

LAND USE BOARD MINUTES
August 15, 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 7:34 p.m.

Present: Blake Johnstone, Dana Desiderio, Shaun Van Doren, Bruce Mackie, Shirley Czajkowski, Ed Kerwin, Arnold Shapack, Alt. #1, and Ed D'Armiento, Alt. #4.

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

Absent: Mary Elizabeth Baird, Elizabeth Devlin, Michael Moriarty and Eric Metzler, Alt. #2.

There were approximately two (2) 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. Ms. Desiderio made a motion to approve the claims listed below and Mr. Kerwin seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at July 18, 2012 meeting - invoice dated July 19, 2012 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Rothpletz (B38, L1.03), invoice dated July 18, 2012 (\$1,995.00)
3. Maser Consulting – Land Use Board Escrow – Cedar Lane Farm (Johnson Helistop B23, L23), invoice #186482 (\$812.50)
4. Maser Consulting – Land Use Board Escrow – Newell (B34, L13.01), invoice #186489 (\$280.00)
5. Maser Consulting – Land Use Board Escrow – Shanley (B15, L33), invoice #186493 (\$325.00)
6. Maser Consulting – Land Use Board Escrow – Snyder (B11, L9.16), invoice #186492 (\$1,105.00)
7. Maser Consulting – Land Use Board Escrow – Rothpletz (B38, L1.03), invoice #186491 (\$195.00)

8. Maser Consulting – Land Use Board Escrow – Hannon (B32.01, L3), invoice #186490 (\$260.00)
9. Maser Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #186487 (\$357.50)
10. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #186483 (\$130.00)
11. Maser Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #186484 (\$130.00)
12. Maser Consulting – Land Use Board Escrow – Johnson (B23, L36), invoice #186485 (\$130.00)
13. Maser Consulting – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice #186488 (\$1,527.50)
14. Suburban Consulting – Land Use Board Inspection – AM Best (B46, L2.01, 5 & 6), invoice #000000018939 (\$332.50)
15. Suburban Consulting – Land Use Board Inspection – Johnson (B23, L36), invoice #000000018946 (\$213.75)
16. Suburban Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #000000018900 (\$250.00)
17. Suburban Consulting – Land Use Board Inspection – Johnson (B23, L4 & 36), invoice #000000018900 (\$545.45)

Roll Call Vote:

Ayes: Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Nays: None

CORRESPONDENCE

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

1. The NJ Planner, May/June 2012, Vol. 73, No. 3.
2. A letter dated August 15, 2012 from Miles Winder re: Johnson Helistop resolution, Block 23, Lot 23.

MINUTES

➤ June 6, 2012

The minutes of June 6, 2012 were approved by motion of Mr. Mackie and seconded by Mr. Kerwin. All were in favor. Mr. Van Doren and Ms. Desiderio 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. 12-14** – Tewksbury Fine Wine, Appl. No. 12-09, Block 44, Lot 24.01 (signage)

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

*Modified to Condition 2 regarding
signage in June 15, 2005
Memorialization Resolution #05-14*

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION #12-09
RESOLUTION #12-14

WHEREAS, TEWKSBURY FINE WINE & SPIRITS has applied to the Land Use Board of the Township of Tewksbury for the modification of Condition 2 in a Tewksbury Township Planning Board (predecessor to Tewksbury Township Land Use Board) Memorialization Resolution #05-14 in Application #03-09 which was adopted on June 15, 2005 concerning property which is located at 1 Old Turnpike Road and designated as Block 44, Lot 24.01 on the Tewksbury Township Tax Map, which premises is located in the PM Zone, and

WHEREAS, submission waivers were granted in Application # 03-09 by the Tewksbury Township Planning Board on November 5, 2003 and memorialized in a resolution which was adopted on December 3, 2003, and

WHEREAS, the application was presented at the December 3, 2003, January 7, 2004, March 3, 2004 and March 30, 2004 Planning Board meetings, and

WHEREAS, the application was denied on March 30, 2004 and a memorialization resolution was adopted on June 16, 2004, and

WHEREAS, the Board's denial was appealed by Tewksbury Fine Wine & Spirits to the Superior Court, and

WHEREAS, the trial took place on April 8, 2005, and

WHEREAS, the Court issued a written opinion dated May 12, 2005, and a final order, and

WHEREAS, the final order provided in pertinent part:

"1. The determination of the Township of Tewksbury Planning Board as set forth in its Resolution dated June 16, 2004 is hereby reversed, and the applications for site plan and subdivision approval with buffer waivers, and for a sign and a tree variance, are hereby granted.

2. This matter is remanded to the Township of Tewksbury Planning Board for further proceedings concerning conditions consistent with the opinion of this Court."

AND, WHEREAS, the Planning Board of the Township of Tewksbury filed an appeal from the determination of the Trial Court, and

WHEREAS, the remand hearing for the imposition of reasonable conditions took place on June 1, 2005, and

WHEREAS, the Board imposed 23 conditions which were memorialized in a resolution which was adopted on June 15, 2005, and

WHEREAS, among the conditions imposed was two:

"2. The sole freestanding sign on the property will be a 2' by 3' sign. A sign plan is attached to this resolution. There shall be directional traffic signs which are subject to the approval of the Planning Board Engineer. The location of the freestanding and directional signs are subject to the approval of the Planning Board Engineer. There shall be

no other freestanding signs. There shall be no other signs, including but not limited to signs:

- on the building,
- on other structures,
- on the doors, except for a single sign no larger than one square foot listing the applicant's business hours. Said sign is subject to the approval of Mr. Hintz.
- on or in the windows.

The windows will be constructed of glass block that cannot be read through. “

AND, WHEREAS, the appeal was dismissed, and

WHEREAS, Tewksbury Fine Wine & Spirits, has now applied to the Land Use Board of the Township of Tewksbury, as the successor to the Tewksbury Township Planning Board, for relief from Condition 2, and

WHEREAS, Andrea Maranca, the owner of Tewksbury Fine Wine & Spirits, presented the request at the July 18, 2012 Land Use Board meeting, and

WHEREAS, the Board, after considering the testimony presented by Andrea Maranca and the comments of Zoning Officer Randall Benson has made the following factual findings:

1. Andrea Maranca requested permission to place sandwich board signs on her property for special events such as the Far Hills Steeplechase and the Superbowl. She testified that her building is set back from the street and requested additional signage for these special events. Ms. Maranca asked for two sandwich board signs as one sign would not be visible to cars traveling towards Old Turnpike Road from Lamington Road.
2. Zoning Officer Randall Benson noted that the Tewksbury Township Development Regulations Ordinance (DRO) permits temporary signs.

3. Ms. Maranca agreed to the temporary signage requirement in the DRO. Ms. Maranca was agreeable to being bound by the Temporary Signage requirements in the DRO. However, if the temporary signage provision allows sandwich board signs, she requested the ability to use two sandwich board signs which would be visible from both directions of Old Turnpike Road, and also Lamington Road.

4. The Board found that this was a reasonable request.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Tewksbury on this 15th day of August 2012 that the application of TEWKSBURY FINE WINE & SPIRITS to modify Condition 2 in the June 15, 2005 Memorialization Resolution be approved. Condition 2 is modified as follows:

The sole freestanding sign on the property will be a 2' by 3' sign. A sign plan is attached to this resolution. There shall be directional traffic signs which are subject to the approval of the Planning Board Engineer. The location of the freestanding and directional signs are subject to the approval of the Planning Board Engineer. There shall be no other freestanding signs, except that an application may be made for a temporary sign or signs under the Tewksbury Township Temporary Sign provisions. In the event the Temporary Sign provisions allows sandwich signs, then in that event the applicant shall be entitled to two sandwich signs, with all other provisions of the Temporary Sign Ordinance being applicable.

There shall be no other signs, including but not limited to signs:

- on the building,
- on other structures,
- on the doors, except for a single sign no larger than one square foot listing the applicant's business hours. Said sign is subject to the approval of the current Township Planner.
- on or in the windows.

The windows will be constructed of glass block that cannot be read through.

Roll Call Vote

Those in Favor: Mr. Van Doren, Mr. Mackie, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- **Resolution No. 12-18** – Tewksbury Fine Wine, Appl. No. 12-09, Block 44, Lot 24.01 (color)

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

*Deletion of Condition 21
regarding color of exterior of
building in June 15, 2005
Memorialization Resolution #05-14*

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION #12-09
RESOLUTION #12-18

WHEREAS, TEWKSBURY FINE WINE & SPIRITS has applied to the Land Use Board of the Township of Tewksbury for the deletion of Condition 21 in a Tewksbury Township Planning Board (predecessor to Tewksbury Township Land Use Board) Memorialization Resolution #05-14 in Application #03-09 which was adopted on June 15, 2005 concerning property which is located at 1 Old Turnpike Road and designated as Block 44, Lot 24.01 on the Tewksbury Township Tax Map, which premises is located in the PM Zone, and

WHEREAS, submission waivers were granted in Application # 03-09 by the Tewksbury Township Planning Board on November 5, 2003 and memorialized in a resolution which was adopted on December 3, 2003, and

WHEREAS, the application was presented at the December 3, 2003, January 7, 2004, March 3, 2004 and March 30, 2004 Planning Board meetings, and

WHEREAS, the application was denied on March 30, 2004 and a memorialization resolution was adopted on June 16, 2004, and

WHEREAS, the Board's denial was appealed by Tewksbury Fine Wine & Spirits to the Superior Court, and

WHEREAS, the trial took place on April 8, 2005, and

WHEREAS, the Court issued a written opinion dated May 12, 2005, and a final order, and

WHEREAS, the final order provided in pertinent part:

"1. The determination of the Township of Tewksbury Planning Board as set forth in its Resolution dated June 16, 2004 is hereby reversed, and the applications for site plan and subdivision approval with buffer waivers, and for a sign and a tree variance, are hereby granted.

2. This matter is remanded to the Township of Tewksbury Planning Board for further proceedings concerning conditions consistent with the opinion of this Court."

AND, WHEREAS, the Planning Board of the Township of Tewksbury filed an appeal from the determination of the Trial Court, and

WHEREAS, the remand hearing for the imposition of reasonable conditions took place on June 1, 2005, and

WHEREAS, the Board imposed 23 conditions which were memorialized in a resolution which was adopted on June 15, 2005, and

WHEREAS, among the conditions imposed was twenty-one:

"21. The exterior of the building shall have a coffee color."

AND, WHEREAS, the appeal was dismissed, and

WHEREAS, Tewksbury Fine Wine & Spirits, has now applied to the Land Use Board of the Township of Tewksbury, as the successor to the Tewksbury Township Planning Board, for the deletion of Condition 21, and

WHEREAS, Andrea Maranca, the owner of Tewksbury Fine Wine & Spirits, presented the request at the July 18, 2012 Land Use Board meeting, and

WHEREAS, the Board, after considering the testimony presented by Andrea Maranca and the comments of Zoning Officer Randall Benson has made the following factual findings:

1. As to Condition 21, Ms. Maranca noted that hers was the only property in Tewksbury Township whose color was imposed by the municipality. It was noted that colors are not controlled in the DRO for any property in Tewksbury Township including those properties in Historic districts.

2. Ms. Maranca asked that she should have the same rights as every other property owner in Tewksbury Township to paint the exterior of her building as she saw fit. After some discussion the Board agreed to invalidate Condition 21.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Tewksbury on this 15th day of August 2012 that the application of TEWKSBURY FINE WINE & SPIRITS be approved for the deletion of Condition 21 in the June 15, 2005 Memorialization Resolution controlling the color of the exterior of the building.

Roll Call Vote

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

Those Opposed: None

➤ **Resolution No. 12-16** – Johnson, Appl. No. 09-05, Block 23, Lot 23

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 09-05
RESOLUTION # 12-16

WHEREAS, JAMES L. JOHNSON has applied to the Land Use Board of the Township of Tewksbury for preliminary and final site plan approval and a use variance under N.J.S.A. 40:55D-70d for a restricted use helistop at *Cedar Lane Farm* which is located at 81 Homestead Road on property designated as Block 23, Lot 23 on the Tewksbury Township Tax Map, which premises is located in the Farmland Preservation (FP) Zone, and

WHEREAS, the application was presented by Attorney Miles Winder; Esq.; Tucker Johnson; Civil Engineer Ronald A. Kennedy, P.E. of the firm of Gladstone Design Inc.; Professional Planner Elizabeth McKenzie, P.P.; Attorney John (Jack) McNamara, Esq.; and Acoustical Engineer Norman R. Dotti, P.E. of the firm of Russell Acoustics, LLC at the March 16, 2011, June 1, 2011, August 3, 2011, September 21, 2011, November 2, 2011, November 16, 2011, January 18, 2012, March 7, 2012, March 21, 2012, and May 2, 2012 Land Use Board meetings, and

WHEREAS, the application was opposed by Attorney David Cohen, Esq., who presented Tewksbury residents Nancy Held, Chris Kennedy, Lois Kennedy, Larry Ross, Amelia Ross, and Bob Flowers, Milford resident Ann Forer, and Professional Planner Peter Steck, P.P., 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 Francis (Frank)

Banisch, P.P. and Charles (Chuck) McGroarty, P.P. of the firm of Banish Associates, which serves as the Township Planner, and

WHEREAS, the Board, after considering the evidence presented by the applicant, the objectors, Township residents and neighboring property owners, members of the general public, and the Municipal Consultants, has made the following factual findings:

A. The Subject Property.

1. Cedar Lane Farm is an irregularly shaped 235.57 acre parcel with approximately 14 feet of frontage on Homestead Road and 260 feet of frontage on Flint Hill Road.

2. The main driveway to the site is from Homestead Road. There are two driveways to the site from Flint Hill Road, and a number of driveways and paths throughout the property.

3. The Cold Brook is a c-1 stream that traverses the eastern and southern portions of the site. The stream corridor has been placed within a conservation easement. The 300 foot riparian buffer extends through the center of the site and encompasses many of the existing structures.

4. Agricultural uses on the site include the dairy, timber, an equestrian operation, and the growing of crops.

5. The sole residents at Cedar Lane Farm are members of the Johnson family and their staff. Tucker Johnson has a residence on the property. Tucker Johnson spends about two months a year at Cedar Lane Farm, and the balance at his homes in Hobe Sound, Florida, Montana, and other locales. His father is a resident of Florida,

spending at least 183 days a year in that State, while retaining a residence on a neighboring farm in Oldwick and a home in the Hamptons.

Tucker Johnson and his five siblings have thirteen children. Jack McNamara noted three of the girls are residents of New Jersey, “. . . but they (the siblings) have either a house or a place to come to in their parents’ home here in Oldwick.”

6. There are a number of barns and other structures that are used in the agricultural operations.

B. The Dairy

7. The principal witness who discussed the dairy operation was Tucker Johnson.

8. Tucker Johnson is not aware of the day-to-day farm operations: “You know, I am in Florida. We have a dairy manager. I don’t breed them myself, so I don’t know, . . .”. Most of Tucker Johnson’s knowledge of the farm came from conversations with the dairy manager.

9. John Seward Johnson, the grandfather of Tucker Johnson, acquired the original Cedar Lane Farm in 1937. He began a dairy operation with Holstein cows.

10. The dairy operation was dormant in the 1970’s when it was revived by Tucker Johnson, who purchased some cattle and rebuilt the herd. Since then, Tucker Johnson has moved to Florida and sold the dairy business to his father, James L. Johnson.

11. According to Tucker Johnson, Cedar Lane Farm has 56 milking cows and two to three times that number of young cows. Mr. Kennedy testified there are about 100 cows. The dairy has between 5 – 7 employees, and hires temporary employees called “*add men.*”

12. Cedar Lane Farm has dairy cattle and show cattle. The pure bred cattle include Holstein, Jersey, and Brown Swiss, with 60% being Holstein and the other two about 20% each.

