

**LAND USE BOARD MINUTES**  
**June 6, 2012**

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Mountainville, New Jersey. The meeting was called to order at 7:30 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Elizabeth Devlin, Bruce Mackie, Shirley Czajkowski, Arnold Shapack, Alt. #1, Ed D'Armiento, Alt. #4 arrived at 7:34 p.m., Michael Moriarty arrived at 7:55 p.m. and Ed Kerwin arrived at 8:15 p.m.

Also present: Daniel Bernstein, Land Use Board Attorney, Craig Herman in for William Burr, Land Use Board Engineer and Shana L. Goodchild, Land Use Administrator.

Absent: Dana Desiderio and Eric Metzler, Alt. #2.

There were approximately ten (10) 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 05, 2012.

**PLEDGE OF ALLEGIANCE**

Those present stood and pledged allegiance to the American flag.

**CLAIMS**

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

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at May 16, 2012 meeting - invoice dated May 17, 2012 (\$450.00)
2. Maser Consulting – Land Use Board Professional Services, invoice #182388 (\$130.00)
3. Maser Consulting – Land Use Board Escrow – Cedar Lane Farm (Johnson Helistop), invoice #182389 (\$1,202.50)
4. Maser Consulting – Land Use Board Escrow – Regan (B40, L5), invoice #182390 (\$32.50)
5. Maser Consulting – Land Use Board Escrow – Caracciolo (B41, L1), invoice #182393 (\$325.00)
6. Maser Consulting – Land Use Board Escrow – Cahill (Emmet) (B42, L6.01), invoice #182394 (\$1,007.50)

7. Maser Consulting – Land Use Board Escrow – Snyder (B11, L9.16), invoice #182397 (\$390.00)
8. Maser Consulting – Land Use Board Escrow – Lauezzari (B31, 25), invoice #182392 (\$780.00)
9. Maser Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #182391 (\$65.00)
10. Maser Consulting – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice #182395 (\$2,535.00)
11. Maser Consulting – Land Use Board Escrow – Newell (B34, L13.01), invoice #182396 (\$1,332.50)
12. Banisch Associates – Land Use Board Escrow – Cedar Lane Farm (Johnson Helistop) (B23, L23), invoice #P12-20154 (\$35.50)
13. Banisch Associates – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice #P12-20155 (\$319.50)
14. Suburban Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #000000018635 (\$285.00)
15. Suburban Consulting – Land Use Board Inspection – AM Best (B46, L2.01, 5 & 6), invoice #000000018610 (\$736.25)
16. Suburban Consulting – Land Use Board Inspection – Johnson (B23, L4, 20 & 36), invoice #000000018630 (\$685.00)

Roll Call Vote:

Ayes: Mr. Van Doren, Mrs. Baird, Mr. Mackie, Mr. Devlin, Mrs. Czajkowski, Mr. Shapack and Mr. Johnstone

Nays: None

Abstentions: Mr. D’Armiento

**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 Memo dated May 14, 2012 from Roberta Brassard, Board of Health Secretary re: Block 51, Lot 80.
2. A Memo dated May 18, 2012 from Roberta Brassard, Board of Health Secretary re: Block 32.01, Lot 3.
3. A Memo dated May 29, 2012 from Roberta Brassard, Board of Health Secretary re: Block 38, Lot 1.03.
4. A letter dated May 18, 2012 from Ken Bogen, Hunterdon County Planning Board re: Hill and Dale Preliminary and Final Major Subdivision, Block 51, Lot 80.
5. Memorandum dated May 29, 2012 from Chief Holmes re: Appl. No. 12-06, Block 32.01, Lot 3.
6. Memorandum dated May 29, 2012 from Chief Holmes re: Appl. No. 12-07, Block 38, Lot 1.03.

7. A copy of a letter dated May 11, 2012 from NJ Highlands Council to Mayor Desiderio re: Tewksbury Township Wastewater Management Plan, First Draft.
8. A letter dated May 31, 2012 from William Burr re: Appl. No. 12-06, Block 32.01, Lot 3.
9. A letter dated May 31, 2012 from William Burr re: Appl. No. 12-07, Block 38, Lot 1.03.
10. A letter dated June 6, 2012 from Dan Bernstein to Michael Rothpletz re: Rothpletz Appl. No. 12-07, Block 38, Lot 1.03.

## **MINUTES**

- May 2, 2012

The minutes of May 2, 2012 were approved by motion of Mrs. Baird and seconded by Mr. Shapack. All were in favor. Mr. Van Doren and Mrs. Devlin abstained.

## **ORDINANCE REPORT**

Mr. Mackie had no ordinances to report on.

## **PUBLIC PARTICIPATION**

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

## **Public Hearing**

- Hannon  
Appl. No. 12-06  
Block 32.01, Lot 34  
Impervious Coverage Variance  
**Action Deadline – 8/6/12**

Mr. Van Doren noted for the record that his personal attorney, David Bunevich, was representing the applicant so he would be recusing himself. He also noted that the Rothpletz application was for a use variance which he cannot participate in so he left the meeting for the evening.

Mr. David Bunevich was present and explained that the applicant is seeking a coverage variance. The property was subdivided by David Jeffreys in the mid 90's in a 16 lot subdivision. The lot in question is a 3.001 acre lot and the pre-existing coverage is 9.8%. The applicant wishes to construct an in-ground swimming pool in the rear yard along with a patio area around the pool. The lot is situated on a curve along Old Mine Road and is encumbered by a 75 foot conservation easement along the front of the lot. Because of the position of the lot and the easement an elongated driveway is necessary which creates excessive coverage. Mr. Bunevich explained that the applicant is prepared to remove some of the driveway so that the coverage would only be an additional 891 sq. ft. Three (3) drywells are proposed to mitigate the impervious coverage down to 6.88%.

Mr. James O. Madsen, Engineer with Apgar Associates, Far Hills, was sworn in by Mr. Bernstein. Mr. Madsen noted that he recently appeared before the Board with the Kian and Goss applications. Mr. Madsen was accepted as an expert.

Mr. Madsen presented a colored version of Sheet 1 of 3 which was marked as Exhibit A-1. He explained that the dark green area represents the wooded area, the lighter green is the lawn area, the dark gray is the driveway area, dark brown represents the existing buildings, the lighter blue area represents the existing deck, light brown area represents the existing porch and the blue and gray area represents the proposed pool. As it exists, the property is a 3.01 acre property located in the Highlands District. The existing coverage on the property equates to 9.87% and the application proposes that the coverage would increase to 10.55%. Mr. Madsen explained that the 75 foot conservation easement follows the roadway throughout the subdivision and is measured from the right of way 75 feet into the property. He opined that because of the conservation easement and the footprint of the house a longer driveway is required. Other than the driveway the lot does not have any out of the ordinary amenities that adds to the coverage. Mr. Madsen explained that the proposal is to reduce the driveway to attempt to reduce the coverage. The roof area will be collected and discharged into roof drains which will effectively reduce the proposed coverage to 6.88%; the maximum permitted is 7.99%. There is also a proposed modification to the existing deck that will reduce the deck area. When asked how the runoff will be captured, Mr. Madsen explained that the applicant is capturing runoff through the existing stormwater collection system that was installed as part of the home construction. All of the leader drains are collected underground and piped to a location upslope of where the drywells are proposed.

Mr. Bunevich explained that a C-1 variance is being requested which requires a hardship and the hardship has to do with the specific nature of the lot. Mr. Madsen noted that the property is long and narrow which impacts the development of the lot. The extent of the conservation easement also impacts the buildable area of the lot.

Mr. Bunevich referenced the report from William Burr of Maser Engineering dated May 31, 2012. Mr. Madsen addressed all the engineering technical items and agreed to conform with the comments from Mr. Burr.

Mr. Bernstein asked about the reduction in the driveway and the deck. Mr. Madsen explained that the deck is 1,235 sq. ft. and will be reduced to 713 sq. ft. Mr. Madsen noted that the Hannon's were hoping to reduce the amount of payment proposed to be removed so that the ultimate coverage would be slightly less than the 7.99% permitted. When asked how much, Mr. Madsen explained that the plan shows 1,748 sq. ft. of driveway to be removed; the applicant would rather remove 400 sq. ft. from the driveway. When asked about the square footage of the pool, Mr. Madsen responded 913 sq. ft. When asked about the square footage around the pool, Mr. Madsen responded 1,480 sq. ft.

Mr. Mackie questioned the proposed contour lines 100 plus feet from the pool and how it is related to the installation of the pool. Mr. Madsen explained that it is designed to

create more of a living and play area for the applicant's children. Mr. Mackie opined that re-grading 20% of the lot for a pool and play area seemed excessive. When asked why so many trees were removed or proposed to be removed, Mr. Madsen explained that Mr. Hannon will provide testimony.

Mr. Shapack asked about the width of the existing driveway. Mr. Madsen explained that it measures 20 feet in width.

Mr. Johnstone opened the meeting up to questions of the witness.

Mark Milam, 11 Old Mine Road, had no objection to the project but questioned the removal of the wooded area between his property and the applicant's and if any trees will be replanted. Mr. Bunevich noted that the property owner will provide testimony.

Ann Rotunno, 31 Bissell Road, asked about the use of drywells. Mr. Madsen explained that it is a method that has been accepted by the township to effectively reduce coverage on the property.

There being no additional questions from the public Mr. Johnstone closed the public portion.

Mrs. Baird asked what the coverage was under the old zoning to which Mr. Madsen opined 10%.

Edward Hannon, 9 Old Mine Road was sworn in by Mr. Bernstein. Mr. Hannon explained that he purchased the property in May of 2011 and has not made any changes to the property. When asked about the tree removal, Mr. Hannon explained that there was a danger of some of the trees falling and hitting the house. The tree expert hired by the applicant explained that the trees were mostly ash and tulip trees and the ash have all been diseased and mostly dead and the tops of the tulip trees were dying and could not be saved. Prior to removing the trees Mr. Benson was consulted and he visited the site and the trees were either deemed dead or diseased or a threat to the house. When asked if he could address Mr. Milam's question, Mr. Hannon explained that they are prepared to put back at least double the trees that were removed and plant them closer to the property line. When asked if he plans to have a landscape plan, Mr. Hannon responded in the positive. When asked if he would object to having the Township Landscape architect review the plan, Mr. Hannon responded in the negative and offered to have Mr. Milam included in the review and provide input. Mr. Bernstein noted that if the application is approved he will require that the landscaping be permanently maintained and dead or diseased trees will need to be replaced. When asked about additional lighting, Mr. Hannon explained that the only additional lighting proposed would be low voltage landscape lighting to highlight the walkways around the pool; no spotlights proposed and all lighting will conform to Township lighting ordinances. Mr. Herman asked that the lighting be included in the landscape plan submitted to which Mr. Hannon agreed. When asked about the boulders being used, Mr. Hannon explained that the existing boulders on the property will be used to provide a more natural look; the goal is to make the pool look

like a pond. Mr. Herman also requested that spot shots be shown for the area of boulders to be used as a jumping off/diving area.

Mrs. Devlin expressed concern over all of the re-grading and possible impacts on neighbors. Mr. Herman explained that the applicant is proposing a 1 on 3 slope which can be properly stabilized to prevent erosion.

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

Mrs. Devlin indicated that she was in favor of the application with the conditions as discussed.

Mrs. Baird agreed with Mrs. Devlin and added that she would like to see the areas of the paved driveway that are shown on the plan to be removed taken out to reduce the impervious coverage.

Mr. Johnstone asked if the patio will be cemented or dry laid to which Mr. Hannon responded dry laid. Mr. Johnstone agreed with Mrs. Baird that some of the driveway should be removed.

Mr. Mackie agreed with Mr. Johnstone and Mrs. Baird as well as the conditions as mentioned.

Mrs. Czajkowski asked if removal of the driveway near the curve will impact the turning radius for emergency vehicles. Mr. Johnstone opined that a fire truck would have no issue getting up the driveway; they may need to back out.

Mr. Shapack agreed that the driveway should be reduced.

Mr. D'Armiento opined that the parking area at the top of the driveway should not be required to be removed.

Mr. Bunevich indicated that his client was willing to reduce the driveway but requested permission to retain the two (2) small areas at the top of the driveway near the inside and outside curves. When asked why he needed the inside, Mr. Bunevich explained that they use it when backing up. The consensus was that the inside of the curve was not necessary and Mr. Hannon agreed to remove it. Mr. Johnstone noted that the Board wants the vast majority of the area in gray removed and the interior curve should also be removed. The removal needs to bring the coverage below the 7.99% to meet the ordinance. Mrs. Baird opined that the interior of the curve should remain and the rest of the driveway should be removed.

Ann Rotunno, Bissell Road, was sworn in by Mr. Bernstein. Mrs. Rotunno suggested having grass down the middle verses removing from the sides. Mr. Johnstone did not find that solution acceptable.

Mrs. Devlin made a motion to approve the application with the following conditions as outlined by Mr. Bernstein. Mr. Johnstone seconded the motion.

1. Compliance with William Burr's report.
2. Landscape plan that is approved by the Landscape Architect with input from Mr. Milam.
3. Approval expires within one (1) year.
4. Certification that all approvals have been obtained.
5. Plans shall be revised to show elevations at the boulder jump/dive.
6. Runoff mitigated to 7.99% or less; the driveway shall be reduced as discussed.
7. Deed restriction that the Grading and Surface Water Management Plan facilities are maintained.
8. A deed restriction that the landscaping will be permanently maintained.
9. A recommendation that the pool patio be dry laid and not cemented.

The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Nays: Mrs. Baird

**Public Hearing**

- Rothpletz  
Appl. No. 12-07  
Block 38, Lot 1.03  
Use Variance  
**Action Deadline – 8/8/12**

Michael Rothpletz, 82 Rockaway Road was present as the applicant and attorney. Mr. Rothpletz was sworn in by Mr. Bernstein since he would be providing testimony.

Mr. Rothpletz explained that the application is for approval of a proposed apartment in a recently constructed barn. The barn was constructed on the 32 acre property that also contains the main residence. Much of the property is environmentally constrained and consists of open fields with significant portions of it within the 300 foot stream corridor. The barn is in the rear of the property to avoid disturbing the environmentally constrained property. The barn was designed to look like an indigenous Tewksbury barn with equipment storage in one area and seven (7) horse stalls in another area with a wash stall, tack room and small bathroom. A septic system was constructed for the wash stall and bathroom and because there was over an acre of disturbance the project was classified as a major development for stormwater purposes and drainage improvements were necessary including a small detention basin. Mr. Rothpletz explained that he and his family own the 150 acres of land that surround his property and it is currently in

application to the State for farmland preservation. There is also a five (5) acre lot that he and his wife have a 90 year ground lease on which they will probably acquire in fee in the future. Mr. Rothpletz also noted that his family sold the northern portion of Hill and Dale Farms to the NJ Conservation Foundation late last summer; the property included the larger horse barn. He explained that the remaining horse barn didn't have enough stalls so he and his wife constructed the barn in question; they felt it was important for their kids to be actively involved in caring for the animals and the farm. Mr. Rothpletz explained that he and his younger son ride and they may have a boarder or two (2) in the future. The apartment in the barn is important because the property is a lot to take care of and it would provide an opportunity to have farm help live on the property which is important to attract people to help. He explained that apartments for farm help are a fairly common situation in town and he offered up the following examples of other barn apartments:

**Exhibit A-1** – 15 Cold Brook Road – apartment in the barn on a 43 acre lot. Variance granted in the mid 90's.

**Exhibit A-2** – 76 Homestead Road – apartment in the barn.

**Exhibit A-3** – 31 Cold Brook Road – a second house on a 40 acre farm.

**Exhibit A-4** – Hill and Dale property – cottage on the farm.

**Exhibit A-5** – King Street – an apartment in a barn on a 6 acre farm.

Mr. Rothpletz explained that they could satisfy two (2) ordinance options, either the conditional use or the conversion option but find them to be too limiting. He opined that making the apartment a low/moderate income unit restricts their ability to find the kind of people they want to have live on the property; it has nothing to do with income levels.

When asked if they will comply with the report from Bill Burr, Mr. Rothpletz responded in the positive. When asked if the septic system was designed to accommodate the farm use and the apartment, Mr. Rothpletz responded in the positive and indicated that the Dept. of Health approval is part of the record. When asked if the barn is occupied, Mr. Rothpletz explained that the drainage is being finished and the Certificate of Occupancy has not been granted. When asked what uses are on the property, Mr. Rothpletz explained that the property is used as cow pasture currently. Mr. Bernstein asked Mr. Rothpletz if he would agree to seek a "D" variance if the lot that the two (2) dwelling units will be on is made smaller to which Mr. Rothpletz agreed.

Mrs. Devlin asked if the septic system was designed for a one (1) bedroom house and Mr. Rothpletz indicated that it was designed for a two (2) bedroom apartment which is the minimum that can be designed and approved.

Mrs. Czajkowski asked if a reserve field was also planned and Mr. Rothpletz responded in the positive.

Mr. Moriarty asked about a possible deed restriction for a COAH unit and Mr. Rothpletz explained that he finds the restriction too limiting and would not build the apartment if the approval was subject to that condition. When asked about tax ramifications, Mr.

Kerwin explained that if there were no COAH restriction it would be assessed as a market rate apartment which would be slightly higher taxes.

Mr. Kerwin asked for clarification on the size of the apartment because of the discrepancy noted in Mr. Burr's letter. Mr. Rothpletz explained that the proposed apartment is approximately 780 sq. ft.

Mr. Bernstein asked about the anticipated occupancy of the apartment to which Mr. Rothpletz opined two (2) people.

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

Mr. Rothpletz called Candice Davis from Yannaccone, Villa and Aldrich. Ms. Davis was sworn in by Mr. Bernstein and qualified by Mr. Rothpletz. The Board accepted Ms. Davis as an expert witness.

Ms. Davis explained that Mr. Rothpletz asked her to prepare a conceptual minor subdivision layout showing conforming lots for the Farmland District (the plan was marked at **Exhibit A-6**). The plan yielded two (2) lots, one (1) 16 acre lot and one (1) 15 acre lot. The barn under construction would be the principal dwelling on one lot and the main residence would be on the other lot. Both lots would conform to all bulk requirements with an access easement for the common driveway. When asked by Mr. Bernstein if they could gain access to Rockaway Road from the lot that would house the barn, Ms. Davis explained that there are environmental constraints adjacent to Rockaway Road so the existing driveway would be used. Mr. Bernstein noted that a planning variance would be required for the access. Ms. Davis and Mr. Rothpletz agreed to comply with the engineering comments in Mr. Burr's letter.

Mr. Rothpletz noted that the original size of the apartment was proposed at 780 sq. ft. but he requested the ability to go up to 900 sq. ft. for a little more room for possible design changes. The Board had no issues with increasing the size of the apartment so long as it did not exceed 900 sq. ft.

Elizabeth McKenzie, Planner, was sworn in by Mr. Bernstein. Ms. McKenzie explained that the "d" variance is needed so that the property owner has the ability to find someone to work on the farm and provide a residential opportunity on the property. It would also be beneficial to have someone living in the barn with the horses in the event of an emergency. Ms. McKenzie explained that if the apartment were deed restricted to low/moderate income housing the owner may not be able to choose a tenant that is qualified to work with the horses or work on the farm. She agreed with statements made by Mr. Rothpletz, farm labor housing is part of the fabric of Tewksbury Township and other Hunterdon County municipalities. Ms. McKenzie noted that there will be no exterior changes to the barn as the result of the apartment except that an exterior staircase would be added as shown on the plans.

Outlining the purposes of the MLUL, Ms. McKenzie noted the following: Purposes A is promoted because the continued agricultural use is furthered. She explained that the barn cannot be seen by any adjacent landowners as it is in an isolated area. She noted that there is plenty of room for parking for the person who resides in the apartment. Purpose B is promoted because if there is a fire the occupant of the apartment can get the horses out safely. Purpose E is promoted because the two (2) dwelling units are well within the density for the Farmland Preservation Zone and that has been demonstrated by Exhibit A-6. Purpose F is promoted since everything that is needed for the apartment already exists. Purpose G is promoted since it will be limited to farm labor or those living in the household.

Mr. Bernstein opined that the strongest evidence is that the applicant demonstrated that they can subdivide the property and create two (2) conforming lots with a single access. Ms. McKenzie agreed and was not convinced that a planning variance would be necessary in the future for access.

Mrs. Devlin noted that the Board is seeing more of this type of application (farm labor or family housing) but she opined that the thing that makes this property different is that the property can be subdivided into two (2) fully conforming lots. Mr. Johnstone agreed that the ability to subdivide differentiates this property from others.

Mrs. Baird asked about the deed restriction. Mr. Bernstein opined that it is not legal to limit it to family; he believes that is an invalid condition and would lead to future problems.

Mr. Moriarty asked about the agricultural use to which Mr. Rothpletz explained that it will continue to be used as pasture for horses, cows and sheep. When asked if the purposes of the zone plan would be more or less supported by a COAH unit, Ms. McKenzie explained that there would be additional purposes promoted with a COAH unit but the purposes mentioned are still promoted. Mr. Moriarty expressed concern that the Township will lose a COAH unit opportunity.

A lengthy discussion ensued regarding the ability to restrict it to family use. Mr. Bernstein felt strongly that it would be an invalid condition and urged the Board not to include that restriction. Ms. McKenzie suggested that the deed restriction read that the apartment could not be rented except to a part time or full time farm worker (other occupants would not pay rent).

Mr. Johnstone noted that he is in favor of the project and did not push for the COAH restriction because it was demonstrated that the property can be subdivided.

Mrs. Baird agreed with Mr. Johnstone and made a motion to approve the application subject to the conditions as outlined below by Mr. Bernstein. Mrs. Devlin seconded the motion.

1. Conformance with Bill Burr's report.

2. The applicant would be entitled to a maximum of 900 sq. ft. for the apartment but it would be limited two (2) bedrooms and a maximum of two (2) occupants.
3. The only occupants that could be charged rent would be a full or part time worker on the farm.
4. A deed restriction to the approval of the LUB Attorney for items 2 & 3.
5. The approval is valid for two (2) years,

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 and Mr. Johnstone

Nays: None

**ADJOURNMENT**

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

Respectfully submitted,

Shana L. Goodchild  
Land Use Administrator