

LAND USE BOARD MINUTES
September 3, 2014

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Lebanon, New Jersey. The meeting was called to order at 7:32 p.m.

Present: Blake Johnstone, Shaun Van Doren, Bruce Mackie, Ed Kerwin, Shirley Czajkowski, Robert Becker, Alt. #1, Ed D'Armiento, Alt. #2 arrived at 7:34 p.m., Kurt Rahenkamp, Alt. #3 and David Larsen, Alt. #4.

Also present: Shana L. Goodchild, Land Use Administrator and Chuck McGroarty, Township Planner.

Absent: Mary Elizabeth Baird, Dana Desiderio and Michael Moriarty.

There was approximately one (1) person 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 9, 2014.

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 Mr. Becker seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 8-06-14 LUB meeting, invoice dated August 7, 2014 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Hill and Dale Farms, Inc.(B38, L1.04 & 1.05), invoice dated August 11, 2014 (\$150.00)

Roll Call Vote:

Those in Favor: Mr. Van Doren, Mr. Mackie Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

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

1. A press release from the Hunterdon County Planning Board & Hunterdon County Cultural & Heritage Commission 2014 Awards Committee re: Reminder for the 2014 Awards Event.
2. A letter received on August 19, 2014 from Webster B. Todd, Jr., President, Oldwick Fire Company re: Application No. 14-02, Block 44, Lot 22.01, sign variance.
3. A copy of a letter dated August 20, 2014 from Shana L. Goodchild to Webster B. Todd, Jr., President, Oldwick Fire Company re: Application No. 14-02, Block 44, Lot 22.01, sign variance.
4. An e-mail dated August 26, 2014 from Dan Todd to Shana Goodchild re: Application No. 14-02, Lot 22.01, sign variance and site visit.
5. A Memo dated August 13, 2014 from Roberta Brassard, Township Clerk re: Master Plan Consistency review of Ordinances 06-2014 and 07-2014.
6. A letter dated August 11, 2014 from Christopher Teasdale, Environmental Commission Chair re: Oldwick Fire Co. electronic sign, Application No. 14-02, Block 44, Lot 22.01.
7. Notice of Response Action Outcome dated August 4, 2014 from ADS Environmental, Inc. re: remediation of underground gasoline storage tank at Block 6.04, Lot 24.03.
8. NJ Planner, May/June, Volume 75, No. 3.
9. An e-mail dated September 3, 2014 from Dan Todd, Oldwick Fire Company President re: the temporary sign and the October 1, 2014 public hearing.

MINUTES

- May 21, 2014

The minutes of May 21, 2014 were tabled due to the duplication in the copies that were circulated.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from the Borough of Califon dealing with the Highlands Area Exemption Ordinance. There are procedures in the Highlands Act that allow municipalities to exempt certain projects. Mr. Mackie passed the ordinance on to Ms. Goodchild.

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. 14-15 Lance, Appl. No. 14-09, Block 39, Lot 2

Eligible to vote: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Mr. Becker made a motion to adopt the following resolution. Mr. Mackie seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION #14-09
RESOLUTION #14-15

WHEREAS, JEANNE LANCE has applied to the Land Use Board of the Township of Tewksbury for a Certificate of Preexisting Nonconforming Use and Structure pursuant to N.J.S.A. 40:55D-68 for a second story garage apartment on property which is located at 3 Church Street, Oldwick and designated as Block 39, Lot 2 on the Township of Tewksbury Tax Map, which premises is located in the Village Residential (VR) Zone, and

WHEREAS, the application was presented by Attorney Robert Boak, Esq. and Wilbur C. Connor at the August 6, 2014 Land Use Board meeting, and

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

WHEREAS, the Board, after considering the evidence presented by the applicant and Mr. Burr, has made the following factual findings:

A. The Subject Property.

1. The subject property contains 0.275 acres with 69.30 feet of frontage on Church Street.

2. Located on the site are a two-story frame house and a garage with a two-story apartment.

B. The Development Regulations Ordinance.

3. The apartment constitutes a second single-family dwelling which is not permitted in the Tewksbury Township Development Regulations Ordinance (DRO).

4. Section 702 of the DRO provides:

“A. No lot shall have upon it more than one principal permitted use and no more than one principal building shall be permitted on one lot, except that [i] townhouses and research and office complexes receiving site plan approval may be permitted to have more than one building on a lot and more than one principal use in a building or on a site in accordance with the zoning district in which they are located, and [ii] more than one principal permitted use and more than one principal building shall be permitted on a lot owned by the Township.

B. Not more than one single-family dwelling shall be constructed on each lot in addition to permitted accessory buildings, and the accessory buildings shall be constructed on the same lot as the dwelling.”

5. Tewksbury Township adopted its first zoning ordinance in 1960. Two dwelling units were not permitted on a single lot.

6. A nonconforming use or structure which existed prior to the adoption of an ordinance prohibiting said use of structure, which use of structure has not been abandoned, may be continued after the adoption of the ordinance. A prospective purchaser, prospective mortgagee or other interested persons may apply to the administrative officer within a year after the adoption of the prohibitory ordinance and thereafter the Board of Adjustment for a Certificate of a prior nonconforming use or structure pursuant to N.J.S.A. 40:55D-68. An application for said certificate has been filed by the applicant.

7. The apartment is both a nonconforming use and a nonconforming structure.

C. The Testimony.

8. The applicant's attorney Robert Boak presented Wilbur C. Connor.

9. The subject property was owned by Wilbur C. Connor's mother.

In 1952 Wilbur C. Connor married, constructed the apartment over the garage, installed a septic system for the apartment, and stayed in the apartment for seven years. Thereafter his brother moved into the apartment. His brother installed the septic system for the single family home.

10. In 1995 the property was sold to Jeanne Lance, who continued to lease the apartment.

11. At the present time there are sewer connections for both residences.

D. Second Floor Door.

12. Board Member Robert Becker noted that a photograph of the garage showed a second floor door opening to the outside without any landing or staircase. The Board suggests that the Construction Official investigate this situation to determine whether a danger exists.

E. Conclusion.

13. Based on the foregoing, the Board has determined that the second floor apartment is a valid prior nonconforming use and structure.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 3rd day of September 2014 that this resolution constitute a Certificate of Prior Nonconforming Status for the second story apartment above the garage for the premises on 3 Church Street designated Block 39, Lot 2 on the Township of Tewksbury Tax Map.

Roll Call Vote

Those in Favor: Mr. Mackie, Mr. Kerwin, Mr. Becker, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Those Opposed: None

MASTER PLAN PUBLIC HEARING

➤ Highland Master Plan Element

Mr. Van Doren made a motion to open the public hearing for the Highlands Master Plan Element. Mrs. Czajkowski seconded the motion. All were in favor. Mr. Larsen abstained.

Mr. Chuck McGroarty, Township Planner, explained that the Board reviewed a draft of the element on May 21, 2014. The document that was reviewed in May has been slightly modified by Highlands Council staff. Mr. McGroarty explained that the Township is completely within the Highlands region, 66% is in the Preservation Area, and is obligated to adopt a Highlands Master Plan Element for that portion of the township. In April of 2012, the Township Committee decided to fully conform (known as “opting in”) and so the Master Plan Element will not only apply to the Preservation Area of the Township but also for the remaining 1/3rd in the Planning Area; the policies are slightly different for each area. The Township’s existing Master Plan remains in force and the Highlands Element will co-exist with that plan. When asked by Mr. Johnstone which supersedes if there is a conflict between Tewksbury’s Master Plan and the Highlands Master Plan Element, Mr. McGroarty responded that the one that is more restrictive will apply. He went on to explain that there are eleven (11) chapters within the Highlands Element including the Housing Element which will be superseded when the Township adopts a Third Round Housing Element and Fair Share Plan and COAH rules are finalized. When asked by Mr. Johnstone when the COAH rules are expected to be finalized, Mr. McGroarty noted that the schedule is for the rules to be adopted in November however COAH has received over 2,000 comments, including Tewksbury’s, so they will have to respond to those. If they don’t make changes to address the comments the schedule will likely stay the same; the schedule is subject to any litigation filed. Mr. McGroarty noted that the third round was supposed to end in 2014.

Mr. McGroarty went on to explain that the Highlands Element establishes policies for both the Planning and Preservation Areas; the policies are more restrictive in the Preservation Area with respect to densities and intensity of development. Water protection, land conservation, sustainable economic development are some of the sections and are funded through the Highlands process. He noted that some of the sections don’t apply to Tewksbury and have been removed (lake management). The Transfer of Development Rights (TDR) was also removed because Tewksbury was not interested in participating. The plan presents natural resources in the Conservation Plan Element dealing with forests, open waters, carbonate rocks, steep slopes, etc. which will lay a

foundation for the Highlands Ordinance which follows the adoption of the Highlands Master Plan Element.

In conclusion, the Township is divided into overlay zones that are imposed by the Highlands Act so that the local zoning stays in place. If a property owner does not qualify for an exemption and is deemed a Major Highlands Development they will be subject to the policies contained within the Highlands Master Plan Element. 37% of Tewksbury is within the Protection Zone which largely covers the forested area of the Township and very little development is allowed in the Protection Zone. 26% of Tewksbury is within the Conservation Zone which largely covers agricultural resource areas. 35% of the Township is a subset of the Conservation Zone known as Environmentally Constrained which covers land that qualifies for conservation characteristics but has steep slopes, wetlands, streams, etc. The remaining area is the Pottersville and Oldwick areas which are known as Existing Community Zones where development potential has a higher probability and the restrictions are less.

Mr. McGroarty noted that the changes the Highlands staff asked Tewksbury to make touch upon 20 plus pages. Some of the changes deal with variances and waivers and the Highlands staff's position is that it doesn't belong in a Master Plan and so it was removed. They made some changes to the wellhead protection area, primarily to the prohibited use list.

When asked by Mr. Johnstone if there is any significant change from the version reviewed in May, Mr. McGroarty responded in the negative. He did mention that some of the septic density provisions were removed because they will be covered in the Highlands Ordinance instead.

When asked by Mr. Becker what properties won't be grandfathered and won't be able to be built on, Mr. McGroarty did not have an answer without doing more research of individual properties but outlined several of the exemptions that are available to property owners.

When asked by Mr. Rahenkamp when the Board can see the attachments referenced in the Highlands Element, Mr. McGroarty displayed those for the Board but noted that the clarity is not that sharp. The Highlands Ordinance will take the 30 plus exhibits from the Master Plan and reduce them to ten (10) maps with improved clarity.

Referring to page two (2) Mr. Larsen noted that the adoption of the element is voluntary and asked Mr. McGroarty to confirm. Mr. McGroarty noted that the Preservation Area was never voluntary and the Planning Area is not voluntary now because the Township opted in. When asked if the Township can opt out, Mr. McGroarty believed that the Township could opt out at the six (6) year Master Plan review cycle but needed to confirm the answer with the Highlands staff. When asked if all of the regulations that come with opting in are mandatory, Mr. McGroarty responded in the positive. When asked why the Board has to even discuss the Master Plan Element, Mr. McGroarty noted that by law the Board must hold public hearings when there is an amendment to its

Master Plan. When asked if the Non-Government Organizations (NGO) are taking the control away from the municipalities, Mr. McGroarty did not have an answer. When asked who wrote the Highlands Element, Mr. McGroarty responded the Highlands Council Staff. When asked if they are an NGO, Mr. McGroarty explained that the Highlands Council was created from the Highlands Act. Mr. Larsen concluded by saying that when the Township signs on to something like this they are giving control to someone else. Mr. McGroarty noted that this was discussed by the Township Committee but the decision was made to opt in. Mr. Van Doren noted that the Township could only opt out of the Planning Area. Mr. Johnstone noted that the Land Use Board was asked for a recommendation about opting in and based on the Township Attorney's opinion that the Township could opt out in the future the Board recommended that the Township move forward with opting in. Mr. Larsen noted that Land Use Board members change and therefore there should be the ability to opt out. Mr. Van Doren noted that the decision to opt in or out lies with the Township Committee.

When asked by Mr. Becker about water conservation measures, Mr. McGroarty explained that there would be a water conservation management plan which would create regulations and techniques for projects that rise to the level of Major Highlands Development. When asked if the Highlands Council would require public water and sewer and stop septic systems, Mr. McGroarty explained that in the Preservation Area it is almost impossible to construct new central water or sanitary sewer systems; the NJDEP regulates all activity within the Preservation Area under NJAC7:38. Unless it is a compelling health and safety issue water and sewer will not be extended in the Preservation Area.

When asked by Mr. Larsen if the Highlands Master Plan Element discourages sprawling development, Mr. McGroarty explained that the Highlands Element calls for clustering as does the Township's Master Plan. Mr. Van Doren opined that Mr. Larsen was referring to Transfer of Development Rights which the Township rejected.

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

George Cassa, Guinea Hollow Road, asked if the exhibits that were passed around to the Land Use Board members are the same as the exhibits presented in 2012 and also posted on the Highlands Council webpage to which Mr. McGroarty responded in the positive. When asked if the only changes from the 2012 draft and the draft presented tonight are in the narrative, Mr. McGroarty responded in the positive. When asked what the next step is, Mr. McGroarty explained that when/if the Land Use Board adopts the Highlands Master Plan Element the next step would be to take the Highlands Ordinance Draft and send it to the Highlands staff for any updates. Subject to any changes by the Highlands staff the ordinance would be scheduled for a public hearing with the Township Committee. The ordinance would be forwarded to the Land Use Board for a Master Plan consistency determination and then adopted by the Township Committee at a public hearing. When asked if the adopted Highlands Master Plan Element would be forwarded to the Highlands Council for review, Mr. McGroarty responded in the positive.

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

When asked by Mr. Van Doren if the Highlands Master Plan Element is a document to guide the ordinance, Mr. McGroarty responded in the positive and noted that the teeth is in the Highlands Land Use Ordinance.

Mr. Larsen opined that people are unaware that the Township is giving over authority to the Non Government Organizations.

