

**JOINT MEETING**

**Lebanon Township Planning Board  
Municipal Bldg 530 West Hill Road Glen Gardner, N.J.**

**May 4, 2021**

The 935<sup>th</sup> Regular Meeting of the Lebanon Township Planning Board was called to order at 7:00 p.m. by Chairman Gary MacQueen. Present were: Ms. Koehler, Mr. Duckworth, Mr. Schmidt, Mr. Piasecki, Mr. Rich, Mr. Abuchowski, Mr. Skidmore, Attorney Gallina & Engineer Bayer. Also in attendance from the Township Committee: Mayor Mike Schmidt, Deputy Mayor Tom McKee & Committeeman Marc Laul. Township Attorney Matt Lyons arrived at 8:50 p.m. **Excused:** Ms. Bleck, Mr. Weiler & Planner Kyle.

In compliance with the "Open Public Meetings Act" the Planning Board will hold a Joint Meeting with the Township Committee on May 4, 2021 at 7:00 p.m. in the Main Meeting Room in the Municipal Building. Notice of this Joint Meeting was published in the April 28, 2021 issue of the Hunterdon Review. The purpose of the Joint Meeting is to discuss the Cannabis Ordinance/Legislation, Lighting Progress Report & Fees & Escrow Schedule. Action may or may not be taken. Copies of the Agenda are posted on the Bulletin Board in the Municipal Building and on the Lebanon Township Website on April 28, 2021.

**PRESENTATION OF MINUTES:** April 6, 2021 Regular Meeting

Motion by Mr. Rich and seconded by Ms. Koehler to approve the minutes as amended. Unanimously approved.

**ITEMS FOR DISCUSSION:**

**a. Fees & Escrow Schedule - Planning Board Clerk**

Ms. Glashoff asked if everyone had a chance to review the Fees & Escrow Schedule and also said she has the spreadsheet that she worked from. Ms. Glashoff said the Board Fees aren't a real concern as much as the Escrow Fees. An account can have plenty of money and two bills can come in and wipe it out. There is no way to predict how much a voucher from a professional will be. In most cases when she asked for money, there isn't a problem, but there are times when it can take months to get the money owed and the Escrow Agreement is clear that you have to keep a healthy balance. The board continued to discuss the fees. Attorney Gallina was asked if the Escrow Agreement can be revised and can we increase the percentage from 35% to 50% to keep better balances in an escrow account. Attorney Gallina said yes. At the conclusion of the board's discussion, motion by Mr. Abuchowski and seconded by Mr. Piasecki to have Ms. Glashoff send Attorney Gallina a copy of the Escrow Agreement for him to make these revisions and increase the percentage from 35% to 50%.

**ROLL CALL**      **Yes:** Ms. Koehler      Mr. Duckworth      Mr. Schmidt      **Absent:** Ms. Bleck  
                         Mr. Piasecki      Mr. Rich              Mr. MacQueen      Mr. Weiler  
                         Mr. Abuchowski      Mr. Skidmore

**b. Lighting Ordinance Progress Report: Sub-Committee – Bev, Abe & Josh**

Ms. Koehler informed the board that they are just looking at the Residential portion of the Ordinance. Mr. Schmidt said Gail & Gary have gotten phone calls from residents with complaints regarding lights shining on their properties at all hours of the night. Mr. Schmidt said these complaints should be addressed by the Township Committee. Ms. Koehler said they reviewed the Lacey Township Lighting Ordinance and have some from municipalities in Hunterdon County. They also reviewed the ordinance from Chester Township and some specs from the County Environmental Lighting. For now they are just focusing on residential lots this is just an update on their progress with the sub-committee. Ms. Koehler asked the Board if they want the Residential portion to be broader with less measurable specifics at the first attempt or would you rather have a statement with a lot more measureable specifics and have the Zoning Officer go out and look at it. Chairman MacQueen asked Engineer Bayer for his input. Engineer Bayer said the Zoning Officer can go out with a meter in hand and measure and said this would make more sense. Engineer Bayer said if it is 0.1 at the property line and it comes in at 0.2 then it is not compliant but an enforcement issue. Ms. Koehler said she wanted to hear from the board.

**Lebanon Township Planning Board & Township Committee**

**May 4, 2021**

**Page 2**

Mr. Skidmore said it was his understanding that this matter was going back to the Township Committee to make a decision on whether or not they wanted to proceed by changing the existing light ordinance. Ms. Koehler said she brought this issue up at the last meeting and said this issue is with the sub-committee and we will bring it to the Planning Board and once the Board agrees with the revisions then it will go to the Township Committee.

Board Member Schmidt again referred to the phone calls that Gary & Gail have received regarding lighting issues and in the event the Township Committee wants the Planning Board to look into this, then it would come back to the board. Mayor Schmidt said there are two ways this can be addressed either as a land use matter or as police powers. Mayor Schmidt said if it is handled as police powers then it should come to the Township Committee and as a land use matter then it would go to the Planning Board. Attorney Gallina said the board always has input on review with land use matters. Mayor Schmidt said the topic came up at the Committee and they didn't discuss whether it was a police power verses a land use issue. Mayor Schmidt said if it is a light nuisance how do we handle it. Attorney Gallina said if it is a problem then the Zoning Officer would get involved with enforcement. Mayor Schmidt said this is the first step in a very complicated discussion at the Committee. Mr. Piasecki was under the impression that it was going back to the Committee and that we did not approve a sub-committee. It was noted on the record that the Planning Board did vote at their last meeting on having a sub-committee which include Ms. Koehler, Mr. Abuchowski and Mr. Rich. The board continued with this discussion.

Committeeman Marc Laul said this issue is similar to the wood boiler ordinance that the Planning Board worked on for over a year and then presented it to the Township Committee for them to vote on. Mr. Laul said this is the same situation. Chairman MacQueen suggested that the Township Committee should decide whether or not the sub-committee that the board voted on should continue working on the Lighting Ordinance or not. Then we will know that it is coming from the Township Committee. Mayor Schmidt said they will need to decide whether it will be a police power or land use. Chairman MacQueen said we are not looking for police power. Deputy Mayor McKee said the committee needs to know how many complaints have come in. Mayor Schmidt informed the board that they will put it on their agenda for May 19<sup>th</sup>. Chairman MacQueen opened the meeting up to the public, Mr. Joe Maurizio of Little Brook Road, spoke on the lighting issue by him. Mr. Maurizio said the property by him looks like an industrial park, lighting shines in all direction. Mr. Maurizio said there is so much light pollution coming from this property that it fills the sky.

During the discussion, Mr. Laul said the protocol on this lighting issue has already been met. Since the Planning Board has already come up with a sub-committee than they need to put something together for the Township Committee. Mayor Schmidt questioned the extent on how this all is going to work and felt this was a very complicated matter. The board continued to discuss this issue at length. In conclusion, Chairman MacQueen asked the sub-committee to work on this ordinance in two parts utilize Engineer Bayer if you have any questions along with Mr. Maurizio and when they have something ready, after sharing it with the Township Committee then bring it back to the Planning Board.

**c. Cannabis (Marijuana) Ordinance - T.C. & P.B.**

Chairman MacQueen informed everyone that he spoke to Planner Kyle earlier this evening and was informed that he was never contacted regarding the ordinance and didn't understand why the Planner wasn't involved with creating the ordinance and the ordinance was totally written by the Township Attorney. Mayor Schmidt said the ordinance was sent to Jim Kyle a couple of weeks ago. Planner Kyle called the Township Attorney to let him know he was good with the ordinance. Chairman MacQueen said at some point the Planner will have to be involved with ordinance for how it will work into the existing ordinances that we have. Committeeman Abe Abuchowski made a brief statement regarding the ordinance. Chairman MacQueen referred to an email that Ms. Glashoff sent out to the board that you needed 10 acres and asked was there a specific reason for the 10 acres. Mayor Schmidt said this was discussed with Planner Kyle who recommended 10 acres. Also, the Mayor said since these buildings can be up to 70,000 square feet we didn't want to have a building that size on a 3 acre lot.

Lebanon Township Planning Board & Township Committee

May 4, 2021

Page 3

Mayor Schmidt said we can make it permitted on 10 acres and a Conditional Use on less than 10 acres. This would be for a Class I (**Cannabis Cultivator License for facilities involved in growing and cultivating cannabis**). Ms. Koehler said that in case anyone is not aware, you can't grow cannabis on farm assessed land because cannabis is illegal at the Federal level (Schedule 1 controlled substance). You can't grow it on preserved land either unless the Federal Government changes the law. Deputy Mayor McKee said you could take a portion of your farm assessed land out of assessment for growing cannabis and leave the rest in, you just can't use farm preserved property. The answer was that the statement was correct. The board continued to discuss this issue. At the conclusion, Chairman MacQueen asked Engineer Bayer for his comments. Engineer Bayer said he is now working on a Site Plan for the property that was once the Walmart site on Route 22 in the Whitehouse portion of Readington Township. Engineer Bayer said he was in the building about two weeks ago and the biggest concern is the applicant has contractors in and out of there on a regular basis and the building is not secure at this point. The applicant is going in to phases, first is an exemption from site plan so they could start growing at 30% capacity while they are building out the rest of the facility. Engineer Bayer said the Site Plan was approved last Monday night by Readington Township Planning Board and one of the conditions was a schedule of every opening in the building with the requirements for a separate odor plan either a carbon filter or another type of filter. Engineer Bayer said he was going to suggest tonight an odor control plan or odor mitigation plan in the event we have an odor problem. This should be part of the approval process.

Mayor Schmidt asked if the project in Readington is a Class I growing license. Engineer Bayer said yes, it covers all aspects of a Class I. Mayor Schmidt said if a Class I could produce odor then an odor mitigation plan would be required. Also, the applicant could have multiple licenses. Engineer Bayer said that all the grow rooms have air circulating throughout the grow rooms and come out into the processing room. Engineer Bayer said he thinks that is where most of the odor comes from. The odors seem to come from the processing and packaging. Engineer Bayer said that screening and buffering was a big consideration by the Readington Planning Board. Chairman MacQueen noted that you would need a lot of Air Filters. Mayor Schmidt said if the odor is coming from the processing and packaging then the applicant would need a Conditional Use. Engineer Bayer said there are air handlers for 15-17 plants that take up the water. They are working with DEP regarding the waste water and getting a waste water permit. The water they use to feed the plants would need an RO unit.

Committeeman Abuchowski asked about their water supply and where does it come from. Engineer Bayer said they have well water and are trying to recycle as much as they can. Engineer Bayer said it is a complicated process and as a board you want to make sure that it is thoroughly thought out at the Site Plan level since they will be using a lot of ground water and the DEP will need to give the applicant a ground water diversion permit. Engineer Bayer said we just did our Stormwater Management Plan regarding water and now we will need to deal with this. The other consideration is site lighting since they will need to have lights on 24/7. Also a letter from the Utility Company to make sure they will have enough electricity since there will be a substantial amount of electricity used and that JCP&L can handle it. Mayor Schmidt asked how much of that is in the State License. The Township Committee was under the impression that this will be highly regulated by the State in order to get a License to manufacture it. How much does Lebanon Township need to reinvent checks on top of the state license?

Engineer Bayer stated you will need a letter from the utility company stating they will be able to provide enough electricity. This will also be part of the requirements for Site Plan Approval. It should also be clear to the utility company how much electricity they will be using. Deputy Mayor McKee asked if they have a generator. Engineer Bayer said yes they have a standby generator about half the size of this room. The question was asked about water consumption. Engineer Bayer said he is now working with the DEP regarding discharge. They are pumping and hauling which is about 8000 gallons per day. Engineer Bayer said that is the RO blow down and for the irrigation water. It gets put into a holding tank and taken off site. Engineer Bayer said the septic system that was designed for this site will not accommodate all this output.

**Lebanon Township Planning Board & Township Committee**

**May 4, 2021**

**Page 4**

There is a holding tank that can hold 10,000 gallons per day and the DEP has an exemption for industrial size holding tanks when hauling. Mr. Piasecki questioned hauling out 8,000 gallons per day on small roads in the Township, Engineer Bayer said that is traffic consideration.

Mayor Schmidt said with the state legislation, if we do nothing by August 22<sup>nd</sup> then the state rules apply or we ban it entirely. Mayor Schmidt, we want to support our farmers but can't because of the complexity of the operation. The Committee was looking at the Highway B2 zone for the retail portion and even then you have to be 1000 feet from a school bus stop. The Committee wanted to isolate retail along the highway and for the growing portion have it in the I5 Industrial Zone. Mayor Schmidt said this was the Committee's starting thought on this issue. Given the timeline we either do nothing or some feedback within the next couple of weeks. Chairman MacQueen said that Ms. Koehler had explained a lot of that when she was going over all of this at our last meeting.

Ms. Koehler said if you decide to allow it and other Townships around you decide not to allow anything then she believes the business they have has to be at least a 1000 feet from their border. Ms. Koehler read into the record a paragraph from the NJSLOM "Opt Out" ordinance which stated that the NJSLOM and the NJLGA strongly urge towns to "Opt Out" for now due to the complexity and novelty of the law. The "Opt Out" will allow municipalities to meet the August 22<sup>nd</sup> deadline, but can then "Opt In" if they choose at any time. Ms. Koehler said she was on a conference call and one of the items mentioned was once you have the ordinance in place to allow any category you can't amend it during those 5 years and at the end of the 5 years you have to wait an additional 180 days before you can amend the ordinance. At this point several members discussed this issue at the same time. Chairman MacQueen asked what is the consensus of everyone on this issue.

Mr. Piasecki referred to the second page of the draft ordinance third whereas from bottom, it refers to the potential adverse impacts on health, safety and welfare of its residents. Mr. Piasecki asked if this needs to be in the ordinance. Should there be discussion on this with the Township Attorney. Mayor Schmidt said that sets up the Conditional Use review by the Board of Adjustment. Mr. Piasecki said he is looking at this from a liability perspective, we know this is a disaster but we are doing it anyway. The board continued the discussion and it was noted that having the ordinance would only benefit a few people not the whole population of the Township. The board continued this discussion amongst several board members. Chairman MacQueen stated there is a lot of work on this that needs to be done between the Township Committee and the Planning Board.

**PRESENTATION OF BILLS:**

John Gallina, Esq.        \$300.00 – Attend PB Mtg 4/6/2021

Motion by Mr. Rich and seconded by Mr. Piasecki to approve the bill as presented. Unanimously approved.

**OPEN TO THE PUBLIC**

Mr. Maurizio from the public and Mr. Schmidt from the board questioned what was going on with the Highlands Act regarding all the water usage. Attorney Lyons joined the meeting at this time. Mayor Schmidt asked Attorney Lyons if Ms. Koehler's statement about adopting an "Opt Out" ordinance by August 22<sup>nd</sup> and having the ability to opt back in at any time was correct. Attorney Lyons said yes. The League of Municipalities stated that the state has rammed this down the Municipalities throat over a multiple year battle and compressed it at the municipal level where there is no room for error. There are some legislators that agree that this was all done in hast and not with any considerations. Attorney Lyons said that none of this was designed to make it easier for the municipalities. Attorney Lyons went on to say we have the option of opting out of all 6 Classes. Chairman MacQueen asked if we opt out of everything now, can we opt back in within a week. Attorney Lyons said yes. Attorney Lyons continued with his comments. Mayor Schmidt referred to the Readington Township project on Route 22. Attorney Lyons stated that a lot of municipalities are opting out where others are looking at the revenue that they will get from opting in.

