

**LAND USE BOARD MINUTES**  
**September 5, 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 7:32 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Bruce Mackie, Elizabeth Devlin, Ed Kerwin arrived at 7:33 p.m., Michael Moriarty, Arnold Shapack, Alt. #1, and Ed D'Armiento, Alt. #4 arrived at 7:35 p.m.

Also present: Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Randall Benson, Zoning Officer.

Absent: Dana Desiderio, Shirley Czajkowski, 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 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. Devlin seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Land Use Board Escrow – Snyder (B11, L9.16) - invoice dated August 2, 2012 (\$2,850.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Tewksbury Fine Wine (B44, L24.01), invoice dated August 1, 2012 (\$645.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Cedar Lane Farm (Johnson Helistop B23, L23) – invoice dated August 22, 2012 (\$9,000.00)
4. Maser Consulting – Land Use Board Escrow – Tewksbury Fine Wine (B44, L24.01), invoice #188060 (\$195.00)
5. Maser Consulting – Land Use Board Escrow – Cedar Lane Farm (Johnson Helistop B23, L23), invoice #188061 (\$292.50)
6. Maser Consulting – Land Use Board Escrow – Snyder (B11, L9.16), invoice #188070 (\$780.00)
7. Maser Consulting – Land Use Board Escrow – Stavola (B44, L24), invoice #188066 (\$1,397.50)

8. Maser Consulting – Land Use Board Escrow – Hannon (B32.01, L3), invoice #188069 (\$590.00)
9. Maser Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #188067 (\$130.00)
10. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #188062 (\$422.50)
11. Maser Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #188063 (\$422.50)
12. Maser Consulting – Land Use Board Escrow – Johnson (B23, L36), invoice #188064 (\$422.50)
13. Maser Consulting – Land Use Board Escrow – Johnson (B23, L2), invoice #188065 (\$97.50)
14. Maser Consulting – Land Use Board Escrow – JCP&L (B17, L2), invoice #188068 (\$390.00)
15. Suburban Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #000000019038 (\$285.00)

Roll Call Vote:

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

Nays: None

**CORRESPONDENCE**

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

1. A letter dated August 9, 2012 from William Burr re: Stavola Quarries, Appl. No. 11-10, Block 44, Lot 24, Minor Subdivision & Variance.
2. Notice dated August 7, 2012 from Steffen Wollmer re: application to the NJDEP re: an application for an LOI, General Permit and Transition Area Waiver for Block 11, Lot 20.
3. Notice dated August 04, 2012 from Paul Delman re: application for a Highlands Applicability Determination for Block 13, Lot 3.
4. Memorandum dated August 13, 2012 from Chief Holmes re: Stavola Quarries, Appl. No. 11-10, Block 44, Lot 24.
5. A letter dated August 29, 2012 from the Hunterdon County Planning Board re: Stavola Quarries, LLC, Blk 44, Lot 24.

**MINUTES**

➤ June 20, 2012

The minutes of June 20, 2012 were approved by motion of Mr. Van Doren and seconded by Mrs. Devlin. All were in favor. Mrs. Baird, Mr. Moriarty and Mr. Kerwin 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.

**Resolutions**

- **Resolution No. 12-19** – Schmitt, Appl. No. 09-21/ZBA03-17, Block 11, Lot 5.02, 5.03 and 6

Mr. Van Doren made a motion to adopt the following resolution. Mr. Kerwin seconded the motion. The motion carried by the following roll call vote:

*Extension to  
October 21, 2015*

LAND USE BOARD  
TOWNSHIP OF TEWKSBURY  
APPLICATION #09-21/ZBA#03-17  
RESOLUTION #12-19

WHEREAS, FRANCES SCHMITT previously applied to the Board of Adjustment of the Township of Tewksbury, a predecessor to the Land Use Board, for permission to construct a home on property off of Sutton Road designated as Block 11, Lot 6 on the Tewksbury Tax Map, and for a lot depth variance for premises which was located in the R-3 Zone, and is now located in the HL (Highlands) Zone, and

WHEREAS, the subject property had access to Sutton Road by way of what was described as “*Existing Old Woods Road (Driftway) for ingress and egress*” on a survey, but lacks direct access to a public road contrary to N.J.S.A. 40:55D-35 & 36, and

WHEREAS, the application was approved and a memorialization resolution was adopted on April 19, 2004 which permitted the construction of a home on the subject property which does not front on a public road, and for a depth variance, subject, however, to the following conditions:

“A. The developer of Lot 6 shall be responsible for any damage done to the right of way during construction on lot 6. Thereafter, the parties shall enter into a maintenance and upkeep agreement for all the lots served by the common drive including lot 6, lot 5.02 and lot 5.03. The Zoning Officer shall approve the maintenance agreement before it is recorded with the County Clerk of Hunterdon County. Furthermore the common drive shall be upgraded to Township standards to lot 6 through lot 5.02. The Township Engineer shall have final authority over this matter and the applicant or her successor in interest shall be required to make the improvements prior to the issuance of a building permit.

B. Finally, the Applicant shall submit the responses from the fire department and the police department relating to the notices sent regarding the common drive before a building permit shall be issued.

C. The approval must be utilized within one year from the date of this memorialization resolution or the variance shall be void and have no further effect.”

AND, WHEREAS, the applicant obtained a one-year extension to perfect the aforesaid conditions from the Board of Adjustment to April 19, 2006, and

WHEREAS, Condition C in the resolution and the Tewksbury Township Development Regulations Ordinance require variances to be acted upon within one year, or they will expire, and

WHEREAS, the applicant had not met the conditions in the resolution, and

WHEREAS, the applicant obtained a second one-year extension from the Land Use Board to perfect the Board of Adjustment conditions to October 21, 2010, and

WHEREAS, the applicant’s attorney, Meryl Gonchar, Esq. of the firm of Greenbaum, Rowe, Smith and Davis, satisfied the last unsatisfied condition in the Resolution by the preparation, execution, and filing of a common driveway agreement by the owners of Lots 6 (the applicant) 5.02 and 5.03, and

WHEREAS, attorney Gonchar prepared a notice to property owners and public notice pursuant to N.J.S.A. 40:55D-12a as the extension was for more than 5 years from the initial approval, and

WHEREAS, the request for a third extension was presented at the August 4, 2010 Land Use Board meeting, and

WHEREAS, the extension request was approved on August 4, 2010 and a memorialization resolution was adopted on August 17, 2010, and

WHEREAS, the request for a fourth extension was presented by Attorney William A. Shurts, Esq. of the firm of Felter, Cain & Shurts and realtor Randee Caren Zyzyck at the October 5, 2011 Land Use Board meeting, and

WHEREAS, that application was approved on October 5, 2011 for an extension to October 21, 2012 and memorialized in a resolution which was adopted on October 19, 2011, and

WHEREAS, Frances Schmitt has now applied to the Land Use Board for a five (5) year extension of her approval, and

WHEREAS, the request was reviewed by Land Use Board Engineer William H. Burr, IV, P.E., and

WHEREAS, Mr. Burr in his August 13, 2012 memorandum stated:

“The subject property is known as Block 11, Lot 6 and is located at 3A Sutton Road. The property consists of 3.73 acres and has access to Sutton Road across adjacent Lots 5.02 & 5.03 by way of existing driftway (easement); however, the property does not have direct access to a public road – the property is land-locked (see attached location map). On April 19, 2004, the Zoning Board of Adjustment granted approval to the applicant to construct a home on the property (without having frontage on a public road), as well as, for a lot depth variance. Since that time, there have been four (4) extensions approved by the Township.

1. The zoning has changed from the Rural (R-3) Zone District to the current Highlands (HL) District and any future development of this lot would need to comply with the HL District requirements.

2. There has not been any development in the surrounding areas since the time of the variance approval in 2004, which would affect the approval.

3. As I understand, a common driveway agreement between the owners of Lots 5.02 and 5.03, and Lot 6 (applicant) has been executed and filed with the County.

4. The owner/developer of Lot 6 would need to obtain either a Highlands exemption or approval prior to constructing a dwelling on this lot.”

AND, WHEREAS, the current extension request was presented at the August 15, 2012 Land Use Board meeting, and

WHEREAS, the Board found that a three (3) year extension was warranted.

NOW, THEREFORE, be it resolved by the Land Use Board of the Township of Tewksbury on this 5<sup>th</sup> day of September 2012 that the application of Frances Schmitt for an extension of her Board of Adjustment approval to October 21, 2015 be approved, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his memorandum of August 13, 2012:

“1. Compliance with the previous conditions of the Board of Adjustment approval.

2. Any construction on the subject property would be required to meet the provisions of the HL Zone District (unless variance relief is obtained from same).

3. Highland’s exemption or approval is required prior to the issuance of any building permit for this lot.”

Roll Call Vote

Those in Favor: Mr. Van Doren, Mr. Mackie, Mr. Kerwin, Mr. Shapack and Mr. Johnstone

Those Opposed: None

**Public Hearing**

- Stavola Quarries  
Appl. No. 11-10  
Block 44, Lot 24  
Minor Subdivision  
**Action Deadline – 11-28-12**

Mr. Van Doren recused himself from the hearing at 7:39 p.m. due to family living within 200 feet of the property.

Mr. Michael O’Grodnick, attorney for the applicant, was present representing Stavola Quarries, LLC. He explained that the applicant is seeking to subdivide the property into three (3) lots along the three (3) Township zone lines (Mining, Highlands and Piedmont Districts). The property consists of approximately 318 acres and has been used as a quarry since the early 1900’s. Stavola mines aggregates, specifically crushed stone and sand and sells the product to municipalities, NJDEP, etc. Mr. O’Grodnick stressed that Stavola is not planning any development on the lots; they are trying to divide the property to have consistency with the zone lines for long term financing and planning for the quarry. One (1) variance is necessitated by the application for a lot that does not abut a public street (MLUL 40:55D-35). Mr. O’Grodnick explained that in 1921 the owner donated and dedicated the land as a public street (Prospect Ave.) however the Township has no record of ever accepting that dedication. He noted that the case law requires a Township to accept the dedication by a formal resolution or by action (maintenance, signage, etc.). When asked if “Prospect Avenue” was the area next to the Fine Wine and Spirits, Mr. O’Grodnick responded in the positive. When asked if it has been agreed to that there is no paper street, Mr. O’Grodnick noted that a dedication to a Township is irrevocable so it was his opinion that the Governing Body should formally reject the dedication. Mr. O’Grodnick noted that an easement exists to gain access to proposed Lot 24.02 but the lot does not front on a public street. Mr. O’Grodnick presented a plan that was marked at Exhibit A-1.

Alfred Coco, Engineer from Menlo Engineering Assoc. was sworn in by Mr. Bernstein. Mr. Coco provided his qualifications and was accepted by the Board. Mr. Coco explained that Exhibit A-1 is an overlay of the proposed subdivision on an aerial photograph that represents the existing conditions. He noted that property to the west of the quarry, owned by Stavola, is in Readington Township and consists of approximately 270 acres. The existing lot in Tewksbury Township is known as Lot 24 and is currently shown within three (3) different zoning districts. With the exception of the mining operation, which is within the Mining Zone, there is virtually no development on the site. There is a power pole easement along the east side and a power pole easement along the

very western end of the property. Mr. Coco explained that the application is for subdivision only and no improvements are proposed at this time; the applicant will return to the Board if improvements are proposed in the future.

Mr. Coco explained that the 94 acre proposed parcel in the Highlands Zone could be subdivided into seven (7) lots; this does not take into account environmental constraints and septic suitability. The proposed parcel in the Mining District will be 160 acres. The proposed parcel in the Piedmont District will be 15 acres; this lot will not have frontage on a public roadway but does have access through existing access easements over Lot 24.01 (Tewksbury Fine Wine). Mr. Coco explained that 50 foot wide access easements were provided on the northern and southern boundaries of Lot 24.01 that provide access to Route 517. The MLUL requires frontage so the applicant is seeking a variance to create proposed Lot 24.02 in the Piedmont District.

Mr. Coco agreed to make any revisions necessary in accordance with the review letter from William Burr dated August 9, 2012.

Mr. Coco noted that the scale house located in the Mining District encroaches into the front yard setback (near Rockaway Road) but is a pre-existing condition; the applicant has requested a variance as part of the application.

When asked by Mr. Burr about environmental constraints that might preclude future access to the lots, Mr. Coco noted that there are no obvious restrictions that would preclude driveways to the lots proposed in the Piedmont and Highland Districts. When asked if the easements exist on the Tewksbury Fine Wine lot, Mr. Coco responded in the positive. When asked for a copy of the easement documents, Mr. O'Grodnick agreed to provide them to Mr. Bernstein.

Mr. Bernstein noted that the scale house is considered a pre-existing non-conforming structure and the Board does not prefer to grant a variance for the structure because if they are destroyed the applicant would have the ability to construct them in the same non-conforming location; the Board acknowledges that they are a pre-existing condition. When asked to confirm that no building is proposed, Mr. Coco responded in the positive. When asked if the 50 foot access easement is exclusively on the Tewksbury Fine Wine lot (Lot 24.01), Mr. Coco responded in the positive. Mr. Bernstein displayed for Mr. Coco the approved plan that created the Tewksbury Fine Wine lot (Lot 24.01) and asked him to point to where it is shown. Mr. Coco noted that it is shown as proposed. When asked if the applicant will revise the plan to show the easement and provide a document creating the easement, Mr. Coco agreed to make the revisions and provide the document if it has not already been created and filed. Mr. Bernstein asked Mr. Coco to review Mr. Burr's technical review points which resulted in Mr. Coco agreeing to address item No.'s 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

Mr. Bernstein noted that the Board has a number of standard conditions that it puts in its resolutions of approval however he also recommended that there be a deed restriction that any construction or use on proposed Lot 24.02 would require approval from the Land Use

Board. Mr. Coco agreed to that condition. Mr. O'Grodnick indicated that he did not have the easement documents for Lot 24.01 with him but agreed to provide them to Mr. Bernstein. If for some reason the easements have not been drafted and recorded there will be a condition that they be drafted to the approval of the Land Use Board Engineer and Attorney.

When asked by Mr. Mackie if the subdivision impacts the quarry reclamation plan, Mr. Coco responded in the negative. Mr. Coco noted that his office was not involved in the preparation of the reclamation plan so he was not able to answer in more detail. When asked if any of the reclamation would take place outside of the Mining District, Mr. Coco responded in the negative. Mr. O'Grodnick agreed and noted that there are some slope issues within the mine that need to be resolved but that will not have an impact on what is proposed by the subdivision.

Mr. Moriarty questioned the "high wall". Mr. Johnstone explained that there is a separate agreement between Stavola and the Township that the grade of the wall needs to be altered to eliminate the high wall condition.

Mr. Shapack asked which access easement on Lot 24.01 would be used to gain access to proposed Lot 24.02. Mr. O'Grodnick explained that NJDEP recommended the use of the easement to the south (near the Hildebrant property) to use the Tewksbury Fine Wine entrance with the traffic light. When asked if there would still be adequate space for the wine store if that access easement were utilized, Mr. O'Grodnick responded in the positive. Mr. Coco explained that he opined the best solution would be to use the current driveway and extend it to the rear to gain access to proposed Lot 24.02. Mrs. Baird noted that the County would have to approve the driveway in the future.

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

George Cassa, 14 Guinea Hollow Road, questioned the acreage breakdown in each of the zones. Mr. Coco explained that the 318 acres includes 45 acres in Readington Township, 95 acres in the Highlands District, 160 in the Mining District and 15.5 in the Piedmont District. When asked if the license held by Stavola for the Mining District transfers to a new owner, Mr. O'Grodnick was not sure of the answer. He believed that the license is feely transferable and that any agreement with the Township is an annual agreement. Mr. Cassa asked if Stavola would consider deeding the unquarryable and undevelopable Rockaway Creek Stream corridor to the Township for public access. Mr. Johnstone suggested Mr. Cassa ask that question to the Stavola representative and not the engineer.

Chris Schaefer, 34 Potterstown Road, asked that the current permitted land uses in the Mining District be described. Mr. Coco explained that the permitted uses are quarrying stone, sand and gravel, Township building and services and public utility facilities.

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

When asked by Mr. Moriarty the zoning for the land in Readington, Mr. Coco explained that it is zoned residential and may have the developability for several homes. When asked if anything is being subdivided in Readington, Mr. Coco responded in the negative and noted that it is unaffected by the subdivision in Tewksbury.

Gary Vialonga, 620 Tinton Ave, Tinton Falls, NJ, was sworn in by Mr. Bernstein. Mr. Vialonga explained that he is the President of Stavola Realty Company and an authorized representative of Stavola Quarries.

When asked about the quarry reclamation plan, Mr. Vialonga believed that all of the quarry activities were limited to the Mining zone and to the best of his knowledge there are no mining activities or reclamation plans outside of that zone. Mr. Bernstein suggested that a condition of the resolution be that the applicant confirm that the reclamation plan is not impacted by the subdivision.

When asked by Mr. Johnstone about the buildout potential on the land in the Highlands and Piedmont Districts, Mr. Vialonga explained that due to the environmental constraints they are unsure what the lot yield would be in the future.

Cathy Foster, 61 Welsh Road, noted that prior to Stavola purchasing the property there were equestrian trails throughout the property and a critical link that created a connection between the Cold Brook Preserve and the Whittemore Preserve. Ms. Foster asked if they would take the opportunity to grant an equestrian easement since they are subdividing the property. Mr. Vialonga indicated that if and when they appear before the Land Use Board to develop the property they would consider granting an easement. Mr. Vialonga recalled that the trail was in the Mining Zone where there are federal requirements for safety that Stavola has to abide by. Mr. Johnstone suggested that Mrs. Foster call Mr. Vialonga to discuss the matter further.

Barbara Todd, 40 King Street, asked if there was the ability to create a road from the Mining District to Potterstown Road. Mr. Coco explained that the Mining area has frontage on Potterstown Road and there are no plans to provide any new access to Pottersville Road for the mining operation. When asked if someone could put a township or utility building in that area, Mr. Coco responded in the positive. When asked if Stavola would be willing to preserve the land, Mr. Vialonga indicated that Stavola is not prepared to do that at this time.

George Cassa, 14 Guinea Hollow Road, asked if Stavola would consider looking at a dedication or a deeding of the unquarriable and undevelopable 300 foot wide stream corridor on either side of the Rockaway Creek for public access. Mr. Vialonga noted that if that area falls within the Mining District it is very unlikely but he agreed to discuss it with Mr. Cassa privately.

Chris Schaefer, 34 Potterstown Road, asked if the Highlands overlay would encompass the Mining District. Mr. Coco noted that when the mining operation is finished he would envision the township changing the zoning on that area.

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

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

Mr. Bernstein noted the following conditions:

1. Mr. Burr's report
2. A subdivision deed subject to the approval of the LUB Engineer and Attorney
3. Proof that the subdivision has no impact on the reclamation plan.
4. Proof that there is a 50 foot easement on the south side of Lot 24.01 or the creation of one
5. Any future development or structures would require approval from the Land Use Board
6. Approval from all other Boards that have jurisdiction.
7. Filing of deeds within 180 days.
8. County Planning Board approval
9. NJ Highlands approval
10. Statement from the applicant that they have met all State, Local and County requirements
11. Payment of all fees and escrows

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

Roll Call Vote:

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

Nays: None

**ADJOURNMENT**

There being no further business, the meeting adjourned at 8:43 p.m. by motion of Mr. Moriarty and seconded by Mr. Mackie.

Respectfully submitted,

Shana L. Goodchild  
Land Use Administrator