13. Tucker Johnson testified that the Cedar Lane Farm dairy operation fluctuates between a small and a large annual loss.

14. Mr. Kennedy estimated that Cedar Lane Farm sells about 15 – 20 cows a year. Tucker Johnson was not aware of the specific breakdown in the milk sales, cow sales and embryo sales. Nor was he aware of the breakdown in the type of cattle embryos which were sold. However, Tucker Johnson estimated that about 50 cow and embryo sales took place each year.

15. Tucker Johnson was aware that prospective purchasers of embryo have come from Japan, Holland, Germany, England, Switzerland, Uruguay, Columbia and Turkey. However, he was not aware of the number or ratio of international and domestic buyers who have come to the farm, and what the prospective purchasers have actually bought.

16. Cedar Lane Farm has 30 full and part-time employees. The Cape Ranch Foundation is located there, as are some other Johnson family operations.

C. The Neighborhood.

17. Chris Kennedy, who is a neighbor of the Johnsons, resides at 50 Homestead Road. He raises miniature horses 32” – 33” high to the shoulder and regular sized horses. The Sharing Village, a nonprofit organization, brings young cancer survivors ages 7 – 16 to the Kennedy farm. The children are placed in carts along with an adult and given rides by both the miniature and regular sized horses. The rides have proven to be both a joyous and therapeutic experience for the children.

18. Larry Ross, another neighbor of the Johnsons, who resides at 60 Homestead Road, raises hay, apples, peaches, plums, pears and cherries and has chickens on his farm. There is a horse trail on his property which is open to the public.

19. Planner McGroarty in his March 10, 2011 report noted that the entire Farmland Preservation District was proposed to be included in the Cold Brook Historic District in the September 2003 Master Plan, Land Use Plan Element at page 99 and the Historic Preservation Plan at pages 147 – 154. The 2003 Master Plan, Historic Preservation Plan, at page 150 says:

“The proposed Cold Brook Historic District is located in the southeast section of the Township along tributaries of the Cold Brook. It consists of intact 19th century farmsteads which have been in continuous operation as farms, and have not been impacted by 20th century intrusions.”

“The proposed district primarily consists of very large lots of land, with agricultural fields, most of which are still actively cultivated. The topography is flat, with only a few gentle rolling hills, contrasting to the more wooded hilly areas north of the proposed district. The individual properties retain an excellent degree of integrity, as does the proposed district as a whole.”

D. The Proposal.

20. The applicant requests permission to install on his property and use a restricted use helistop for helicopter landings and take-offs, which are a prohibited use in the FP Zone.

21. The proposed helistop would be located at the northeast corner of the property. Set back 100 feet from the eastern property line would be a grass landing area within a 100 foot diameter circle. Fourteen flush mounted lights would surround the landing area and be directed skyward. Helicopters landing at night could activate the landing lights. The lights would remain lit for 10 – 15 minutes after activation. A wind cone would be placed on a 15 – 20 feet high pipe-like flag pole with a light on top. A 100 feet by 100 feet helicopter parking area would be located 125 feet behind the landing area.

22. The applicant presented Attorney John McNamara who is an expert in the fields of aviation and aviation law. Mr. McNamara has advised the Johnson family on aircraft purchases by their closely held corporations. He is Secretary to some of the Johnson corporations and is the Chief Operating Officer of others.

He testified that a *heliport* is used exclusively for helicopter take-offs and landings, while a helistop is used by helicopters and also for alternative uses. The alternative use for the Johnsons' helistop would be a cow pasture.

23. The applicant seeks a restricted use helistop which would permit unlimited flights for those with permission from the Johnsons to land and take off but would not be open to the public.

24. The proposed flight approach path would be from:

- Routes 78 and 287 intersection.

- Through Route 78 corridor West.
- To the southeast corner of the Trump National Golf Course.
- Turning toward the Lamington Church steeple.
- Begin the descent toward the large blue silos at Cedar Lane Farm.

25. Both Tucker Johnson and John McNamara testified that all pilots entering and exiting Cedar Lane Farm would follow the route described in factual finding 24. Those pilots who failed to follow the route would be prohibited from flying into and out of the proposed helistop.

26. Both James L. Johnson and Tucker Johnson spend most of their time away from Tewksbury Township. They therefore would not be able to enforce the flight protocol which would be left to a farm employee or John McNamara.

27. The helistop would be used for personal use and for buyers of cattle and embryos. While Tucker Johnson could not provide a breakdown, he testified that the predominant use of the helistop would be personal. Typical trips would include:

“If it goes down to the Hamptons, it may come back. It may stay out there. I used it for parent’s weekend to go up and see Sam in Massachusetts a couple of weeks ago. It is short trips like that, to go into the city occasionally for work.”

28. Tucker Johnson said that the helicopter was used only 1.3 times per week when it was based in New Jersey from June 2011 through October 2011.

29. Tucker Johnson speculated that international embryo buyers would fly to Cedar Lane Farm’s helistop 3 – 4 times in the Spring and 1 – 2 times in the Fall.

30. According to Jack McNamara, the Johnson family helicopter was purchased in February of 2007 with 1,450 hours on its Hobbes meter (like an odometer for aircraft) . Four years later it had 1,812 hours. It had been flown an average of 90.5 hours per year. He divided the hours by engine starts to determine that the average trip was .62 hours, or about 37 minutes, which equated to 146 trips per year, or 2.8 per week. These numbers contrast with Tucker Johnson’s testimony that “I use the aircraft in Montana quite regularly and in Florida quite a bit.”

Based on these numbers, and the alleged limited time the helicopter would be at Cedar Lane Farm, Tucker Johnson estimated the personal use of the helicopter at Cedar Lane Farm at 12 times per year. However, the Board finds the construction of a helistop at Cedar Lane Farm would likely lead to a substantial increase in helicopter traffic. The Johnson family helicopter will be available to James L. Johnson and Gretchen Johnson, his wife, their six children, possibly their thirteen grandchildren and friends, and anyone allowed by the Johnsons. Non-agricultural visitors may also use the helistop.

E. The Variance

31. A variance under N.J.S.A. 40:55D-70d(1) is required for the helistop which constitutes a non-permitted use in the FP Zone.

32. The sole property in Tewksbury Township where a helicopter pad is permitted is the RO-MXD (Research Office/Mixed Use) Zone where AM Best is located. Based on the recent site plan application by AM Best in Application No. 10-11, the Board is aware that there is no helicopter pad on that property.

33. There is an inactive helistop at the residence of John and Angela Holt, 2 Fox Hill Road, Tewksbury. The Holts removed the asphalt landing pad and have not used the helistop since buying the property.

34. Applicants for use variances for new non-permitted uses under N.J.S.A 40:55D-70(d)(1) must prove special reasons. Promoting the purposes of the Municipal Land Use Law (MLUL) at a particularly suitable site constitute special reasons. Kohl v. Fair Lawn, 50 N.J. 268 (1967); Medici v. BPR Co., 107 N.J. 1 (1987); and New Brunswick Cellular v. Bd. of Adj., 160 N.J. 1,21 (1999),

35. The applicant's planner Elizabeth McKenzie claimed the following purposes of the MLUL are promoted under N.J.S.A. 40:55D-2 by the proposed helistop:

"a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;"

"g. To provide sufficient space in appropriate locations for a variety of agricultural . . . uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;"

"m. To encourage coordination of the various public and private procedures and activity shaping land development with a view of lessening the cost of such development and to the more efficient use of land;"

36. Section 2a speaks of promoting health, safety, morals and general welfare. Ms. McKenzie claimed that the medevac use of the helistop would promote purpose 2a. That claim is analyzed herein in Sections F and G, factual findings 39 – 46 herein.

37. Section 2g deals with providing sufficient space in appropriate locations for a variety of uses including agriculture. Ms. McKenzie and the applicant's other witnesses contended that the application promoted agriculture. That claim is analyzed in Section H in factual findings 47 – 50 herein.

38. Section 2m encourages coordination between public and private activities with a view to lessen the cost of development and the more efficient use of land. It is not clear to the Board how the establishment of a helistop at Cedar Lane Farm will lead to the more efficient use of land. However, that claim is discussed in Section I in factual findings 51 herein.

F. Medevac Landings.

39. Some Tewksbury Township and Califon emergency service personnel at the May 2, 2012 meeting suggested that the proposed helistop would be helpful for medevac landings. Tewksbury First Aid and Rescue Squad Chief Paul Zanelli spoke in favor of the application. He was unaware that the helistop would be unpaved. The Land Use Board has great respect for the Township's Emergency Service personnel, but finds their statements to be generalized opinions without a factual predicate.

40. Resident Nancy Held requested information regarding all medevac landings in Tewksbury Township under the Open Public Records Act (OPRA) from the Califon, Fairmount, Lebanon, Oldwick, and Pottersville Fire Companies for the period from 2006 through September 2011. The resulting information was presented in Exhibit O-1. During this period of 5 years, 9 months there were a total of 41 medevac landings in Tewksbury Township, with 9 night landings.

41. Ms. Held testified that the medevac helicopters typically landed on municipally owned sites that are proximate to County Roads. There were eight landings at the Christie Hoffman Farm Park, eight at the Old Turnpike School, and three at both the Oldwick ball fields and field at the intersection of 517 and Hill and Dale Road.

42. On page 13 of 0-1 is a Tewksbury map with the medevac landings superimposed. There were no landings at Cedar Lane Farm, and few in the vicinity, which is sparsely developed. Most of the landings have occurred in the more developed areas of Tewksbury Township.

G. The Positive Criteria - an Inherently Beneficial Use?

43. The Johnson's planner Elizabeth McKenzie contended that the helistop would advance the purposes in N.J.S.A. 40:55D-2a of the MLUL by promoting the public health, safety, morals and general welfare by providing a medevac landing facility. This claim was echoed by others at the May 2, 2012 public hearing.

44. The Board finds that the helistop would not be an inherently beneficial use. The paucity of 41 medevac landings in Tewksbury Township over the past five years and nine months, with few landings in the vicinity of Cedar Lane Farm and none on that property, prove that the usage would likely be nonexistent and at most negligible.

45. Even assuming arguendo that the helistop was considered an inherently beneficial use, the Land Use Board finds that it would not meet the four part balancing test set forth by the New Jersey Supreme Court in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. Super. 152, 165-166 (1992):

“First, the board should identify the public interest at stake. . . .
Second, the Board should identify the detrimental effect that will ensue

from the grant of the variance. . . . Third, in some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use. . . . Fourth, the Board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.”

46. As to 1), the public interest would be at most negligible. As to 2), the detrimental effects which are discussed in Section J herein, factual findings 52 - 59 would be substantial. As to 3), this Board lacks the jurisdiction to impose conditions which would mitigate the detrimental impacts. As to 4), the minimal public interest would be overwhelmed by the unavoidable detriments of unbridled helicopter flights from the proposed helistop

H. Providing Sufficient Space in Appropriate Locations for a Variety of Agricultural Uses.

47. Tucker Johnson is away from Cedar Lane Farm most of the year. He has residences in Florida and Montana where he spends most of his time. Tucker Johnson has no financial interest in the dairy operation at Cedar Lane Farm. As noted in factual finding 10, he is not aware of the day-to-day farm operation.

48. Tucker Johnson was aware that buyers of embryo came to the Johnson property. He knew that some came by airplane to nearby airports, some by limousine and some by private bus. He could not give any information as to the number of buyers, how they arrived at the farm, how many embryos were sold to international and how many to domestic buyers.

49. Tucker Johnson expressed the hope that the helistop would encourage foreign embryo buyers to come to the farm. He had heard that a single buyer did not come to Cedar Lane Farm because of the absence of a helistop.

50. The Board concludes that there is no credible evidence that the establishment of a helistop at Cedar Lane Farm would lead to more visits by foreign buyers. (Nor was there any credible evidence that the foreign buyers, if they came, would actually purchase embryo.)

I. Coordination Between Public and Private Activities Lessening Cost of Development and Leading to More Efficient Use of Land.

51. The construction of the proposed helistop would not be based on the coordination of public and private activities, but would be a purely private endeavor for the convenience of the Johnson Family. It would increase the cost of development. It would only be an efficient use of land in the sense that any commercial activity in a residential zone could be considered to be an efficient use of land.

J. The Negative Criteria – Reconciling the Omission of Helistops in the Zoning Ordinance with the Present Application.

52. The New Jersey Supreme Court in the Medici case established an enhanced negative criteria for new nonconforming uses. An applicant for a new nonconforming use must reconcile the proposed use with its nonconforming status in the Zoning Ordinance and Master Plan.

53. The objector's planner Peter Steck noted that the drafters of Tewksbury Township's Development Regulations Ordinance (DRO) were cognizant of helicopter usage by making helicopter pads a conditional use in the RO-MXD (Research Office/Mixed Use) Zone. The Board notes that this zone encompasses the A.M. Best Corporate Center. The governing body confined helicopter landings and takeoffs to this single property.

54. The Johnsons' proposed helistop is contrary to the intent of the DRO which is to limit helicopter pads to a single property located along Interstate 78.

55. The Land Use Board has recently adopted, with amendments, the 2012 Periodic Re-Examination Report of the Master Plan. The requested variance will denigrate, rather than promote, the goals of the Master Plan.

“III. Threats to Tewksbury’s Aesthetic Beauty.”

Helicopter landings and takeoffs in one of the most rural areas in Tewksbury Township would be an aesthetic impairment to the bucolic countryside.

“IV. Threats to Farms and Farmland Areas.”

There was no credible evidence that the helistop will aid the dairy operation at Cedar Lane Farm.

Chris Kennedy was concerned that helicopter traffic would spook the horses pulling carts and endanger the passengers. Larry and Amelia Ross were worried about the impact of helicopter flights on equestrians riding on the trail on their farm. Similar concerns were expressed by Ann Forer. Contrary testimony was provided by Dr. Furlong who is an equine veterinarian as well as Dr. Jane Cailles of Oldwick Animal Hospital and Guy Torsilieri of the Far Hills Horsemen Association. The Board finds there is insufficient evidence to make a determination on the impact of the helicopter flights on horses' behavior.

“VII. Threats to Townships’ Rural and Scenic Roads.”

The Tewksbury Township Scenic Roads and Bridges Commission issued a report on January 28, 2011 which stated:

“The subject property lies within the Cold Brook District, as stated in the township master plan, wherein many farms and homes are

located in their original historical settings dating back to the 18th century. Homestead Road is a designated scenic road according to the master plan, and is one of the earliest recognized as such, giving credence to its historical significance, and its location in a tranquil valley of farms and fields. The area is frequented by equestrians, hikers, and bicyclists.

The SRBC members reviewed the application, specifically in relation to their responsibilities as stated in Tewksbury Scenic Roads and Bridges Ordinance articles 12.22.020.B and 12.22.040.B.6. The SRBC members present, representing a quorum of the members, were in unanimous agreement that helicopter operations would be a totally inappropriate activity on the referenced site, and a variance should not be granted. The beauty and tranquility of the valley and its environs would be seriously disturbed by the high noise levels, and possible air pollution, as well as by the appearance of low flying aircraft. Domestic animals and wildlife would also be negatively affected.”

The Board finds that helicopters flying into and out of Cedar Lane Farm would be discordant and incongruous with the farms, estates, and historic homes in the neighborhood along Homestead Road, which is a scenic road.

“XVI. Threats to Darkness of the Night Sky.”

The helistop lights will bring additional unwanted night lights to rural Tewksbury.

Ms. Held in Exhibit 0-3, on pages 7 – 9 presented photographs of neighboring properties whose residents would see the helistop landing lights. The applicant did not refute Ms. Held’s contention that the landing lights would be visible to neighboring property owners. The Board finds that the lights would be visible to a number of Tewksbury Township residents.

56. The Tewksbury Township Environmental Commission in its report of January 25, 2011 concluded:

“Conclusion: Creating a heliport is not consistent with the goal of reducing noise and light pollution. Local bird flocks may pose a safety hazard.

Moreover, creating a precedent for a heliport on property that has just received approval for 12 new building lots (significantly raising the number of family members who could potentially use helicopters) is not consistent with Township Values.”

K. Noise and Vibrations.

57. Tucker Johnson and another Johnson family pilot flew test flights over the prescribed flight pattern on June 29, 2011. Once the flights were perfected to minimize the noise generated from the helicopters, Acoustical Engineer Norman Dotti made measurements which indicated low decibel readings. However, no sound measurements were taken under the helicopter flight path.

58. Larry and Amelia Ross were in their home when Tucker Johnson made a test flight in the fall of 2009. Larry Ross described the results as vastly different from the June 29, 2011 test flights. The noise was very loud in 2009. Amelia Ross was in the dining room. The windows vibrated. She characterized a typical helicopter flight as having a noise level of between 2 – 3. The 2009 landing was at a magnitude of 8 – 9.

59. The Board finds that many flights will not be under the ideal June 29, 2011 conditions. These flights will likely generate significant noise and vibrations to nearby homes.

L. An Ability to Condition an Approval.

60. Because of State and Federal preemption of aeronautics flights, the Board has limited jurisdiction to condition the present application. City of Burbank v. Lockheed Air Terminal, 411 U.S. 624 (1973); Township of Hanover v. Town of Morristown, 135 N.J. Super. 529 (App. Div. 1975), Piralo v. City of Clearwater, 711 p. 2nd 1006 (United States Court of Appeals, Eleventh Circuit 1983).

The Board cannot control or condition the following:

- The number of flights to and from the helistop.
- The flight pattern.
- The number of parties given permission by the Johnsons to use the helistop.
- The type of helicopters coming in to and out of Cedar Lane Farm.
- The time of the flights.
- The noise generated from the helicopters.

61. Even if the Board were legally able to condition use of the helistop, it is extremely unlikely that the conditions could actually be controlled.

L. Alternative Landing Sites.

62. The Johnson Family has a number of reasonable alternative landing sites.

63. The Johnson helicopter has used the Somerset Airport in Bedminster Township which is approximately 9.5 miles and 15 minutes from Cedar Lane Farm.

64. Other airports which are open to helicopters include Solberg in Readington Township, Alexandria Airport, and Morristown Airport.

65. Bedminster Township allows helistops as conditional uses on parcels of at least 10 acres.

66. James L. Johnson's daughter Christy Johnson Moynihan owns more than 10 acres of land on Lamington Road in Bedminster Township which is about 3.2 miles from Cedar Lane Farm. One would expect Ms. Moynihan, as the recipient of Johnson family helicopter rides, to allow a helistop or heliport on her property, especially if the flights were as infrequent as suggested by her brother and John McNamara.

67. Robert Wood Johnson, IV, a relative of the applicant, also owns a large parcel of land on Lamington Road in Bedminster Township which contains a helistop.

Based on the foregoing factual findings this Board concludes:

A. Cedar Lane Farm is located in a bucolic, sparsely developed area of Tewksbury Township. Within the neighborhood are farms and a number of historic homesteads. Homestead Road is an attractive scenic road.

B. The proposed helistop would be used mainly as a convenience for the Johnson family and their friends.

C. Tucker Johnson expressed the hope that the helistop would lead to wealthy foreigners traveling to Cedar Lane Farm to purchase cattle and embryo. There was apparently a single foreign buyer who did not travel to Cedar Lane Farm because of the absence of a helistop. The Board finds that there is no credible evidence that the helistop would have any discernable impact on the Johnson dairy business.

D. The estimated prior personal use of the helicopter by John McNamara and Tucker Johnson is not predictive of future use.

E. The construction of a helistop at Cedar Lane Farm would likely substantially increase the use of the helicopter.

F. With James L. Johnson and Tucker Johnson residing out of New Jersey most of the year, it is unlikely that a Johnson family employee or Jack McNamara, who resides in Far Hills, would be controlling the flight pattern of landings and takeoffs of Johnson family members and friends from Cedar Lane Farm who are anxious to use

the helicopter to make an airplane connection or for personal engagements or brokers bringing wealthy buyers to the farm.

G. The controlled June 29, 2011 test flights would not be duplicated by all helicopter take-offs and landings. Some will be more like the 2009 test flight which was loud and shook the windows of a neighbor's home.

H. The lights will be a discordant use.

I. The applicant has failed to provide the positive criteria of special reasons for a use variance under N.J.S.A. 40:55D-70d(1). The application will not promote any of the purposes of the MLUL under N.J.S.A. 40:55D-2.

J. Cedar Lane Farm is not a particularly suitable site for medevac landings. The proposed helistop cannot be justified on the basis of providing a hypothetical medevac landing area. It is noteworthy that not a single medevac has landed on the Johnson family holdings between 2006 and September 2011. Medevac helicopters have landed on more developed areas elsewhere in Tewksbury Township.

K. The applicant has failed to provide the enhanced proof of the negative criteria under Medici. The proposed helistop cannot be reconciled with either the DRO or the Master Plan. The helistop is inconsistent with the prohibition in the DRO on helicopter pads anywhere in the municipality except the AM Best property. It cannot be reconciled with the goals of the Master Plan.

L. The application is inconsistent with the non Medici proofs on the negative criteria. The noise, lights, and activity make it antithetical with the quiet, bucolic, neighborhood of farms, estates, and historic homes.

M. The applicant has failed to prove the negative criteria that the proposed use will not cause substantial detriment to the public good, nor substantially impair the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

N. Unlike most applications which come before the Board, the Board cannot impose conditions on the operation of the helistop. As noted in factual finding 60, the Board cannot control the number of flights to and from the helistop, the flight pattern, the number of parties given permission by the Johnsons to use the helistop, the type of helicopters coming into and out of Cedar Lane Farm, the time of the flights, or the noise generated by helicopters. Even if the Board were able to impose conditions on the helistop's operation, the conditions would not likely be enforced.

O. The Johnsons can continue to base their helicopter at the convenient Somerset Airport, which is only 15 minutes away in Bedminster Township, or alternatively explore the construction of a heliport or helistop on Christy Johnson Moynihan owned property in Bedminster Township, or use the existing helistop on property in Bedminster Township owned by Robert Wood Johnson, IV.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 15th day of August, 2012 that the application of JAMES L. JOHNSON be denied.

Roll Call Vote

Those in Favor: Mr. Mackie, Mr. Kerwin and Mr. Johnstone

Those Opposed: None

Public Hearing/Extension Request

- Frances Schmitt
LUB Application No. 09-21/Application No. ZBA03-17

Block 11, Lots 5.02, 5.03 & 6

Mrs. Schmitt was present and sworn in by Mr. Johnstone.

Mrs. Schmitt requested that the variance be extended for an additional five (5) years since she has been unable to sell the lot. She explained that she currently has a contract on the lot but is not sure if it will sell. When asked if she has had a chance to review the report from the Land Use Engineer dated August 13, 2012, Mrs. Schmitt responded it he positive and agreed to the recommendations made by Mr. Burr.

Ms. Goodchild noted for the record that the Board has historically granted one (1) year extensions to Mrs. Schmitt but at the last hearing the Board suggested that she request a longer extension in the future. Ms. Goodchild noted that the applicant noticed for five (5) years so the Board could grant an extension from one (1) to five (5) years. She conveyed to the Board that Mr. Bernstein opined that five (5) years would be too long but three (3) years would be more appropriate.

Mr. Kerwin asked why they were having trouble selling the lot. Mr. Robert Schmitt was sworn in by Mr. Johnstone and explained that due to the economy the lot has not sold despite the price being lowered from \$300,000 to \$120,000. Mr. Johnstone reminded the Board that this applicant had difficulty for many years finalizing the common driveway agreement.

When asked by Mrs. Czajkowski the size of the lot, Mr. Schmitt indicated 3.7 acres. When asked if it is landlocked, Mrs. Schmitt responded in the positive. When asked if it is presently listed, Mrs. Schmitt responded in the positive and indicated that there is currently an offer on the lot. When asked what has been approved for the lot, Mr. Schmitt explained that the present buyers have secured current perc tests and have submitted a Grading and Surface Water Management Plan for approval. When asked if there is a closing date, Mrs. Schmitt responded in the negative. When asked if the purchaser has been approved for financing, Mrs. Schmitt explained that they are in the process of securing financing.

When asked by Mr. Mackie when the common driveway agreement was finally signed, Ms. Goodchild noted that the agreement is dated June, 2010. Mr. Schmitt explained that they had trouble getting all of the parties to agree on the maintenance responsibilities. When asked if this is the first offer since the driveway agreement was signed, Mr. Schmitt explained that it is the first offer they have had in five (5) years.

Mr. Johnstone recommended the Board grant a three (3) year extension.

Mrs. Czajkowski agreed and confirmed that land sales in the township are very slow.

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

Mr. Van Doren made a motion to grant a three (3) year extension which commences from the expiration of the prior extension (October 21, 2012). Ms. Desiderio seconded the motion. The motion carried by the following roll call vote: start

Roll Call Vote:

Ayes: Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Czajkowski, Mr. Kerwin, Mr. Shapack, Mr. D'Armiento and Mr. Johnstone

Ayes: None

ENVIRONMENTAL CONSTRAINTS ORDINANCE/RIDGELINE ORDINANCE

Ms. Goodchild explained that the Board asked staff to look into an ordinance that would subtract out the environmentally sensitive areas from the land to calculate the minimum lot size. She explained that she has discussed the ordinance with both Bill Burr and Chuck McGroarty and both agree that it does not make sense for Tewksbury to adopt this type of ordinance given the regulations from the Highlands; the Highlands will be more restrictive than any ordinance Tewksbury would adopt. The Board agreed but asked that the ordinance not be forgotten in the event the Highlands regulations get watered down.

When asked about the Ridgeline Ordinance, Ms. Goodchild explained that the problem with a Ridgeline Ordinance is enforcement. Mr. Mackie agreed and noted that the Environmental Commission found that it would be difficult to enforce and also suggested waiting to see what comes out of the Highlands regulations. Ms. Goodchild noted that she discussed this with Chuck McGroarty and he agrees that the enforceability is difficult. Mr. Johnstone suggested amending the DRO to provide for a definition of a ridgeline and would require anyone building on a ridgeline to appear before the Land Use Board before any disturbance occurs. Ms. Goodchild agreed to research the definition of ridgeline in other towns.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:00 p.m. by motion of Ms. Desiderio and seconded by Mr. Kerwin.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator