

LAND USE BOARD MINUTES
March 4, 2015

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 7:36 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Dana Desiderio, Bruce Mackie, Ed Kerwin, Michael Moriarty, Robert Becker arrived at 7:45 p.m., Kurt Rahenkamp, Alt. #2, Glenn Stein, Alt. #3 and David Larsen, Alt. #4.

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

Absent: Shirley Czajkowski and Ed D'Armiento, Alt. #1

There were eight (8) 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 8, 2015.

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 claim to which the response was negative. Mr. Van Doren made a motion to approve the claim listed below and Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 2-18-15 LUB meeting, invoice dated February 19, 2015 (\$375.00)

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mr. Moriarty, Mr. Kerwin and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

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

1. Memorandum dated February 6, 2015 from Chief Holmes re: Appl. No. 15-02, Block 27, Lots 96 & 154.
2. A letter dated February 9, 2015 from Adam Bradford, Assistant Planner, Hunterdon County Planning Board re: Weber Lot Line Adjustment, Block 27, Lot 96 & 154.
3. A letter dated February 27, 2015 from William Burr re: Weber, Appl. No. 15-02, Block 27, Lots 96 & 154.
4. An e-mail dated February 21, 2015 from Susan Taylor and a copy of a letter dated October 29, 2010 from Randy Benson, Zoning Officer re: the pool fence at 1 Hildebrant Road, Block 37, Lot 7.
5. Memorandum dated February 27, 2015 from Shana Goodchild re: Taylor, Appl. No. 14-13, Block 37, Lot 7, pool fence in a conservation easement.

MINUTES

- September 3, 2014

The minutes of September 3, 2014 were approved as submitted by motion of Mr. Van Doren and seconded by Mr. Moriarty. All were in favor. Mrs. Baird, Mr. Desiderio and Mr. Stein abstained.

- September 17, 2014

The minutes of September 17, 2014 were approved as submitted by motion of Ms. Desiderio and seconded by Mr. Moriarty. All were in favor. Mr. Johnstone, Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Kerwin and Mr. Stein 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 comments or questions, Mr. Johnstone closed the public participation portion of the meeting.

Mr. Becker arrived at this time.

PUBLIC HEARING

- Weber
Appl. No. 15-02
Block 27, Lots 96 and 154
Minor Subdivision/LLA and Variances
Completeness Deadline – 6/5/15

Steve Schaffer, attorney for Joseph Weber was present to discuss property known as 9 Dinner Pot Road. Mr. Schaffer explained that Lot 154 contains a single family dwelling and Lot 96 is vacant with the exception of a driveway that meanders. Both lots are within

the Highlands Preservation Area and the applicant applied for and received approval from the Highlands Council on February 9, 2015 which was forwarded to the Township. Mr. Schaffer explained that Dinner Pot Road is a private road. The proposal before the Board is for an adjustment of the lot boundary line to permit the Tewksbury Land Trust to purchase Lot 96 for open space preservation. No improvements are proposed as part of the application.

Patrick Faton, Heritage Consulting, Flemington, NJ, was sworn in by Mr. Bernstein. Mr. Faton reminded the Board that he was accepted and testified approximately 2 years ago for the Sullivan subdivision. The Board accepted Mr. Faton as a licensed surveyor.

Mr. Faton displayed for the Board a colorized version of the plan that was submitted, marked as **Exhibit A-1**. He explained that Lot 96 (outlined in orange) will change in size from 15.41 acres to 14.31 acres with the difference merged to Lot 154 to provide Lot 154 a 100 foot setback from the house (to make it compliant with the current setback standards). Lot 154 is currently 9.54 acres and it will increase in size to 9.97 acres after the mergers. The current title line for Lot 96 created a problem with the survey because of an overlap onto Lot 155 (shown on the exhibit in the green shaded hatched area). The applicant intends to correct the overlap by preparing a quit claim deed to relinquish rights to that area. Mr. Faton displayed another colorized version of the plan which was marked as **Exhibit A-2** which he referred to as the "Map of Austin Clark's Woodland" recorded in the Hunterdon County Clerk's office on November 23, 1896. Lot 96 was part of this old subdivision (woodlots 7 and 8 created the current Lot 96). Lot 154 was a separate lot (not part of the filed map shown in Exhibit A-2) from the land shown on the map as owned by Jerry Teats.

Mr. Faton went on to explain that once they discovered the problem with the title boundaries overlapping they did further surveying to locate corners to verify compliance with the filed map. An iron was found on the southeast corner of Lot 98, an iron on the southwest corner of Lot 98 and irons along Dinner Pot Road to confirm their title lines and an old monument was found along with the division line between woodlots 7 & 8. He felt comfortable that they established the correct boundary line through this additional surveying.

Mr. Faton explained that Lot 154 currently has a gravel driveway from Dinner Pot Road to the existing house. There is no record of any easement in the titles for either lot so as part of the application a driveway easement will be created to establish a record of the use of the driveway through Lot 96 for the use of Lot 154. The proposed easement will be twenty (20) feet wide (the gravel driveway is approximately 10 to 12 feet wide) and at the connection with Dinner Pot Road it has two (2) stubs in a "Y" shaped pattern to allow for an ingress and egress point. When asked about the existing utility easement, Mr. Faton believed that it was created in the 1980's when the house on Lot 154 was constructed for the placement of underground utilities.

When asked by Mr. Burr about how the deed overlap will be handled, Mr. Faton explained that they will prepare a quit claim deed for the applicant to relinquish rights to

that portion of the land. When asked by Mr. Bernstein if there has been any discussion with the owner of Lot 155 as to whether they will accept a deed from the applicant, Mr. Schaffer responded in the negative. When asked if there is a mortgage on the property, Mr. Schaffer responded in the negative and noted that it could be conveyed free and clear of any lien.

When asked by Mr. Van Doren if there are exclusive rights for Lots 96 and 154 to use the Dinner Pot Road, Mr. Fatton responded in the positive and explained that the new deeds will also include the rights to Dinner Pot Road. When asked if the right of access will be conveyed to the Tewksbury Land Trust and allow the public to gain access, Mr. Schaffer indicated that it may be a gray area and will be discussed later in the meeting.

Mr. Becker noted that under the certified owners list Lot 156 was noticed but Lot 155 was referenced as getting the quit claim deed and he questioned if the owner of Lot 155 received notice of the meeting. Mr. Schaffer confirmed that Roger Kolbe, owner of Lot 155, was properly noticed. Mr. Fatton explained that it was a typo on the map and did not impact notice.

When asked by Mr. Larsen when the lines were moved, Mr. Fatton opined the 1970's and 1980's.

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

Chris Teasdale, 11 Dinner Pot Road, noted that he is the owner of Lot 92 and asked what marker in the northwest corner was the final marker chosen. Mr. Fatton explained that he chose the capped pin (metal rebar with a plastic cap) because it was the best fit with the other monumentation along Dinner Pot Road. He noted that there was also a concrete monument but according to his calculations it was 4 feet northwest of the line. When asked how he arrives at the most accurate point, Mr. Fatton noted that they use angles and distances to arrive at the most accurate spot.

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

When asked by Mr. Van Doren if there is an easement within the deeds for access to Dinner Pot Road, Mr. Fatton noted that the deeds for all of the lots through Dinner Pot Road provide the rights to use Dinner Pot Road.

Robert Lorentz, Engineer and Planner, was sworn in by Mr. Bernstein. Mr. Lorentz testified before the Board approximately a year ago for the Sullivan subdivision and was the former Board Engineer. Mr. Lorentz accepted as an expert witness.

Mr. Lorentz noted that the lots do not front on a public road nor do they have street frontage. He noted that both Lots 96 and 154 have been pre-existing lots of record dating back to at least 1975. In 1975 there was an application before the Tewksbury Township

Board of Adjustment to deal with the lack of road frontage. At that time there were certain decisions made as to the level of improvements needed for a driveway to serve a dwelling to be constructed on Lot 154. There was a report prepared by the Township Engineer Clay McEldowney and engineering input on behalf of the applicant to provide a turnaround for emergency vehicles. One of the issues raised was that the site had to be designed to accommodate a fire truck which resulted in the circular drive consideration in front of the house and the “Y” shaped entrance onto Dinner Pot Road which permits a large vehicle to pull in and reverse direction if necessary. The driveway was also specified to have a minimum cleared width of 12 feet (which exists today). Mr. Lorentz referenced a September 15, 1975 resolution which outlines all of the requirements for the driveway. He explained that sometime during the building of the house a determination was made that the current location of the driveway was the preferred location due to the flatter terrain. When asked if the Tewksbury Land Trust is interested in purchasing the vacant lot, Mr. Lorentz responded in the positive. When asked if in his opinion the preservation of open space is a good use of land, Mr. Lorentz responded in the positive and noted that it fits the pattern that’s strived for in Tewksbury Township. When asked if the lots were conforming in 1975, Mr. Lorentz responded in the positive with the exception that they didn’t front on an approved public roadway.

Mr. Burr noted that another condition of the 1975 approval was ultimate maintenance responsibility for that stretch of road and opined that if the Board approves the application it should be determined who is ultimately responsible for that stretch of Dinner Pot Road. Mr. Schaffer noted that the property owners are obligated under a document entitled “Dinner Pot Road Homeowners Association Governance and Obligation” revised January 25, 2014. When asked by Mr. Bernstein if there is a driveway easement to the vacant lot, Mr. Lorentz responded in the negative but it has been proposed as part of the current application.

When asked by Mr. Van Doren if the lot line adjustment would make sense if the Tewksbury Land Trust was not purchasing Lot 96, Mr. Lorentz didn’t feel it was a detriment to Lot 96 and also benefits Lot 154 by increasing the setback on the property. He further noted that both lots can support residential dwellings and specifically mentioned that Lot 96 is less constrained than Lot 154.

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

Mr. Christopher Teasdale, 11 Dinner Pot Road was sworn in by Mr. Bernstein. Mr. Teasdale was called as a witness as the current President of the Dinner Pot Road Homeowner Association. When asked how the Dinner Pot Road maintenance works, Mr. Teasdale explained that the road rules and dues are based on home ownership. The two (2) houses at the bottom of the roadway pay \$200 and five (5) houses at the top of the roadway pay \$750 each subject to change based on needs of road maintenance, etc. When asked if the Tewksbury Land Trust will have to pay towards the maintenance since they do not have a home on the property, Mr. Teasdale responded in the negative.

When asked by Mr. Moriarty why the road is called Dinner Pot Road, Mr. Teasdale explained that the story he has heard was that woman would leave a pot of dinner at the bottom of the road for the men who worked the woodlots.

When asked by Mr. Van Doren if item g of the resolution is enforced by the HOA to which Mr. Teasdale could not answer. Mr. Lorentz opined that he interpreted that language as a “one shot deal” in terms of performing those improvements to the Dinner Pot Road when the lots were initially developed. When asked when the HOA was formally created, Mr. Teasdale opined 20 plus years ago. Mr. Schaffer opined that the HOA was not in existence in 1975. When asked by Mr. Van Doren if there is any language in the HOA documents that permits or prohibits public access on Dinner Pot Road, Mr. Teasdale responded in the negative. Mr. Teasdale provided Mr. Bernstein with a copy of the HOA documents for the Township’s records.

When asked by Mr. Rahenkamp if two (2) cars could pass, Mr. Teasdale noted that there are pull over areas that allow cars to pass.

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

Mr. Schaffer noted that the applicant is requesting a design waiver from providing the bump outs mentioned in Mr. Burr’s report and asked Mr. Lorentz to address the issue. Mr. Lorentz noted that the current driveway ordinance requires bump outs if a driveway exceeds 500 feet in length. He opined that the existing driveway is unique in that it has an adequate turnaround at the house and a “Y” shaped turnout that was specifically designed to accommodate an emergency vehicle. He opined that the driveway to Lot 154 is more accessible and open to two way traffic than the rest of Dinner Pot Road. Mr. Bernstein noted that only the Township Engineer can grant a waiver from the driveway ordinance. When asked by Mr. Kerwin where the public will park to access Lot 96 if it were to be purchased by the Tewksbury Land Trust, Mr. Schaffer deferred the question to Beth Davisson.

Beth Davisson, NJ Conservation Foundation (NJCF), was sworn in by Mr. Bernstein. Ms. Davisson explained that the NJCF provides consulting services to the Tewksbury Land Trust. Ms. Davisson explained that the Tewksbury Land Trust is interested in preserving the natural areas in Tewksbury and to create connecting pieces of open space and Lot 96 is part of an emerging greenway connecting the Hell Mountain Preserve and Hill and Dale Preserve. When asked what recreation purpose it will serve, Ms. Davisson explained that it will be used for passive recreation such as hiking and presumably a pass through trail. When asked where someone from the public would park, Ms. Davisson opined that ultimately when the pass through trail is created the public would park at the Hell Mountain Preserve and Lot 96 would be walkable from that parking area. She noted that the Tewksbury Trail Association also has nearby trails and Lot 96 would be available for both pedestrian and equestrian access.

When asked by Mr. Burr if there would be signage, Ms. Davisson responded in the positive and noted that there would be Green Acres signage due to the use of Green Acres funds. When asked where the signs would be placed, Ms. Davisson responded on the property. When asked if signage would be placed on Old Turnpike Road, Ms. Davisson explained that they are still in negotiations to purchase the property so all of the details have not been ironed out but they will be required to provide the trail link to a public roadway in order to be approved for Green Acres funding and tax exempt status.

When asked by Mr. Bernstein if the driveway access easement will be restricted to the homeowner, Mr. Schaffer responded in the positive. When asked if she felt there would be any problems with the transaction, Ms. Davisson noted that they are still in the option phase and access still needs to be clarified.

Until the other pieces are acquired Mr. Moriarty questioned how the Tewksbury Land Trust envisions Lot 96 being used and accessed. Ms. Davisson suspected that it would not be heavily used but to gain funding public access must be provided so walking up Dinner Pot Road might be the only way to access. When asked if Lot 96 will be left in its natural state, Ms. Davisson responded in the positive except for the driveway serving Lot 154.

When asked by Mr. Mackie if it is customary for the Tewksbury Land Trust to have a pull off for one (1) or two (2) cars to park, Ms. Davisson explained that it depends on the intensity of the use envisioned. For example, the Hell Mountain Preserve and the Hill and Dale Preserve are both incredible parks and warrant the creation of parking areas; Lot 96 is more of a stepping stone project vs. a destination project like Hill and Dale and Hell Mountain Preserves.

When asked by Mr. Van Doren if all of the homeowners in the Dinner Pot HOA have to permit access, Ms. Davisson explained that it is a gray area that was recently brought up. She indicated that the Tewksbury Land Trust would prefer to have the Dinner Pot HOA sign off on the access to avoid an issue in the future. Mr. Van Doren expressed concern with the initial access to Lot 96 and possible conflict with the Dinner Pot Road HOA if the public parks along the roadway. Ms. Davisson noted that the issue has been discussed but is not yet resolved. When asked if there is a dedicated Tewksbury Trail Association easement traversing Lot 96, Ms. Davisson responded in the negative but noted that they have a “hodgepodge” of trails, from loose agreements to formal easements. When asked if the Tewksbury Land Trust will continue with the woodland management plan, Ms. Davisson indicated that she could not speak to the current plan but generally the Tewksbury Land Trust does not take trees down but they do have management plans for their properties which call for the removal of invasive species. Mr. Schaffer noted that the driveway easement would contain language regarding maintenance.

When asked by Mr. Johnstone if there is an anticipated date of purchase, Ms. Davisson noted that the option expires in April. Mr. Schaffer noted that in the event that the

Tewksbury Land Trust doesn't acquire Lot 96 it is a fully conforming lot; the lot line adjustment is justifiable independent of whether the lot is purchased for open space. When asked by Mr. Johnstone if the property owner wants the lot line adjustment regardless of the preservation, Mr. Schaffer responded in the positive.

When asked by Mr. Becker the distance from Lot 96 to the Hell Mountain Preserve, Ms. Davisson responded only Lot 155 separates them.

Joseph Weber, applicant, was sworn in by Mr. Bernstein. When asked if he owns Lots 96 and 154, Mr. Weber responded in the positive. When asked what the taxes are on Lot 96, Mr. Weber responded approximately \$30 a year as it is farmland assessed under a woodland management plan.

Mr. Becker questioned why the Dinner Pot Road HOA would permit public access to Lot 96 if the Tewksbury Land Trust isn't contributing to the maintenance. Ms. Davisson opined that the pedestrian access would not cause any degradation to the roadway. She noted that there is no formal agreement with the Dinner Pot Road HOA about what type of parking there would be at the bottom of Dinner Pot Road.

Mr. Johnstone opined that the Tewksbury Land Trust purchase is irrelevant to the application.

When asked by Mr. Becker if he would have applied for a lot line adjustment had it not been for the option to sell Lot 96 to the Tewksbury Land Trust, Mr. Weber responded in the positive.

Mr. Bernstein noted that the Board has learned in the past that the approval cannot be subject to preservation because Green Acres won't provide funding. Mr. Schaffer agreed and explained that the condition of preservation impacts the appraisal value.

When asked by Mr. Becker if hunting will be permitted if the Tewksbury Land Trust purchases the property, Ms. Davisson could not speak to that question.

Mr. Rahenkamp opined that the Tewksbury Land Trust should provide parking on Lot 96 if they preserve the property.

Mr. Johnstone suggested that the Board consider the application as a lot line adjustment and not consider whether or not the Tewksbury Land Trust will preserve Lot 96.

When asked by Mr. Larsen if the purpose of the lot line adjustment is to make Lot 154 more conforming, Mr. Weber responded in the positive. Mr. Larsen expressed concern that public access is not provided, notably for a handicapped resident, for land purchased with tax payer's money. Mr. Van Doren pointed out that Green Acres access regulations do not specify that the access be handicapped accessible.

When asked by Mr. Kerwin who determines what portion of the maintenance for the driveway lies with each of the two (2) lots, Mr. Bernstein explained that the applicant will prepare a driveway easement with the maintenance addressed.

When asked by Mr. Moriarty how the front setback is measured since the lot doesn't front on a public roadway, Mr. Bernstein suggested measuring it from the property line.

When asked by Mr. Larsen if any of the members of the Tewksbury Land Trust have any business or personal relationship with Mr. Weber, Ms. Davisson was not aware of any. Mr. Weber responded in the negative.

When asked by Mr. Van Doren if the existing driveway is adequate to provide emergency vehicle access to a potential house on Lot 96, Mr. Burr responded in the positive noting that the current width of the driveway meets the township driveway ordinance requirements. The only grey area is the need for bump outs and if there is sufficient room to allow emergency access. He went on to say that the Board could require the installation of a bump out between the circular turnaround in front of the existing home on Lot 154 and the "Y" turnaround. Mr. Bernstein suggested a condition requiring the driveway to be constructed to current standards at the time of development. When asked by Mr. Van Doren if the applicant will need to return if a permit to construct a house is sought for Lot 96, Mr. Bernstein responded in the positive (40:55D-35 & 36).

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

Larry Ross, Homestead Road, was sworn in by Mr. Bernstein. Mr. Ross encouraged the Board to approve the lot line adjustment so that the existing house on Lot 154 has a conforming front setback. Secondly, he serves on the Tewksbury Land Trust and opined that a parking area could be constructed on Lot 96 if necessary. He noted that the Tewksbury Land Trust views Dinner Pot Road as a trail and the Land Trust has been successful in the past in getting trail grants which could go towards the maintenance of Dinner Pot Road.

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

Mr. Schaffer reiterated that the applicant has demonstrated that the adjustment of the lot lines between Lots 96 and 154 results in a better configuration of the two (2) lots.

Mr. Larsen noted that the lot line adjustment fixes an existing non-conformity and therefore he would vote to approve the application.

Mr. Johnstone agreed with Mr. Larsen and the potential for preservation should not impact the vote on the application before the Board.

Mr. Moriarty made a motion to approve the application as submitted subject to the following conditions. Mr. Becker seconded the motion.

1. Driveway Easement with maintenance agreement.
2. Conditions as outlined in Mr. Burr's report.
3. The filing of a quit claim deed relinquishing rights to Lot 155.
4. Prior to construction on Lot 96 the owner will need to return to the Board for approval of a permit for a lot that doesn't abut a public road.

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mr. Becker, Mr. Moriarty, Mr. Kerwin, Mr. Rahenkamp, Mr. Stein, Mr. Larsen and Mr. Johnstone

Those Opposed: None

ADJOURNMENT

There being no further business, the meeting adjourned at 9:25 p.m. by motion of Mrs. Baird and seconded by Mr. Moriarty. All were in favor.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator