LAND USE BOARD MINUTES
May 16, 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 7:35 p.m.

Present: Blake Johnstone, Dana Desiderio, Shaun Van Doren, Bruce Mackie, Shirley Czajkowski, Arnold Shapack, Alt. #1, Eric Metzler, Alt. #2 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: Elizabeth Devlin, Mary Elizabeth Baird, Michael Moriarty and Ed Kerwin.

There were approximately fourteen (14) 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. Mayor Desiderio made a motion to approve the claims listed below and Mrs. Czajkowski seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at May 2, 2012 meeting - invoice dated May 3, 2012 ($450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Cahill (Emmet), B42, L6.01, invoice dated May 7, 2012 ($682.50)
3. Bernstein & Hoffman – Land Use Board Escrow – Newell, B34, L13.01, invoice dated May 7, 2012 ($727.50)

<u>Roll Call Vote</u>
Ayes: Blake Johnstone, Dana Desiderio, Shaun Van Doren, Bruce Mackie, Shirley Czajkowski, Arnold Shapack, Alt. #1, Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #4

Nays: None

CORRESPONDENCE

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

1. A Memo dated April 25, 2012 from Roberta Brassard re: Ordinance No.'s 07, 08, 09 & 1002012 for review for consistency with the Master Plan pursuant to MLUL 40:55-31.
2. Notice dated May 4, 2012 from Jeff Tareila Environmental Consulting re: application to the NJDEP for a Statewide General Permit #25 for 30 Felmley Road, Block 45, Lot 13.
3. A copy of a letter dated May 4, 2012 from Robert Zalewski of Malick & Scherer to William Burr re: JCP&L, Appl. No. 12-04, Block 17, Lots 2.01 and 2.02.
4. A copy of a letter dated May 7, 2012 from NJ Highlands Council to Mayor Desiderio re: Adopted Planning Area Petition Ordinance and Adopted 2012 Periodic Master Plan Reexamination Report.
5. A letter dated May 11, 2012 from William Burr re: JCP&L, Appl. No. 12-04, Block 17, Lot 2.01 & 2.02.
6. An e-mail dated May 11, 2012 from Harold Wrede, Chairman of the Scenic Roads & Bridges Commission re: JCP&L, Appl. No. 12-04, Block 17, Lots 2.01 & 2.02.

MINUTES

- April 4, 2012

The minutes of April 4, 2012 were approved by motion of Mr. Van Doren and seconded by Mayor Desiderio. All were in favor. Mr. Metzler and Mrs. Czajkowski abstained.

- April 18, 2012

The minutes of April 18, 2012 were approved by motion of Mr. Johnstone and seconded by Mr. Metzler. All were in favor. Mrs. Czajkowski, Mr. Van Doren and Mayor 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.

Resolution

- **Resolution #12-10 –** Cahill (Emmet), Appl. #12-03, Blk 42, L6.01
  Those eligible: Mr. Mackie, Mrs. Devlin, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Mayor Desiderio recused herself from the meeting.

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 12-03
RESOLUTION # 12-10

WHEREAS, BRIAN J. CAHILL (ANNE EMMET) has applied to the Land Use Board of the Township of Tewksbury for a Conditional Use for the construction of an apartment for a low income care taker or farm employee on the second floor of a garage on property which is located at 1 Cold Brook Road and designated as Block 42, Lot 6.01 on the Tewksbury Township Tax Map, which premises is located in the F-P (Farmland Preservation) Zone, and

WHEREAS, the the application was presented at the April 18, 2012 Land Use Board meeting by Attorney Aaron R. Culton, Brian Cahill and Anne Emmet, and

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

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

A. <u>The Subject Property</u>

1. The subject property contains 30.83692 net acres and 32.68696 gross acres. It has 1,563 +/- feet of frontage on Cold Brook Road and 1,716 +/- feet of frontage on Lamington Road.

2. About 12 acres on the western side of the property is constrained with wetlands, wetlands transition area and a riparian buffer.

3. Bisecting the site in a north south direction is a 16.5 feet wide underground cable easement.

4. Access to the site is through a driveway from Cold Brook Road.

5. The property has been deed restricted for agricultural use by a Deed of Easement dated January 22, 2007 and recorded in the Hunterdon County Clerk's Office on January 25, 2007 in Deed Book 2176 at Page 96 et. seq. The Easement permits housing for an agricultural laborer employed on the premises that is neither the Grantor nor the Grantor's relatives. Also, a single family residence may be constructed on the site (to replace the existing residence) within a non-severable exception area consisting of 3.019 acres.

6. The applicant Brian Cahill, as the contractor, is constructing a single-family residence and a detached garage with a proposed second floor apartment. The construction is taking place east of the underground cable Easement on unconstrained property.

7. The owner of the property is Anne Emmet.

B. <u>Zoning Considerations</u>

8. The subject property is in the FP Zone where the minimum lot size is 7 acres. Twenty acres is required for a second dwelling unit.

9. The applicant presented testimony that the apartment would meet the conditional use requirements under Section 710.1D3 of the Development Regulations Ordinance (DRO).

> 3. Low and moderate income housing conforming to the following requirements: In order to provide additional opportunities for low and moderate income housing and, in particular, to offer an opportunity to the low and moderate

income families which include a farm worker, lots having a least 20 acres and whose principal use is a farm may also be permitted to have an accessory building used as a dwelling unit, provided:

a. Each unit shall comply with the requirements of Section 707, that are not amended in the Section, and the Housing Ordinance.

   Section 707 of the DRO list requirements for low and moderate income housing. The applicant agreed that the apartment would be deed restricted to the approval of the Tewksbury Township Zoning Officer of low and moderate income housing.

b. Each such dwelling unit shall serve as living quarters for an employee of the farm, or the employee and his/her family.

   The application was for an apartment for a farm employee or caretaker of the property.

c. Each such unit shall be a maximum size of two bedrooms and have a maximum floor area of 900 square feet.

   The one-bedroom, 879.25 square foot apartment will contain a kitchen/breakfast area/living area, bathroom, and bedroom with a closet.

d. No more than one dwelling unit shall be located in any one converted access building.

   The proposal is for a single-family home and one apartment.

e. Each unit shall be located so as to have setbacks twice those required for other farm accessory buildings except no such unit shall be located in any front yard unless it is set back from the street line at least 200 feet.

   The Land Use Board Engineer testified that the apartment met this requirement. It will have a minimum side yard of 590.02 feet, rear yard of 617.86 feet and minimum front setbacks of 426.93 feet and 520.48 feet, respectively.

f. The number of units (in addition to the principal dwelling) permitted under these provisions shall not exceed one unit

per 10 acres, or one unit per 20 horse stalls, or a total of four units per lot, whichever results in the smaller number.

The proposal is for two dwelling units on more than 30 acres.

g. Each unit shall have its own exterior means of access separate from any other unit.

The single family dwelling and the apartment will each have separate access.

h. The potable water supply and sewerage disposal system for the unit(s) and principal dwelling shall be adequate.

A well has been drilled which will serve both dwelling units. The septic design has been approved by the Hunterdon County Board of Health for 5 bedrooms. The single-family residence will contain 4 bedrooms and the apartment will contain a single bedroom. An e-mail dated March 7, 2011 from Bob Vaccarella stated that the septic design was approved on August 31, 2009 and is still in effect.

i. Additional off-street parking shall be made available for each unit in accordance with Section 721.

There are four (4) garage parking spaces for the single-family residence within the detached garage, two (2) designated parking spaces for the apartment, and room for several additional cars to be parked in the driveway behind the single family dwelling.

j. The property on which the housing is located shall be under Farmland Assessment.

The property is under Farmland Assessment. It is planted with corn and hay.

10. Harold F. Wrede, the Chairman of the Scenic Roads and Bridges Commission, sent an e-mail to Ms. Goodchild on April 13, 2012 stating that the Scenic Roads and Bridges Commission found the proposed caretaker apartment to be acceptable according to the Scenic Roads Ordinance.

11. The Land Use Board finds that the applicant has met the conditional use requirements and is entitled to approval.

NOW, THEREFORE BE IT RESOLVED, by the Land Use Board of Township of Tewksbury on 16th day of May, 2012, that the application of Brian J. Cahill (Anne Emmet) be approved in accordance with the engineering plans plans titled: "CONDITIONAL USE PLAN, LOT 6.01, BLOCK 42, COLD BROOK ROAD & LAMINGTON ROAD, TOWNSHIP OF TEWKSBURY, HUNTERDON COUNTY, NEW JERSEY" prepared by Apgar Associates on December 12, 2011 and last revised March 14, 2012 consisting of two sheets and architectural plans entitled: "Project Name: EMMET RESIDENCE PROPOSED OUTBUILDING, Location: BLOCK 42, LOT 6.01, TEWKSBURY TWP NJ" prepared by VJM Architecture on May 10, 2011 and last revised on March 13, 2012 consisting of sheets C1, A2, A3, A5, A6 and E1, subject however to the following requirements:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV PE in his report of April 13, 2012, as modified by the Land Use Board:

> 1. According to DRO Section 710.1.D – Conditional Uses, low and moderate income housing is a permitted conditional use within the Farmland Preservation District, subject to the following requirements:
>
> *The applicant satisfied the Conditional Use Requirements in 710.1.D of the DRO.*
>
> 2. The plans should be provided to the Township Fire Department for review and approval of site access, circulation and building accessibility.
>
> *The applicant has agreed to this requirement.*
>
> 3. The architectural plan for the proposed barn/apartment has been revised to reflect light fixtures at the various doorways. Information should be provided by

the applicant regarding the type, style and quantity of lights that are proposed to confirm that there will not be any undesirable effects to the surrounding properties in accordance with the Township Lighting Ordinance - Section 632. These lights should be minimal wattage and be down-shielded to ensure compliance with the above requirements.

The testimony disclosed that exterior lights will be shielded downward with wattages between 75-125. The applicant shall supply cut sheets to the Land Use Board Engineer. The exterior lighting is subject to to his approval. Lighting shall not cause glare or sky glow an adjoining properties or roadways. The lighting shall be in conformance with Section 632 of the Lighting Ordinance.

4. The architectural plans label the proposed bedroom as "Bedroom #2" however there is only one bedroom shown on the floor plan. The applicant shall confirm whether a one or two bedroom apartment is being proposed.

The plans shall be revised to reflect a single bedroom in the apartment.

5. I understand that the applicant has already obtained approvals for the Grading and Surface Water Management Plan (GSWMP) and driveway permit. The applicant will need to comply with any conditions of these approvals and the improvements will be subject to the approval of the Township Engineer's office.
The completed improvement will be subject to the final approval of the Township Engineer prior to issuance of a certificate of occupancy.

2. 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.

3. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, county and local municipal governments that may apply to the premises. The applicants shall subject a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

4. This resolution and the issuance of a building permit hereunder is conditioned upon the applicant paying all escrow fees and real estate taxes.

5. The applicant shall send a letter to the Tewksbury Police Department advising it of two dwellings on the property, with a copy mailed to the Land Use Administrator.

6. A deed restriction for the low income housing unit is subject to the approval of the Zoning Officer. It shall be filed with the County Recording Office.

7. The plans shall be revised to the approval of the Land Use Board Engineer by the removal of the post light and by showing the correct number of bedrooms in the home and apartment.

Roll Call Vote
Those in Favor: Mr. Mackie, Mr. Shapack, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- **Resolution #12-11 –** Newell, Appl. #12-05, Blk 34, L13.01
  Those eligible: Mr. Mackie, Mrs. Devlin, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 12-05
RESOLUTION # 12-11

WHEREAS, JOHN TIMOTHY (TIM) NEWELL has applied to the Land Use Board of the Township of Tewksbury for permission to construct an addition to an existing barn which would be used as a garage on property which is located at 20

Meadow Lane and designated as Block 34, Lot 13.01 on the Tewksbury Township Tax Map, which premises is located in the HL (Highlands) Zone, and

WHEREAS, the application was presented by John Timothy Newell at the April 18, 2012 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, PA, and

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

A. The Subject Property.

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

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

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

B. The Proposal.

4. The applicant proposes to construct a 26 feet wide by 36 feet deep addition to the frame barn which would serve as a two car garage.

5. Mr. Newell testified that the siding for the addition would match that of the existing barn, which may be re-sided. The addition would have a metal roof.

6. Neighboring property owner Henry Kreuter of 19 Meadow Lane was concerned that the roof be a "non-shining metal". The applicant agreed to this condition.

C. Zoning Considerations.

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

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

9. The existing frame barn has a side yard of 40.5 feet which will be reduced to 30.5 feet by the proposed addition. The addition will increase impervious lot coverage from 10.57% to 10.83%, while the DRO limits impervious lot coverage to 7.77% for the subject property.

D. Justification for Variances.

10. The proposed placement of the barn addition is particularly appropriate, being located at the end of an existing circular driveway which will not require a new driveway.

11. The residence on the adjoining lot to the south is a substantial distance from the property line.

12. The Land Use Board would ordinarily require an applicant to provide a stormwater management plan for excessive lot coverage. For the current application that would require reducing the runoff from 10.83% to that produced by 7.77% lot coverage. The Board gave the applicant the alternative of removing 445 square feet of impervious coverage (which is the net increase from the proposed garage) from the driveway leading to the home, or providing a detention facility and the usual deed restriction. At the public hearing the applicant had not made up his mind as to which approach he would follow.

13. The requested relief, with appropriate conditions, can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 16th day of May 2012 that the application of John Timothy Newell be approved in accordance with engineering plans titled: "**VARIANCE MAP** TAX MAP LOT 13.01 BLOCK 34 TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY**"** prepared by Parker Engineering & Surveying, P.C. dated February 14, 2012 and last revised March 28, 2012 consisting of two sheets and an architectural plan titled: "PRPOSED [sic] ACCESSORY STRUCTURE FOR TIM NEWELL 22 MEADOW ROAD LEBANON, NJ" prepared by Ralph L Finelli, Architect revised March 26, 2012 consisting of Sheet A1, subject, however, to the following conditions:

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

"TECHNICAL REVIEW:

1. The applicant should describe in detail the proposed addition to the existing barn including the proposed use of the space and exterior style, materials, color, etc. *The barn addition will be used as a two car garage. Its siding will match that of the existing barn. It is likely that the existing barn will be resided with the same siding which is used on the addition. The addition will have a metal roof. The metal on the roof shall not be shiny.*

2. The applicant and its professionals should provide testimony to support the proposed side yard variance, including testimony as to the location of residential dwellings on adjoining properties and surrounding vegetation. Did the applicant consider renovating the existing barn to use as a garage or perhaps constructing the garage addition to the north side of the barn to eliminate the need for the side yard variance? *See factual findings 10 – 11 herein.*

3. The applicant and its professionals should provide testimony to support the proposed lot coverage variance. The property is currently 4,718.50 S.F. in excess of the permitted lot coverage and the applicant is proposing an additional net increase of 445 S.F. as part of this application. The total excess lot coverage (net) as a result of the proposed improvements, beyond that which is permitted, is proposed to be 5,163.50 S.F. *See factual finding 12 herein.*

   In an effort to reduce the impacts of the additional lot coverage, testimony shall be provided to confirm whether any existing lot coverage (i.e., gravel driveways, existing structures, etc.) can be removed. *See condition 2 herein.*

4. The plans do <u>not</u> propose any stormwater management facilities to capture and infiltrate runoff from the proposed garage addition. As with previous lot coverage variance applications, the Board should consider requiring the applicant to address stormwater management as part of this application. *See condition 2 herein.*

5. The applicant should clarify whether any trees or shrubs will be removed, impacted or damaged as a result of this project. *An 18 inch Willow tree will be removed. The applicant shall replace the Willow tree with additional trees or shrubs to the approval of the Land Use Board Engineer's office.*

6. The applicant should clarify whether there is any exterior lighting proposed as part of this application. If so, the applicant should provide information to confirm that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632. All lighting should be minimal wattage and be down-shielded to ensure compliance with the above requirements. *There will be shielded lights with 60 watt bulbs between the two large doors and the entry door. The applicant shall provide a catalog cut sheet to the Land Use Board*

Engineer. The lighting shall not cause glare or sky glow on adjoining properties or roads. The lighting shall comply with Section 632 of the DRO and are subject to the approval of the Land Use Board Engineer.

7. The plans should be revised to indicate silt fence around all areas of disturbance, as well as, temporary soil stockpile area(s). *The applicant agreed to this request.*

8. The Zoning Schedule on Sheet 1 of the plans should be revised to indicate a required maximum lot coverage of 7.77%, not 7.12%. *The applicant agreed to this request.*

9. Per Chapter 13.12 of the Township Code of Ordinances, a Grading and Surface Water Management Plan (GSWMP) does <u>not</u> appear to be required for this application because the proposed improvements do not meet the threshold requirements for a GSWMP pursuant to Chapter 13.12. " *See condition 2.*

2. The applicant shall either:

- Remove 445 square feet of impervious coverage, place top soil in the area and convert the area to either lawn or landscaped area, or
- The applicant must provide to the approval of the Land Use Board Engineer a stormwater management plan to detain or infiltrate the water runoff created by more then 7.7% lot coverage.

If this approach is followed, the applicant shall file a deed restriction to the approval of the Land Use Board Engineer and the Land Use Board Attorney requiring: The perpetual maintenance of the stormwater management plan required in condition 2 and the required improvements in accordance with the NJDEP Best Management Practices and any subsequent revisions and regulations.

3. The applicant shall send a letter to Shana Goodchild, LUA making his selection as to the alternative chosen in condition 2 prior to filing an application for a building permit. The letter shall be accompanied with a revised plan showing in detail the chosen alternative. If the applicant elects to remove 445 feet of impervious coverage,

that shall be accomplished prior to the issuance of a building permit, or an appropriate performance guarantee shall be filed if the applicant wishes to proceed with the addition prior to removing the impervious area and converting it to lawn or landscaped area.

4. The plans shall be revised to the approval of the Land Use Board Engineer within 90 days of the adoption of the within resolution

5. 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.

6. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may apply to the premises. The applicants shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

7. This resolution and the issuance of a building permit hereunder is conditioned upon the applicant paying all escrow fees and real estate taxes.

Roll Call Vote

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

Those Opposed: None

Mayor Desiderio returned to the meeting at this time.

Master Plan Consistency Review

- Ordinance No.'s 07, 08, 09 & 10-2012 in accordance with 40:55D-31

Mr. Mackie made a motion to find Ordinance No's 07, 08, 09 and 10-2012 not inconsistent with the Master Plan. Mrs. Czajkowski seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

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

Those Opposed: None

Abstentions: Mr. Metzler

Public Hearing

- JCP&L
  Appl. No. 12-04
  Block 17, Lot 2.01 & 2.02
  Modification to a prior approval and Variance
  Action Deadline – 7-11-12
  Those eligible: Mr. Van Doren, Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mr. Shapack, Mr. D'Armiento, Mr. Moriarty, Mrs. Czajkowski and Mr. Johnstone

Mayor Desiderio recused herself and left the meeting at this time.

Mr. Metzler and Mrs. Czajkowski announced for the record that they listened to the tape and signed the certification to be eligible to vote.

John Beyel, attorney for JCP&L, was present and noted that the last hearing was held on April 4, 2012. Mr. Beyel reminded everyone the relief being sought. He noted that Mr. Anderson completed his testimony at the April 4, 2012 hearing and that Rob Zalewski would be providing engineering testimony. He noted that the Board encouraged JCP&L to meet with the neighbors to resolve some of the issues that came up at the April 4, 2012 meeting. The neighbors and the applicant briefly met in the next room after the last hearing however the concept that seemed to work then was further investigated and was not possible because of the encroachment on the NJDEP approved landscape plan. Mr. Beyel explained that he would have Mr. Zalewski testify as to the subsequent meetings and discussions with the neighbors and professionals which led up to the plan currently before the Board.

Robert Zalewski, 295 Route 22, Whitehouse Station was sworn in by Mr. Bernstein. Mr. Zalewski provided his qualifications as a Civil Engineer. The Board accepted Mr. Zalewski as an expert witness.

Mr. Zalewski explained that in December of 2011 JCP&L asked Malick and Scherer to design new driveways for Lots 2.01 and 2.02 to provide access from the County Route 512. Two (2) individual driveways were proposed because the property owners did not want to travel under the power lines to exit their properties. In addition to that, there is a substantial amount of wetlands in the area which would make it difficult to design a common driveway. Mr. Zalewski explained that he spoke with Bill Burr prior to the meeting to discuss his March 30, 2012 report and some of the review comments were satisfied. When asked about the meeting that was held with the neighbors immediately after the last hearing, Mr. Zalewski explained that the group discussed moving the existing common driveway to the south so that it would be contained within the JCP&L right of way. By doing that the thought was that landscaping could be planted in the area

of the abandoned driveway. However, after looking at it further the driveway would encroach upon the proposed landscaping around the substation. He explained that he met with Mr. Anderson to come up with an alternative by shifting the driveway slightly (still within the Hernick property). A plan was developed with enhanced landscaping and a meeting was held on site. After the meeting with the Hernick's they met on the site with Bill Burr and his Landscape Architect Marla Roller. Ms. Roller suggested additional planting of Juniper bushes on the Kalb property. As for the existing common driveway, Mr. Zalewski explained that they will no longer use the existing driveway to access the manhole/duct system proposed. It allows JCP&L to eliminate the gate from the project and also landscape that area of the driveway. As part of the discussions with the neighbors and professionals JCP&L has decided to construct a soil berm and a stone wall along Fox Hill Road with plantings. Another meeting was held at the Municipal offices with the neighbors, professionals and staff with a plan showing all of the changes that were agreed to in the field and everyone generally agreed. There were some requests related to moving some of the trees and changing some of the species; those requests have been addressed on the revised plans currently before the Board. Since the filing of the revised plan with the Land Use Board Mrs. Kalb requested that there be an attempt to preserve the Cherry tree near her house and driveway. Mr. Zalewski presented a revised plan, marked as Exhibit A-19 (*Exhibit A-18 was skipped so there is no Exhibit A-18*) which depicts the realigned driveway which avoids the tree. When asked if the shift in the driveway removed the sliver of what was the Kalb driveway from the Hernick driveway, Mr. Zalewski responded in the positive and noted that the Kalb driveway is exclusively on their property. In all other respects the plan marked as Exhibit A-19 is the same as the plan filed with the Land Use Board on May 4, 2012.

Mr. Beyel noted that the applicant addressed all of the issues raised by Mr. Burr but specifically noted that they did not address the issues related to landscaping the substation as that was not part of the current application; the landscaping will be installed per the approved NJDEP plan. When asked if he has reviewed the NJDEP landscape plan, Mr. Burr responded in the negative. Mr. Johnstone asked Mr. Beyel to provide Mr. Burr with a copy of the approved plan to which Mr. Beyel agreed. Mr. Johnstone asked Mr. Burr to report back to the Board about the plan and any additional recommendations. Mr. Beyel again stated that JCP&L's position is that the landscape plan for the substation has nothing to do with the driveway application.

Mr. Burr asked if the change in the driveway on the Kalb property impacted the impervious coverage calculations previously submitted. Mr. Zalewski explained that there was a negligible reduction in impervious coverage. When asked if all other comments will be addressed, Mr. Zalewski responded in the positive. Mr. Burr explained to the Board that various meetings were held since the last meeting and he is satisfied with the effort JCP&L has shown to address previous concerns raised.

When asked by Mr. Bernstein if he would agree to a two (2) year maintenance guarantee for the landscaping, Mr. Beyel responded in the positive.

When asked by Mr. Van Doren how JCP&L will access the underground manhole/duct system, Mr. Zalewski explained that they will access it from Lot 2 through an existing gate in the southwest corner of the substation fence. When asked if that area is stabilized to handle large equipment, Mr. Zalewski responded in the positive. When asked if any discussions have taken place with the County since the last meeting, Mr. Zalewski explained that JCP&L has talked to the County but no formal application has been made.

When asked by Mr. Johnstone if the old driveway will be maintained, Mr. Zalewski explained that it will be covered with top soil and seeded with grass.

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

Debbie Close, 5 Hollowbrook Road, asked if the revised driveway plan changes the NJDEP approved landscape plan. She explained that she has been advised by JCP&L that no changes can be made including changes to species without a resubmission and approval from the NJDEP. She explained that the notes on the plan appear to give the landowner latitude and the township jurisdiction. She opined that the plan provided to the Board shows changes to the plantings and land treatment within the boundary of the NJDEP approved landscape plan. Mr. Zalewski wasn't aware that the driveway plan changed anything on the NJDEP approved landscape plan but admitted that he wasn't familiar enough with the substation project to be sure. Mr. Johnstone suggested that Mrs. Close be sworn in since her questions were more along the lines of comments. Mrs. Close was sworn in by Mr. Bernstein. Mr. Johnstone asked Mr. Beyel or Mr. Anderson to provide clarification regarding the NJDEP approved landscape plan. Mr. Beyel explained that nothing by way of landscaping on Lots 2.01 and 2.02 involve any changes to landscaping on Lot 2. Mrs. Close disagreed with Mr. Beyel's statement. Mr. Anderson explained that the landscape plan has been approved by NJDEP and JCP&L has taken the position that it is acceptable if vegetation is added but to modify the plants shown on the NJDEP approved landscape plan would require a resubmission to NJDEP; there is no conflict between the two (2) plans and any change is merely additional plantings. Mr. Anderson explained to the Board that Mrs. Close has requested changes to the species and location of plantings and JCP&L doesn't feel that they are in a position to change material or location. He went on to say that the landscaping proposed as part of the driveway plan is over and above the substation landscape plan and reinforces what that plan accomplishes. Mr. Johnstone asked that Mr. Burr be provided with a copy of approved NJDEP landscape plan so that he can provide the Board with his opinion.

Mrs. Close asked Mr. Anderson if anyone visited her property to take soil samples when the landscape plan was being developed. Mr. Beyel objected to Mrs. Close's questions as it was not germane to the driveway approval being sought by JCP&L. Mr. Bernstein opined that the Board was going to allow some latitude. Mr. Anderson was not aware of whether Mr. Hintz (the former Township Planner) performed any soil samples but noted that he is a Landscape Architect and so they felt comfortable with his recommendations and put them on the plan. When asked if JCP&L's Landscape Architect took soil samples or assessed the conditions of her property, Mr. Anderson didn't know the

answer. When asked if JCP&L's landscaper met with the neighbors, Mr. Anderson responded in the positive. When asked if JCP&L's landscaper had an opinion as to the longevity of the plantings and if they would provide the necessary screening, Mr. Anderson explained that he was informed that the landscaper met with some of the adjacent property owners and that he has asked for a field meeting to go over some of the discussions that took place with the neighbors. When asked if the intent of the plan is to provide screening from the Historic District of the adjacent homes to the substation, Mr. Anderson was unaware of what Mr. Hintz's intentions were at the time the plan was prepared. Mr. Beyel objected to Mrs. Close's questioning as he opined that it had nothing to do with the driveway application. When asked if JCP&L was attempting to provide adequate screening from the adjacent landowners in the Historic District, Mr. Anderson explained that their intention was to create a landscape plan that the adjacent property owners would be happy with which was why Mr. Hintz met with all of the neighbors impacted and prepared the plan that was submitted. When asked if he is familiar with the notes on the approved landscape plan, Mr. Anderson believed that the trees are warranted for two (2) years and shrubs are warranted for one (1) year. When asked if he is aware that all of the plantings proposed adjacent to Block 17, Lot 5 (the Close property) are all trees, Mr. Anderson was unsure. When asked why a request to change the species of tree that has no chance of surviving must be submitted to the NJDEP but the driveway plan does not, Mr. Anderson opined that the driveway plan does not require NJDEP approval. He added that JCP&L has tried to accommodate everyone's wishes with both the NJDEP approved landscape plan and the driveway plan. Mrs. Close expressed her confusion with why the driveway plan didn't require approval from NJDEP and is puzzled by the jurisdictional issues. Mr. Beyel explained that there are separate wetland approval applications that need to go to the NJDEP in conjunction with the driveway plan. Mr. Johnstone asked Mr. Beyel to find out why the driveway plan doesn't need to be approved by the NJDEP regarding the landscaping to which Mr. Beyel agreed.

Jon Holt, 2 Fox Hill Road, asked Mr. Anderson if the substation was constructed when Mr. Hintz made his recommendations to which Mr. Anderson responded in the negative. Mr. Beyel objected to the line of questioning and noted that the Friends of Fairmount have challenged the NJDEP approval and they will defend the plan that they approved so questions should be directed to the NJDEP not the Township Land Use Board. When asked by Mr. Johnstone what his concern was, Mr. Holt explained that his concern is of the view from his home to the substation and providing an adequate buffer. Mr. Johnstone noted that the testimony has been that trees can be added without NJDEP approval. Mr. Bernstein noted that the topic is subject to litigation with respect to the NJDEP approved landscape plan and cautioned the Board on discovery taking place during the Land Use Board meeting.

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

Mr. Shapack asked Mr. Beyel if it is a complicated process to go back to NJDEP with a change to the plan. Mr. Beyel explained that a developer should have the opportunity to

rely upon the plan that was approved. He was unsure about the landscape approval process with the NJDEP because he didn't handle that portion of the application but he did add that an appeal was taken and it is in the Appellate Division and so the timing is unknown. He also expressed concern that if a plan change is sought by JCP&L that the Friends of Fairmount would claim that the NJDEP approval is no longer valid. When asked when work would begin if approval is granted, Mr. Anderson explained that it would depend on NJDEP and County approval.

Mr. Mackie asked if there is a separate wetland mitigation plan submitted as part of the wetlands permit approval to the NJDEP. Mr. Zalewski explained that the application filed does not require a mitigation plan; the disturbance amounts are not over the threshold to trigger mitigation.

Mr. Johnstone opened the meeting up for public comment.

Debbie Close, 5 Hollow Brook Road, expressed her support for the application as presented by the applicant noting that it is the right thing to do for the Kalb's and the Hernick's. Mrs. Close indicated that she provided the NJDEP approved landscape plan to Ms. Goodchild who forwarded it on to the Township Attorney. Mrs. Close believes that the Township has some jurisdiction over the substation landscape plan as approved by the NJDEP. She opined that the notes on the plan give JCP&L the latitude to make changes to the plan and take soil samples without going through formal approval. Mr. Johnstone asked Mr. Burr to send a copy of the NJDEP approved landscape plan to Mr. Bernstein and Mr. Bernstein was directed to get back to the Board with his opinion of the notes.

Jon Holt, 2 Fox Hill Road, was sworn in by Mr. Bernstein. Mr. Holt agreed with Mr. Beyel that things need to be in writing given past issues with JCP&L. Mr. Holt noted the lack of maintenance of the trees across the street at the cell tower equipment shed that is within the JCP&L easement on the Pascale Farm Park property. Mr. Holt explained that they are relying on the driveway plan to help screen the substation however it doesn't go far enough. He asked that there be a requirement of JCP&L to maintain the plantings in perpetuity. When asked if he would agree to maintain the trees in perpetuity, Mr. Beyel agreed to maintain them for 2 years as is required by the Township ordinance. Mr. Bernstein noted that it is easier to agree to maintain trees on your own property but this scenario would require JCP&L to maintain trees on several properties not owned by them. Mr. Beyel explained that the substation landscaping is different than the landscaping that is being added as part of the driveway application which is being installed to close off the common driveway from Fox Hill Road; the additional trees being planted are a bonus to Mr. Holt that he otherwise wouldn't be getting and are unrelated to the substation landscape plan. Mr. Beyel agreed to consider a condition requiring JCP&L to maintain the landscaping in perpetuity.

George Cassa, 14 Guinea Hollow Road, was sworn in by Mr. Bernstein. Mr. Cassa explained that the Scenic Roads and Bridges Commission submitted comments that support the plan as submitted with the recommendations that the Land Use Board

consider requiring the applicant to extend the warranty on the plantings and also to add three (3) additional trees to improve the screening.
Mary Kalb, 6 Fox Hill Road, was sworn in by Mr. Bernstein. She thanked Mr. Anderson, JCP&L and their engineer for taking the time and effort to make the changes in the driveway to her home.

Robin Love, 7 Wildwood Road, was sworn in by Mr. Bernstein. She expressed her support for the application and appreciated the work that JCP&L did with the revised plan and agreed with the comments from Mr. Holt and the Scenic Roads and Bridges Commission particularly with regard to the maintenance of the plantings in perpetuity.

There being no further comments, Mr. Johnstone closed the meeting to the public.

Mr. Johnstone thanked Mr. Anderson and JCP&L for making an effort to improve upon an unhappy situation for the adjacent neighbors. He asked JCP&L to reconsider what can be done for Mr. and Mrs. Close. He asked that the applicant look into the three (3) additional trees recommended by the Scenic Roads and Bridges Commission. He opined that the maintenance should be in perpetuity because the purpose of the plantings is to help the neighbors live with something they don't want to have in their backyards and asked the applicant to consider agreeing to this condition of approval.

Mr. Van Doren asked Mr. Bernstein if the property owners need to grant an access easement to JCP&L to maintain the landscaping. Mr. Bernstein responded in the positive. When asked what landscaping would be maintained in perpetuity, Mr. Johnstone and Mr. Van Doren indicated that it would be the landscaping that acts as a buffer to the substation.

The Board took a break at 9:13 p.m.

The meeting reconvened at 9:23 p.m.

Mr. Beyel noted that during the break he took the opportunity to speak with Mr. Anderson and Mr. Zalewski and JCP&L is willing to add three (3) additional trees in the area near the intersection of the existing common driveway on Fox Hill Road and also willing to maintain the trees in the area of the common driveway in perpetuity. The other landscaping shown on the plan is not subject to that commitment but will be subject to the normal two (2) year limitation. The only proviso is that an easement will be needed from the Hernick's to maintain the plantings.

Steve Hernick, 4 Fox Hill Road, was sworn in by Mr. Bernstein. Mr. Johnstone asked Mr. Hernick if he would be willing to grant an easement to JCP&L in order to maintain the landscaping in perpetuity to which he agreed. Mr. Beyel agreed to draft the easement and send it to Mr. Bernstein and Mr. Hernick for their review.

Robin Love, 7 Wildwood Road, asked if the easement would be a conservation easement to which Mr. Bernstein responded in the negative but thought that Ms. Love raised an

interesting question. Mr. Johnstone noted that the purpose of the easement is to maintain the landscaping in perpetuity. Mr. Bernstein suggested that the easement contain language that the property owner can't interfere with the landscaping by removing any trees.

Mr. Van Doren made a motion to approve the application subject to the conditions as outlined below. Mr. Johnstone seconded the motion. The motion carried by the following roll call vote:

Conditions as outlined by Mr. Bernstein:

1. The electric line from the substation to County Route 512 would be installed underground.
2. Subject to the approval of the County and NJDEP. If a substantial change to the plan is required (in the opinion of the LUB Engineer) the applicant would return to the Land Use Board for amended approval.
3. The common driveway will be eliminated with no secondary access to the substation.
4. Both driveways (Kalb and Hernick) will be macadam.
5. The landscaping on the Kalb and Hernick property, other than the landscaping at Fox Hill Road, will be covered by a two (2) year maintenance bond.
6. Conditions as outlined in Bill Burr's report.
7. The existing driveway from Fox Hill Road will be removed on both the Kalb and Hernick properties and will be topsoiled and seeded with grass.
8. The new driveway on the Kalb property will no longer straddle the property line so a revised plan will be submitted to the LUB Engineer.
9. The landscaping and trees near the existing common driveway entrance onto Fox Hill Road will have an additional three (3) trees planted and will be subject to the approval of the Landscape Architect at the LUB Engineer's office. The maintenance will be in perpetuity and subject to the Hernick's providing both an access easement and an easement whereby they and their successors will allow the landscape to thrive.
10. The approval is valid for a year.
11. Payment of all fees and escrows.

<u>Roll Call Vote:</u>

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

Nays: None

ADJOURNMENT

There being no further business, the meeting adjourned at 9:34 p.m. by motion of Mr. Van Doren and seconded by Mr. Shapack.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator