

LAND USE BOARD MINUTES
June 5, 2013

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, Shaun Van Doren, Mary Elizabeth Baird, Dana Desiderio, Bruce Mackie, Michael Moriarty, Robert Becker, Alt. #1, Ed D'Armiento, Alt. #3 and David Larsen, Alt. #4.

Also present: Dan Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Dennis Allen, Zoning Officer.

Absent: Elizabeth Devlin, Shirley Czajkowski, Ed Kerwin and Eric Metzler, Alt. #2

There were approximately thirteen (13) 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 04, 2013.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

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

1. Bernstein & Hoffman – Attendance at 5-1-13 LUB meeting – invoice dated May 2, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Pentz (B6.03, L3), invoice dated April 30, 2013 (\$892.50)
3. Bernstein & Hoffman – Land Use Board Escrow – JLJ Land Partnership (B23, L2, 20 & 36), invoice dated May 22, 2013 (\$450.00)
4. Bernstein & Hoffman – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.02), invoice dated May 13, 2013 (\$1,455.00)
5. Bernstein & Hoffman – Land Use Board Escrow – Newell (B34, L13.01), invoice dated May 14, 2013 (\$862.50)
6. Bernstein & Hoffman – Land Use Board Escrow – Bligh (51, L80.08), invoice dated May 15, 2013 (\$1,440.00)
7. Maser Consulting – Land Use Professional Services – DRO, invoice #205945 (\$715.00)

8. Maser Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #205947 (\$260.00)
9. Maser Consulting – Land Use Board Escrow – Johnson (B23, L36), invoice #205948 (\$260.00)
10. Maser Consulting – Land Use Board Escrow – Snyder, invoice #205949 (\$65.00)
11. Maser Consulting – Land Use Board Escrow – Gordon (B6, L41.02), invoice #205950 (\$455.00)
12. Maser Consulting – Land Use Board Escrow – Newell (B34, L13.01), invoice #205951 (\$520.00)
13. Maser Consulting - Land Use Board Escrow – Pentz (B6.03, L3), invoice #205953 (\$1,007.50)
14. Maser Consulting – Land Use Board Escrow – Richardson (B6, L31.02), invoice #205955 (\$65.00)
15. Maser Consulting – Land Use Board Escrow – Hayes (B27, L71.27), invoice #205956 (\$227.50)
16. Maser Consulting – Land Use Board Escrow – von Hollen (B16, L4), invoice #205957 (\$227.50)
17. Maser Consulting – Land Use Board Escrow – Johnson (B23, 20), invoice #205946 (\$1,105.00)
18. Maser Consulting – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.02), invoice #205952 (\$1,852.50)
19. Maser Consulting – Land Use Board Escrow – Bligh (B51, L80.08), invoice #205954 (\$1,722.50)
20. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.01 & 2.02), invoice #205958 (\$3,405.00)
21. Suburban Consulting Engineers – Land Use Board Escrow – Johnson (B23, L4, 20 & 36), invoice #000000020450 (\$71.25)
22. Banisch Associates, Inc. – Land Use Board Professional Services – Master Plan Amendment/Re-examination Report for Village Residential, invoice #P13-21234 (\$748.00)

Roll Call Vote:

Those in favor: Mr. Johnstone, Mr. Van Doren, Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mr. Moriarty, Mr. Becker, Mr. Metzler, Mr. D’Armiento, and Mr. Larsen

Those Opposed: None

CORRESPONDENCE

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

1. A letter dated May 24, 2013 from SSP Architectural Group re: proposed generator at the Old Turnpike School, Block 27, Lot 68.01.
2. A letter dated May 24, 2013 from SSP Architectural Group re: proposed exterior stairs at the Tewksbury Elementary School, Block 16, Lot 16.03.

3. A letter dated May 10, 2013 from Apgar Associates to the NJDEP re: Block 12, Lot 2, 12 Guinea Hollow Road, proposal to construct 61.3 sq. ft. residential building addition within a disturbed riparian zone.
4. A copy of a letter dated May 21, 2013 from Dan Bernstein to Walter Wilson re: John Timothy Newell Memorialization Resolution No. 13-17.
5. A letter dated May 31, 2013 from William Burr re: Hayes, Appl. No. 13-07, Block 27, Lot 71.27.

MINUTES

- March 20, 2013

Mrs. Baird made a motion to adopt the minutes of March 20, 2013 with corrections to page 21 provided by Mr. Van Doren. The motion was seconded by Mr. Becker. All were in favor. Mr. Van Doren and Ms. Desiderio abstained.

- March 20, 2013 Executive Session

Mrs. Baird made a motion to adopt the executive session minutes of March 20, 2013. The motion was seconded by Mr. Moriarty. All were in favor. Mr. Van Doren and Ms. Desiderio abstained.

ORDINANCE REPORT

Mr. Mackie reported on two (2) ordinances, one of which is from Bedminster Township regarding solar energy; he recommended that the ordinance be forwarded to the Land Use Administrator for review. The second ordinance he reported on was from Washington Township which amended their conditional use home occupation codes to include the need for a minor site plan application.

Mr. Van Doren noted that the Land Use sub-committee is working on solar and wind energy ordinances.

PUBLIC PARTICIPATION

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

RESOLUTION

- **Resolution No. 13-17** – Newell, Appl. No. 12-16, Block 34, Lot 13.01

Mr. Bernstein noted that Mr. Newell spoke to him about the resolution and the attorney for the neighbor and Mr. Newell requested some changes. Mr. Bernstein reviewed some of the changes he didn't object to and recommended the Board adopt the resolution as amended.

Mr. Moriarty made a motion to adopt the resolution based on Mr. Bernstein's comments. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD

TOWNSHIP OF TEWKSBURY
APPLICATION # 12-16
RESOLUTION # 13-17

WHEREAS, JOHN TIMOTHY (TIM) NEWELL has applied to the Land Use Board of the Township of Tewksbury for a modification of the conditions in a Tewksbury Township Board of Adjustment (predecessor to the Tewksbury Township Land Use Board) resolution 98-02 for Roger Mellick permitting a father-in-law apartment in the applicant's home so long as the father-in-law remains in the apartment, and thereafter the kitchen was to be eliminated and the premises revert to a single family residence for property which is located at 20 Meadow Lane and designated as Block 34, Lot 13.01 on the Tewksbury Township Tax Map, which premises was in 1998 located in the Rural Zone and is now located in the Highlands (HL) Zone, and

WHEREAS, the prior Rural Zone and the Highlands Zone do not allow two dwelling units on a single lot, and

WHEREAS, the application was presented by Attorney Walter Wilson, Esq., John Timothy (Tim) Newell, and Civil Engineer and Professional Planner Wayne J. Ingram, P.E., P.P. of the firm of Engineering & Land Planning Associates, Inc., at the March 20, 2013 and April 17, 2013 Land Use Board meetings, and

WHEREAS, Attorney Anthony (Tony) Koester, Esq. of the firm of Dilt & Koester represented adjoining property owner Hank Kreuter who resides at 19 Meadow Lane, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, P.E. of Maser Consulting, P.A., and

WHEREAS, John Timothy (Tim) Newell received approval from this Board to expand his barn, which application is not related to the present application, and

WHEREAS, the Board, after considering the evidence, comments, and cross-examination by the applicant, Attorney Koester, Mr. Burr, and members of the public, has made the following factual findings:

A. The subject Property.

1. The subject property is described in the May 16, 2012 resolution approving John Timothy (Tim) Newell’s application to expand his barn:

“A. The Subject Property.

1. The subject property contains 4.065 gross acres and 3.876 net acres. It has 325.15 feet of frontage at the Meadow Lane right-of-way.

2. The site is improved with a single-family residence, two frame barns, and a number of accessory structures.

3. There are two circular stone driveways on the property. One leads to the home and the other to the frame barn on the southern side of the property which is proposed to be expanded.”

B. Zoning Considerations:

2. The status of the subject property as a *grandfathered lot* is described in the May 16, 2012 resolution:

“C. Zoning Considerations.

7. The subject property is in the HL Zone, where the minimum lot size is 12 acres. As previously noted, the site contains 4.065 gross acres and 3.876 net acres. The lot is *grandfathered* under Section 706F3 of the DRO as an existing undersized lot which was created prior to the adoption of the DRO in 2002.

8. The regulations for existing undersized lots between 3 – 5 acres which are pertinent to the present application are the minimum side yard of 40 feet and the maximum lot coverage of 8%, which shall be reduced by 1% for each additional acre required over three acres of area. The ordinance limits maximum lot coverage on the subject property to 7.77%.