Ms. Goodchild noted that page two (2) references Elizabeth Devlin as a Board member and at the time of the adoption she had resigned. Mr. McGroarty agreed to remove that name to reflect the current roster.

Mr. Van Doren made a motion to adopt the Highlands Master Plan Element with the correction to page 2 referenced by Ms. Goodchild and the inclusion of the maps as the exhibits. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mr. Van Doren, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp and Mr. Johnstone

Those Opposed: Mr. Larsen

BOARD DISCUSSION/ACTION ITEMS

- Master Plan Consistency Review of Ordinance No. 06-2014 and No. 07-2014 in accordance with 40:55D-26a

Ms. Goodchild noted that both ordinances have to do with solar and wind energy which would amend the Development Regulations Ordinance to include language to regulate both solar and wind.

Mr. Van Doren noted that the Land Use Sub-Committee researched multiple solar and wind energy ordinances from other municipalities. The drafts before the Board are the 4th or 5th iteration of the ordinances after having been vetted by the Land Use Sub-Committee, Township Planner and Township Attorney. Mr. Van Doren noted that the Land Use Sub-Committee wanted to be proactive and have ordinances in place to help guide the Land Use Board prior to any applications. Mr. Johnstone was pleased that after the presentations a few years ago that the ordinances finally came to fruition. He indicated that he read both documents thoroughly and opined that they are a good starting point and are consistent with the Master Plan. Mr. McGroarty noted that the MLUL sets some of the standards for the wind energy ordinance so the Township has to abide by those.

When asked by Mr. Larsen where the 100 feet for windmills came, Mr. McGroarty explained that he was not involved in the preliminary drafting but 100 feet tends to be on the low side. Mr. Van Doren noted that it was an amalgamation of various ordinances, some required 100 feet and some required 150 feet and the Land Use Sub-Committee chose 100 feet because of the terrain, etc. Mr. McGroarty noted that the thermal wind corridors are not widely disbursed so he has found that they never get built because the properties are not conducive to the cost of the project. When asked if there is a maximum size rotor, Mr. McGroarty responded in the negative and opined that the industry standards will prevail. When asked the number of people in Tewksbury looking to augment their bills by using solar or wind, Mr. McGroarty was not aware. Mr. Johnstone noted that he flies over Tewksbury often and opined that there are 20 to 25% of properties with solar panels on buildings or ground mounted. Mr. McGroarty noted that under the proposed ordinance solar panels are accessory uses only and are not principal uses and are not allowed as a solar array farm. Certain zones permit ground or building mounted and certain zones permit only roof mounted (such as the Village Residential, Village Business and Village Office) because the ground area is not sufficiently large enough. When asked by Mr. Larsen if excess energy can be sold, Ms. Goodchild and Mr. McGroarty responded in the negative.

Mr. Rahenkamp opined that it is well written and asked if other municipalities allow ground mounted to which Ms. Goodchild responded in the positive. Mr. McGroarty noted that ground mounted solar works well in areas with large lot zoning.

When asked by Mr. Kerwin if the buffering of solar panels on page five (5) is for solar panels on the ground, Mr. McGroarty responded in the positive. When asked if windmills are permitted on residential properties, Mr. McGroarty explained that windmills are only permitted in the Mining and Research Office Districts and the Farmland Preservation District (residential district). When asked how many windmills are permitted, Mr. McGroarty responded one (1) per lot.

Mr. Van Doren made a motion to find Ordinance No. 06-2014 and 07-2014 not inconsistent with the Master Plan. Mrs. Shirley Czajkowski seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mr. Van Doren, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp, Mr. Larsen and Mr. Johnstone

Those Opposed: None

- Schedule site walk for Oldwick Fire Company Sign Variance

The Board announced that the site walk was scheduled for September 24, 2014 at 6 p.m. with a rain date of September 25, 2014 at the same time.

Mr. Van Doren noted that Ms. Goodchild responded to the Oldwick Fire Company's letter and asked if the Board was going to respond. Mr. Johnstone opined that Oldwick Fire Company fails to understand the significance of this type of sign and the impact on the Township. He felt that the fire company was cooperating by having the mock sign erected and so he suggested that the Board ignore the tone of the letter.

When asked by Mr. Becker about proposed ordinances such as a drone ordinance, Mr. Johnstone suggested that he contact Ms. Goodchild to put the idea on a future agenda. He noted that the Land Use Board discussed solar energy in the past and that research eventually turned into an ordinance. Mr. Van Doren noted that the Land Use Sub-Committee needs to look at the sign regulations again because of the complaints being received about the sandwich boards around the township many of which are non-profits posting signs at the major intersections. Mr. Johnstone encouraged Board members to contact Ms. Goodchild with any ideas.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:55 p.m. by motion of Mr. Van Doren and seconded by Mrs. Czajkowski.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator