose of the subdivision is to facilitate the preservation. The land is rolling terrain with some wooded areas and some farm fields. There are a number of structures on the property, including barns located in the southwest corner of the property, a house and corn crib and two (2) cottages. There are variances needed in connection with the application, they are: 1) a D variance for the existing cottages on proposed Lot 80.07 which are proposed to remain. She noted that the intent of the zone plan is not in any way undermined; none of the neighbors will see anything different on the property. The justifications for granting the D variance have to do with appropriate use and farmland and open space preservation, all consistent with local and statewide goals. 2) an existing side yard setback for a barn that does not meet the 100 foot requirement. 3) existing front yard setback variances for all three (3) dwellings and the barn which are unrelated to the subdivision however, with the additional roadway dedication the condition is being exacerbated. She opined that allowing the cottages to remain is reasonable noting that they are all lawfully existing structures that were there prior to zoning.

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

The Board reviewed the report from Andrew Holt dated April 28, 2011 and Mr. Rothpletz testified to the technical comments on page five (5) as follows:

1. The survey was provided however it was not signed. Mr. Rothpletz agreed to have it signed.
2. It was agreed at the Application Review Committee meeting that no wetlands map was required. Ms. Goodchild confirmed.
3. Mr. Villa explained that there are three (3) easements that have not been dedicated to the County but they will be based on the proposed right of way dedication. The plans will be revised accordingly.
4. Mr. Villa agreed to show the existing setbacks vs. the proposed setbacks to the new dedicated right of way lines.
5. Mr. Villa noted that the information is on sheet two (2).
6. This was addressed during Mr. Villa's testimony. Mr. Holt noted that a 50 foot right of way is described in the Master Plan and should be implemented everywhere. Mr. Bernstein recalled that the Board found the testimony on a previous application persuasive enough to permit 16.5 feet for the right of way. Mr. Bernstein noted that if it were 25 feet in may impinge on the existing cottages. The Board agreed that 16.5 feet would be acceptable.
7. Mr. Rothpletz reiterated that the dirt path is not a driveway. It is used primarily to access the fields to spread manure from the horse barns. A technical design waiver was requested since it is within ten (10) feet of the proposed lot line. Mr.

- Rothpletz opined that an access easement is not necessary because there are other alternative access areas to the lot (from Parsonage Lot or Hill and Dale Roads). When asked by Mr. Holt if the proposal is to abandon the lane, Mr. Rothpletz responded in the negative and explained that they would continue to use it the way it is. After the NJ Conservation Foundation acquires the land the use will significantly diminish because there will be less manure to spread. Mr. Holt disagreed with Mr. Rothpletz and explained that the Township driveway ordinance does regulate farm lanes because it does not make a distinction between a regular driveway and farm driveway. Mr. Rothpletz agreed that if the Board wants the driveway moved ten (10) feet off of the line they would agree to move it.
8. Mr. Villa noted that he is not aware of any problems with sight distances at the existing driveways therefore, adequate sight distance is available. When asked about the driveway for Lot 80.07, Mr. Villa opined that because it is only a 20 MPH road that is not an issue. When asked if he had done an analysis, Mr. Villa noted that an issue did not exist when he visited the site.
  9. Mr. Rothpletz noted that occasionally, when there is a heavy rain, there is runoff that goes across the roadway. He agreed to work with the Township however he felt that part of it is a township issue; the culvert under the roadway is not being maintained. Mr. Holt opined that the culvert may be filling with sediment from the driveway. Mr. Rothpletz agreed to work with Mr. Holt to gravel the first 25 feet of the driveway and create a swale to direct the water to the proper location and correct the erosion. Mr. Rothpletz requested that a sign off by the Township Engineer not be required prior to the deeds being signed. Mr. Bernstein asked that Mr. Villa meet with Mr. Holt to get it worked out and suggested the posting of a small bond. Mr. Rothpletz agreed to a small bond.
  10. Mr. Rothpletz explained that there is a well located on remaining Lot 80 that serves three (3) dwellings, two (2) of which will be separated from the lot. The agreement between Hill and Dale Farms and the NJ Conservation Foundation provides that as long as they have both the right to acquire the land and while they are pursuing the agricultural preservation Hill and Dale Farms will have the right to continue to draw on the well to service the two (2) dwellings. If the agricultural funding does not go through and the NJ Conservation Foundation doesn't buy the property Hill and Dale Farms has a reasonable period after the contractual relationship ends to drill a new well to service the two (2) dwellings. Ms. Goodchild noted that the application has been forwarded to the Board of Health for their review and approval.

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

Mrs. Shevade provided her closing statements and reminded the Board that the application facilitates the preservation of very large tracts of land and will be a significant benefit to the township.

Mr. Johnstone applauded the efforts that went into pulling the project together and voiced his support of the application.

Mr. Moriarty made a motion to approve Appl. No. 11-02, Minor Subdivision, Block 51, Lot 80 with variances and conditions discussed. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Dillon, Mr. D'Armiento and Mr. Johnstone

Nays: None

Mr. Johnstone took a five (5) minute break.

**PUBLIC HEARING**

- Hill and Dale Farms, Inc.  
Appl. No. 11-01  
Block 36, Lots 1 & 1.01 – Rockaway Road  
Minor Subdivision with Variances  
**Action Deadline – 8-11-11**

Mrs. Renu Shevade, attorney for the applicant, was present and explained that the application is for a minor subdivision in order to facilitate a sale to the NJ Conservation Foundation. The applicant is looking to carve a small portion of Lot 1.01 to create Lot 1.02. Currently Lot 1.01 is approximately 8.3 acres and following the subdivision remaining Lot 1.01 will be approx. 7.5 acres. Proposed Lot 1.02 will be just shy of one (1) acre. There is an existing residence on Lot 1.01 which will continue to exist. There are no D variances required however some minor bulk variances are necessary.

Mr. Michael Rothpletz, Rockaway Road, was sworn in by Mr. Bernstein.

Mr. Rothpletz explained that Lot 1.01 contains a house that his sister and her family reside in. He explained that Hill and Dale Farms also owns adjacent Lot 1 which is approximately 15 acres. He explained that this property was the genesis of the relationship with the NJ Conservation Foundation; approximately 7 years ago there were discussions about preserving only this tract because of the frontage along the river. For various reasons the initial transaction didn't work out but things have changed and a much larger transaction is now in the works. The river corridor is the appeal to this property and they are paying for the fee acquisition for Lot 1 and Hill and Dale Farms is donating proposed Lot 1.02 as well as a small lot on the other side of Meadow Lane (Lot 11). Mr. Rothpletz noted that the NJ Conservation Foundation intends to use the property for passive recreation. The funding that has been arranged for the acquisition is through the NJ Water Supply Authority; the NJ Water Supply Authority will impose its own conservation restriction on the property. Mr. Rothpletz noted that the family is also imposing a restriction on the property due to its proximity to his sister's home; the

restriction would be for passive recreation limited to certain things (birding, fishing, hiking); no camping or structures are permitted. A single family house was permitted so that the appraisals were not impacted however NJ Conservation Foundation will restrict it after the closing to prevent that development. When asked why proposed Lot 1.02 couldn't be merged with Lot 1, Mr. Rothpletz explained that proposed Lot 1.02 had to be a separate lot for the purposes of the appraisals.

Mr. Shapack asked if there is a house on Lot 1 to which Mr. Rothpletz responded in the negative.

Mr. Bernstein asked if there is access from Lot 1 to Rockaway Road. Mr. Rothpletz explained that the access to Lot 1 is through an easement over Lot 1.01 from Meadow Lane. When asked what restrictions would be placed on Lot 1.02 Mr. Rothpletz responded by reading the following into the record:

*Preserved open space which may be used only for passive recreation limited to hiking, horseback trail riding, birding, fishing and/or nature observation. The following are exclusions: hunting, camping, picnicking or similar activities and/or the use of recreational motorized vehicles such as motorcycles, all terrain vehicles or other similar devices or vehicles shall be prohibited on the property.*

When asked, Mr. Rothpletz explained that the land will be acquired by the NJ Water Authority and managed by the NJ Conservation Foundation. When asked if it will be open to the public, Mr. Rothpletz responded in the positive. When asked if Lot 1.01 will remain a private lot owned by his sister, Mr. Rothpletz noted it is owned by Hill and Dale Farms and will remain as private property.

Elizabeth McKenzie, was sworn in by Mr. Bernstein and was just accepted by the Board as a Professional Planner. Ms. McKenzie explained that the subdivision is for the purposes of facilitating preservation of land. There are two (2) C2 variances, the minimum improvable area does not exist on Lot 1.01 and it will not occur after the subdivision and it will also not exist on Lot 1.02. Ms. McKenzie opined that these variances are all existing conditions that will be carried forward. She noted that a benefit of the subdivision is that the area will not be a building lot and will be part of the open space; the benefits substantially outweigh any potential detriment.

Mr. Johnstone opened the meeting up to the public, there being no questions he closed the meeting to the public.

Greg Romano, was sworn in by Mr. Bernstein. Mr. Romano explained that the main attraction was to protect the river and the purpose of the acquisition is to leave the area in its natural state. The property will be owned by the NJ Water Supply Authority and the NJ Conservation Foundation will manage the property for passive recreation with other restrictions. The NJ Conservation Foundation opined that most of the public access will be on the northern portion of the preserve. There is no anticipated parking area. Mr. Johnstone noted that from experience people park along Meadow Lane to fish in the

river. He expressed concern that if it is open to the public more people will visit and parking will become an issue. Mr. Johnstone asked if the NJ Conservation Foundation would be advertising the fact that there is a stream and it is open to the public for fishing and possibly swimming. Mr. Romano noted that swimming is not considered a passive recreation and generally not permitted on the NJ Conservation Foundation preserves. Mr. Johnstone asked Mr. Romano to notify property owners within 200 feet of the preserved parcels so that they can provide input and feedback. Mr. Romano agreed.

There being no additional questions from the Board, Mr. Johnstone opened the meeting up to the public. There being no questions from the public, Mr. Johnstone closed the meeting to the public.

Julie Hajdusek, Property Administrator, NJ Water Supply Authority (NJWSA), was sworn in by Mr. Bernstein. Ms. Hajdusek explained that one of the aspects of their activities is source water protection for the areas that contribute to the drinking water that NJWSA provides. The Rockaway Creek is a tributary to the North Branch and Raritan River which feeds into the main stem of the Raritan River. She explained that their water costumers fund land acquisition activities for source water protection and they use methodology to identify properties that are of high resource value. The NJ Conservation Foundation invited the NJWSA to look at the Hill and Dale property and it ranked at the top of the list (100 out of 100 on the ranking scale). In addition to the obvious river corridor, the wetlands are also contributing. When asked if it is a C-1 Stream, Ms. Hajdusek responded in the positive. When asked if the NJ Conservation Foundation will manage the property in perpetuity, Ms. Hajdusek noted that they have a 20 year agreement. When asked if the NJWSA guidelines are more or less conservative than the NJCF, Ms. Hajdusek explained that the NJWSA's deed restriction is more conservative than the Green Acres deed restriction because many more activities are prohibited. When asked if there will be any further development of Lot 1, 1.02 or 11, Ms. Hajdusek responded in the negative. When asked about swimming or fishing, Ms. Hajdusek noted that they are neither restricting nor encouraging swimming. Mr. Rothpletz noted that swimming will not be allowed. Mr. Johnstone reiterated his concern about parking along Meadow Lane during fishing season. Ms. Hajdusek noted that the NJWSA has no intentions of promoting fishing on the property. When asked who enforces the restrictions, Ms. Hajdusek explained that the deed restrictions are enforced by the NJDEP but on a day to day basis the NJCF would be the party to call if there is a problem.

Hal Kamine, Meadow Lane, asked if there is a restriction against placing gravel for a parking area. Ms. Hajdusek explained that a parking area could not be added to Lot 1. Mr. Rothpletz noted that because of the stream and other constraints there is no ability to create a parking area on any of the property. He noted that it is a non-stocked stream and it cannot be fished in with live bait and didn't believe that the NJCF would be promoting the property for fishing.

James Boulis, 7 Meadow Lane, noted that most people illegally park where the fire trucks are supposed to park; he suggested that the Township could impose more strict no parking regulations.

Mr. Craig Villa, Engineer for the applicant, was sworn in by Mr. Bernstein. Mr. Villa testified that the application is a paper subdivision and there will be no construction or disturbance or new building lots created.

Mr. Mackie asked about detail B on sheet 2 of 2 and the driveway easement from Meadow Lane to Lot 1. Mr. Villa explained that it is an existing easement and it is only for maintenance access for Lot 1; created by a previous application.

Ms. Goodchild asked if the easement will provide public access to Lot 1 to which Mr. Rothpletz responded in the negative. He explained that it will be limited to accessing Lot 1 for maintenance and management purposes. When asked if the existing easement would be amended to prohibit public access, Mr. Rothpletz responded in the positive. When asked how they will access the property, Mr. Rothpletz explained that they can walk across the creek from Rockaway Road.

Mrs. Czajkowski asked what Lot 1 is being used for presently. Mr. Rothpletz explained that it is used for hay and portions of it are wooded. When asked if the use will continue, Mr. Rothpletz noted that agricultural uses will not continue.

Mr. Dillon asked if Lot 1.02 could be disturbed, Mr. Rothpletz responded in the negative.

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

Mrs. Shevade referred to Andrew Holt's letter dated April 29, 2011 and addressed the technical comments on page 3 as follows:

1. The survey was provided however it was not signed. Mr. Rothpletz agreed to have it signed.
2. The wetlands map was provided and the item satisfied.
3. The testimony addressed this item.
4. Mr. Rothpletz opined that sight easements were shown for a previous subdivision and it was concluded that they were unnecessary for a driveway and ultimately eliminated from the plan and not imposed. Somehow the Tax Assessor got an earlier version of the plan and they were superimposed onto the tax map. Mr. Holt indicated that he would coordinate with the Tax Assessor to get the tax map corrected.
5. Mr. Villa testified that the driveway is wider than that required by the driveway ordinance. Mr. Holt was satisfied.
6. The testimony addressed this item. Mr. Villa agreed to correct some of the notes as part of the re-submittal.

Mr. Holt noted that Meadow Lane has a significant drainage issue. He went on to explain that a few years ago a wetlands delineation and LOI were prepared for future drainage improvements along that area. He asked if the creation of Lot 1.02 under the ownership

of the NJWSA preclude drainage from occurring along the existing ditch; the existing bridge maintenance easement encompasses where the ditch discharges into the Rockaway Creek. Mr. Rothpletz noted no objection to drainage improvements. Mr. Rothpletz agreed to relax their restrictions in the area of the County Bridge Maintenance Easement. Mr. Johnstone asked that it be covered as a condition of the resolution.

Ms. Goodchild noted that the existing shed encroaches into the minimum setback. Mr. Rothpletz explained that a condition of the previous subdivision was that the shed be moved but it wasn't moved far enough. The Board did not find it necessary to have the shed moved. Ms. Goodchild noted that the existing post and rail fence encroaches onto Lot 1. Mr. Rothpletz agreed to have it corrected.

Mr. Bernstein asked if the intention of the owner is to transfer Lot 1 to the NJ Water Authority and not to develop the lot. Mr. Rothpletz agreed.

Mr. Johnstone opined that this is another example of what the township would like to see happen along the Rockaway Creek and thanked the Rothpletz family for their generosity.

Mr. Moriarty made a motion to approve Appl. No. 11-01, Minor Subdivision, Block 38, Lots 1 & 1.01 with corresponding bulk variances subject to the conditions discussed along with the usual restrictions. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Dillon, Mr. D'Armiento and Mr. Johnstone

Nays: None

## **ADJOURNMENT**

There being no further business, the meeting adjourned at 11:11 p.m. by motion of Mrs. Devlin and seconded by Mr. Moriarty.

Respectfully submitted,

Shana L. Goodchild  
Land Use Administrator