9. The existing frame barn has a side yard of 40.5 feet which will be reduced to 30.5 feet by the proposed addition. The addition will increase impervious lot coverage from 10.57% to 10.83%, while the DRO limits impervious lot coverage to 7.77% for the subject property.” *The memorialization resolution in condition 2 required the applicant to either remove 445 square feet of impervious coverage, and convert the area to either lawn or landscape area, or provide a stormwater management plan to detain the water created by more than 7.7% lot coverage. The applicant selected the initial alternative.*

3. The barn addition was constructed with a side yard of 26.64 feet, which was more than 4 feet smaller than the approved side yard. The reduced side yard was approved and memorialized in a resolution which was adopted on April 3, 2013.

D. Prior Approval .

4. In 1998 Roger D. Mellick applied to the Tewksbury Township Board of Adjustment in Application 98-02 for permission to create a second dwelling unit in his home for his father-in-law. That application was approved and a memorialization resolution which is dated February 23, 1998 described the application:

“7. The applicant seeks to place a second complete kitchen in his single family dwelling so that there will be essentially two dwelling units on the same property.

8. The applicant seeks to install the kitchen in his new addition, (already under construction) in order to house an elderly relative. The applicant’s father-in-law needs proximity to the family, but requires his own independence with his own kitchen unit.

9. Henry Kreuter, the owner of the adjoining property across Meadow Lane, appeared in connection with the application and approved of the applicant’s attempt to provide housing for his father-in-law.”

5. The approved father-in-law’s quarters are located on the northern section of the home, and include a living room/dining room/kitchen, bedroom, and bathroom.

6. The memorialization resolution had the following conditions:

“1. The applicant shall permit no tenant to rent or utilize the additional dwelling unit on the premises.

2. The applicant shall limit the use of the dwelling unit to his father-in-law and upon the departure of his father-in-law, the kitchen unit shall be eliminated and the premises shall become a one family house.

3. The variance shall be utilized within one year from the date of the memorialization of this resolution.

4. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments which may apply to the premises.”

E. The Proposal.

7. The applicant initially proposed to modify the conditions in the 1998 resolution in Case No. 98-02 to permit two dwelling units in the home.

8. John Timothy Newell testified at the March 20, 2013 meeting that he purchased the subject property in 2011, believing that it contained two dwelling units. At the time of the purchase there was an existing tenant who had lived in the home about three years.

9. The applicant claimed he was led to believe by a former Township Official that the home contained two dwelling units. The applicant presented as A-1 a Certificate of Inspection issued by the former Zoning Officer. It was the applicant’s position that this certificate validated the two-family use. The Board Chairman noted that the certificate stated in part “there is no promise, undertaking or warranty extended by the Township by this certificate.” In any event, the Land Use Board Attorney pointed out that this claim of estoppel could not serve as the basis for Land Use Board approval.

10. Old #10 deleted.

10. The subject property is a *grandfathered* lot, it contains 3.876 net acres while the minimum lot size in the HL Zone is 12 acres. The record is devoid of any credible evidence which would support two dwelling units.

11. Attorney Koester objected to the proposed two dwelling units. Noteworthy, his client Hank Kreuter supported the Mellick application in 1998, subject to the quarters being used by the father-in-law

12. Neighbors Constance Wygera of 27 Meadow Lane, Cheri Thomas of 29 Meadow Lane and Julia Hagel of 12 Orchard Lane all objected to a second dwelling unit, but did not oppose its use for the applicant's mother-in-law.

13. The applicant was asked if he would accept a condition on the *father-in-law's quarters* like that in Application 12-01, Resolution 12-21 for Douglas Thompson dated December 19, 2012 which provided:

“The occupancy in the second floor barn apartment is restricted to an accessory to the single family residence and shall be restricted to a study, library, office, hobby area, game room, *man/woman cave*, or the like, and quarters for guests staying no more than one month, or for occupancy by the children of those residing in the single family residence. No rent is to be charged for the apartment.”

.The applicant took under advisement a similar condition at the March 20, 2013 meeting.

14. Attorney Walter Wilson asked that the application be carried to the next available meeting. It was scheduled for April 17, 2013.

F. The Subsequent Proposal.

15. At the April 17, 2013 meeting the applicant agreed to accept a condition similar to that which was imposed by the Land Use Board in the Thompson

resolution. John Timothy (Tim) Newell testified that he anticipated that his mother-in-law would live in the home.

16. This provision was acceptable to Attorney Anthony Koester on behalf of Hank Kreuter, subject to a limitation on the time a non-family member spent in the quarters and subject to a deed restriction being filed

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 5th day of June 2013 that the application of John Timothy (Tim) Newell be partially approved and that the conditions in the resolution in application number 98-02 which pertains to the subject property be modified as follows:

1. Neither the quarters previously known as the in-law suite nor the balance of the home may be separately rented; however, the entire residence may be rented.

2. The occupancy of the northern portion of the home previously known as the in-law suite, consisting of a living room/dining room/kitchen, bedroom, and bathroom is restricted to an accessory to the balance of the single family residence and shall be restricted to a study, library, office, hobby area, game room, *man/woman cave*, or the like, and quarters for guests staying no more than one month, or for occupancy by the children or parents of those residing in the single family residence. No rent is to be charged for the quarters.

3. N/A

4. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments which may

apply to the premises. *The applicant shall submit a letter to Land Use Administrator certifying compliance with the aforementioned rules, regulation ordinances and statutes.*

Additional Conditions:

5. The existing tenant shall vacate the premises by August 1, 2013.

6. Condition No. 2 shall be memorialized in a deed restriction executed by the applicant as the owner of the subject property which is subject to the approval of the Land Use Board Attorney and Engineer. It shall be recorded in the Hunterdon County Clerk's Office with a copy provided to the Land Use Board Administrator. The deed restriction shall be presented to the Land Use Board Attorney and Land Use Board Engineer within 60 days of the adoption of the within resolution.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mr. Moriarty and Mr. Johnstone

Those Opposed: None

PUBLIC HEARING

- Hayes
Appl. No. 13-07
Block 27, Lot 71.27
Impervious Coverage Variance

Mr. Moriarty recused himself from the hearing due to his relationship with the applicant.

Mr. Anthony Koester, attorney on behalf of Terence and Margaret Hayes who own property located at 17 Laurel Mountain Way located in the Highlands District. Mr. Koester explained that they are before the Board to seek a variance with regard to excess impervious coverage that came up during the continuing certificate of occupancy inspection prior to the sale of the property. The applicants request that the Board approve the coverage that exists which exceeds the permitted coverage in Section 706 of the Development Regulations Ordinance.

Mrs. Margaret and Mr. Terence Hayes were sworn in by Mr. Bernstein.

Mr. Robert Lorentz was sworn in by Mr. Bernstein and accepted by the Board as a Professional Engineer and Planner.

Mr. Koester explained that the lot in question is part of a subdivision known as Oldwick Farms of Tewksbury which was subdivided in 1988; in 1988 the permitted impervious coverage was 15%. At that time there were various plot plans provided and one of the plans prepared by Apgar showed impervious coverage at 14.99%. It did not indicate on the plan all of the structures that existed at the time the property was developed (1992). Mr. Koester opined that by 1992 not all of the improvements had been installed. He noted that Mr. and Mrs. Hayes are the third owners in 2000 and that the former owners had applied for and received permits for an in-ground swimming pool and tennis court both of which have certificates of approval from the Township. Mr. Koester explained that Mr. and Mrs. Hayes will provide testimony that all of the improvements including the hardscape features were present when they purchased the property in 2000. Mr. Koester explained that Mr. and Mrs. Hayes purchased the home prior to the Certificate of Inspection Ordinance and they were not aware that the property exceeded the permitted coverage limitation. When former Zoning Officer Randall Benson reviewed the 1992 as-built compared to the recent survey he didn't believe it showed all of the improvements on the property and failed the inspection in August of 2012. Mr. Koester opined that Mr. and Mrs. Hayes were innocent buyers that didn't make a single exterior improvement and request that the Board grant a variance to permit the variance to allow the existing improvements to remain.

When asked by Mr. Larsen if the applicants applied for a variance in August of 2012 when they became aware of the problem, Mr. Hayes explained that they got side tracked and didn't follow through with the process until recently.

When asked by Mr. Bernstein if a Certificate of Inspection was required when they bought the property in 2000, Mr. and Mrs. Hayes responded in the negative. When asked if they made any exterior improvements, they responded in the negative. When asked if they are looking for approval for what existed when they bought the property, Mr. and Mrs. Hayes responded in the positive.

When asked by Mrs. Baird if the 15% impervious coverage permitted in 1988 was because the subdivision was a cluster development, Mr. Lorentz responded in the positive.

The consensus of the Board was that the request is straight forward and testimony from Mr. Lorentz was unnecessary. While Mr. Koester took a few minutes to review the resolution prepared by Mr. Bernstein the Board moved on to other business.

BOARD DISCUSSION/ACTION ITEMS

➤ Master Plan Consistency Review pursuant to MLUL 40:55D-26a – Ord. #05-2013
Mr. Van Doren explained that due to hurricane Sandy there were a number of residents that wanted to install emergency generators and the Township tried to come up with a way to provide a certain number of exemptions so a variance was not needed. The Township Attorney drafted the ordinance and the Township Committee introduced the ordinance without Ms. Goodchild and Mr. Landon reviewing it. Since it was rushed through it contained erroneous language and so Ms. Goodchild suggested that the Land

Use Board find the ordinance inconsistent with the Master Plan. Mr. Johnstone noted that it appears to not allow diesel generators and he suggested that the language permit that type of fuel. Mr. Van Doren noted that at the upcoming Township Committee meeting the committee will introduce the changes and corrections.

Mrs. Baird made a motion to find Ordinance No. 05-2013 inconsistent with the Master Plan. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

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

Those Opposed: None

- Master Plan Consistency Review pursuant to MLUL 40:55D-31 – Ord. #04-2013

Mrs. Baird made a motion to find Ordinance No. 04-2013 not inconsistent with the Master Plan. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

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

Those Opposed: None

- Courtesy review of plans for Tewksbury Board of Education for Generator at Old Turnpike Road (Block 27, Lot 68.01) and Exterior Stairs at Tewksbury Elementary School (Block 16, Lot 6.03)

There being no one present from the school, Mr. Johnstone asked the Board if there was any questions or comments regarding the proposed improvements.

When asked by Mr. Larsen the size of the proposed generator, Mr. Burr replied 300 kW (powered by natural gas).

Mr. Van Doren noted that the generator will allow the school to be a warming shelter in the event of an emergency.

The Board had no comment regarding the two (2) projects proposed by the school.

RESOLUTION

➤ **Resolution No. 13-19** – Hayes, Appl. No. 13-07, Block 27, Lot 71.27

Mr. Bernstein indicated that Mr. Koester had a chance to review the draft resolution and had no concerns. Mr. Bernstein recommended to the Board that they approve the application and adopt the resolution as prepared.

Mr. Johnstone opened the meeting up to the public for questions or comments. There being none, Mr. Johnstone closed the public hearing to the public.

Mrs. Baird made a motion to approve the application and adopt the resolution as prepared by Mr. Bernstein. Mr. Mackie seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 13-07
RESOLUTION # 13-19

WHEREAS, TERENCE HAYES and MARGARET DOUGHERTY-HAYES have applied to the Land Use Board of the Township of Tewksbury for a lot coverage variance under N.J.S.A. 40:55D-70c for residential property which is located at 17 Laurel Mountain Way and designated as Block 27, Lot 71.27 on the Tewksbury Township Tax Map, which premises is located in the Highlands (HL) Zone, and

WHEREAS, the application was presented by Attorney Anthony (Tony) Koester, Esq. of the firm of Dilts & Koester; Terence Hayes; Margaret Dougherty-Hayes; and Civil Engineer and Professional Planner Robert Lorentz, P.E., P.P. at the June 5, 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, a 1992 PLOT PLAN & SOIL EROSION & SEDIMENT CONTROL PLAN (Plot Plan shows the proposed development of the subject property –

including a home and attached garage, in-ground swimming pool, tennis court, septic disposal bed and reserve area, and driveway), and

WHEREAS, the plot plan shows 14.99% lot coverage, which complied with the 15% lot coverage in the Rural (R-3) Zone where the property was then located, and

WHEREAS, the house and presumably the other structures were constructed and a certificate of occupancy was issued in 1992, and

WHEREAS, the applicant purchased the subject property in 2000, as the third owner, and

WHEREAS, in 2001 Tewksbury Township initially required a continued certificate of occupancy for the sale of property, and

WHEREAS, in 2012 the Hayes' listed their home for sale and became aware of the need for a continued certificate of occupancy, and

WHEREAS, the former Zoning Officer Randall Benson noted that the gazebo, front porch, walkways, and other structures were not shown on the plot plan and required a new survey prior to the issuance of a continued certificate of occupancy, and

WHEREAS, the 2012 survey showed lot coverage at 18.38%, which exceeded the 15% limitation in 1992 and the current maximum of 12% in the HL Zone, and

WHEREAS, the Hayes' testified that they did not increase lot coverage, but that it existed when they acquired the property in 2000, and

WHEREAS, the water runoff from the property flows downhill to a wooded area, and

WHEREAS, the Board typically requires applicants for lot coverage variances which are approved to submit a Grading and Surface Water Management Plan to the

Land Use Administrator for review by the Township Engineer prior to the issuance of a construction permit. The Plan must comply with the Chapter 13.12 of the Township Code. The Plan need be submitted to the Township Engineer for his approval and implemented to his approval, and

WHEREAS, it would be inequitable to require the Hayes to submit and implement a Grading and Surface Water Management Plan, and

WHEREAS, the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinances of the Township of Tewksbury;

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Tewksbury on this 5th day of June, 2013 that the application of TERRANCE HAYES and MARGARET DOUGHERTY-HAYES be approved in accordance with a plan titled: “LOT COVERAGE CALCULATIONS 17 LAUREL MOUNTAIN WAY Lot 71.27 in Block 27 situated in the TOWNSHIP OF TEWKSBURY, HUNTERDON COUNTY, NEW JERSEY” prepared by Nancy J. Scott, P.L.S. of ENSURPLAN, INC. on August 28, 2012 consisting of a single sheet, subject however to the following conditions:

1. No additional lot coverage which exceeds the maximum permitted in the zone without a variance approval from the Land Use Board.
2. Payment of all fees and escrows.

Roll Call Vote:

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

Those Opposed: None

- Old Turnpike Realty – interpretation of permitted uses in Resolution No. 13-12 (see letter from Kelly Gordon)

Mr. Van Doren and Ms. Desiderio recused themselves due to a conflict with the applicant.

Mr. Ed O'Brien (Old Turnpike Realty), 38 Fox Hill Road, was present and sworn in by Mr. Bernstein.

Mr. O'Brien explained that Mrs. Kelly Gordon of Leaf Realtors would like to rent the building to use as her Real Estate Office however the resolution does not specifically list Real Estate Office as a permitted use.

Mr. Bernstein explained that the Board recently approved an application sought by Mr. O'Brien to modify the uses allowed in one of the three buildings on the property. It listed several business uses but did not specifically allow a Real Estate Office. Mr. Bernstein explained that Mr. O'Brien is before the Board to request an amendment to allow for Real Estate Offices. He asked the Board to first make a determination as to the significance of the request because if the Board felt it was significant Mr. O'Brien would need to provide public notice.

Mrs. Kelly Gordon, 9 Lenore Road, was present and sworn in by Mr. Bernstein. Ms. Gordon explained that she has been running the brokerage for the last 18 months, primarily out of her home, but explained that her competitors are using her lack of commercial office space as leverage against her. She explained that she wants her business to thrive so she feels the need to establish office space and found that Mr. O'Brien's office fits her needs. The space allows her to have a physical presence although she does not foresee a heavy amount of traffic and no more intense than the uses that are currently permitted in the resolution.

When asked by Mr. Larsen if closings will take place at the location, Ms. Gordon responded in the negative and explained that the preferred location for closings is at the office of the attorney for the buyer. She noted that she would not want to rule it out but it is incredibly unlikely.

When asked by Mr. Becker about proposed signage, Ms. Gordon responded in the positive and indicated that it would be in compliance with the sign permitted in the resolution.

When asked by Mr. Mackie about employees, Mr. Gordon explained that the typical real estate agents are independent contractors and agents will not be there any more than a maximum of 10 hours per week. Ms. Gordon noted that a busy agent is not in the office.

Mr. Johnstone didn't have a problem with the use proposed and opined that some of the other uses permitted by the variance resolution are more intensive.

Mr. O'Brien admitted that he didn't read the final copy of the resolution and he was surprised that Ms. Gordon's business wasn't permitted. He added that when the most recent resolution was prepared "medical use" should have been included as not permitted. Mr. Bernstein agreed to make that change to the resolution.

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

Mr. Moriarty made a motion to approve an amendment to Resolution 13-12 for an incidental change to interpret that the use described by Ms. Kelly Gordon of Leaf Realtors is consistent with and does not significantly alter the intent of the resolution. Mrs. Baird seconded the motion. Mr. Bernstein noted that he will amend the resolution to allow for a Real Estate office as a permitted use. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mr. Johnstone, Mrs. Baird, Mr. Mackie, Mr. Moriarty, Mr. Becker, Mr. D'Armiento and Mr. Larsen

Those Opposed: None

ADJOURNMENT

There being no further business, the meeting adjourned at 8:30 p.m. by motion of Mrs. Baird and seconded by Mr. Moriarty.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator