

**REGULAR MEETING**

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

**April 15, 2008**

The 808<sup>th</sup> Regular Meeting of the Lebanon Township Planning Board was called to order at 7:05 p.m. by Chairman Gary MacQueen. Present were: Mr. Weeks, Mr. Schmidt, Mr. Gerlich, Ms. Bleck, Mr. Weiler, Attorney Gallina and Engineer Risse. Planner Bolan arrived at 7:15 p.m. **Excused:** Mr. Piasecki and Mr. Rich.

Notice of this meeting was provided for in the "Annual Meeting Notice Schedule" adopted by this board on January 8, 2008, mailed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on April 9, 2008.

**PRESENTATION OF MINUTES:** March 18, 2008 Regular Meeting

Motion by Mr. Gerlich and seconded by Mr. Schmidt to approve the minutes as presented. Unanimously approved.

**FYI: Ethics Forms due April 15<sup>th</sup>.**

**ORDINANCE BACK FROM TOWNSHIP COMMITTEE:**

a. Ordinance #2008-05 (Checklist) Introduced on April 2, 2008 with Public Hearing on May 7, 2008

Motion by Ms. Bleck and seconded by Mr. Gerlich to send the ordinance back to the Township Committee for Adoption on May 7, 2008. Unanimously approved.

**UNFINISHED BUSINESS:**

Omnipoint Communications Block #12 Lot #5  
4 Sylvan Way Route 513 RC 7½  
Parsippany, N. J. 07054  
**(Extension of Time Expires: May 31 2008)**

**CONTINUATION OF A PUBLIC HEARING Co-location for a Cell Tower in a Residential Zone**

Ms. Glashoff read into the record the letter she received from Attorney DelVecchio with drawing the application of Omnipoint Communications. Motion by Ms. Bleck and seconded by Mr. Weiler to accept the letter withdrawing the Omnipoint application for a co-location for a Cell Tower in a Residential zone. Unanimously approved.

**Attorney Gallina will prepare a Resolution to be placed on the next agenda for May 20, 2008.**

**NEW BUSINESS:**

David Klipstein Block #24 Lot #17  
6 Tamarack Farm Lane Route 513/Doefield Road RC 7½  
Califon, N.J. 07830

**PUBLIC HEARING Amend 3 Lot Minor Subdivision w/remaining lands/variances to 2 Lot Minor Subdivision w/remaining lands/variances with Highlands Approval.**

Attorney Larry Cohen was present to represent the applicant David Klipstein. Attorney Cohen noted the subdivision for 3 Lots and remaining lands was approved by the Planning Board in May 2004 and by August 2004 the Highlands Act was adopted which was retro to March 29, 2004 and the approval fell within that gap. Mr. Klipstein then applied to the Highlands for approval and ultimately the application was approved.

Attorney Gallina announced that all the notices are in order and the board can proceed with the public hearing. The following items were marked into evidence: **A1**-Taxes Paid, **A2**-Notice to Property Owners, **A3**-Affadavit of Proof of Service, **A4**-Notice in Newspaper, **A5**-Certified List of Property Owners, **A6**-Letter of approval from DEP dated August 23, 2007, **A7**-POD Slips, **A8**-subdivision plan approved by Highlands dated August 23, 2007, **A9**-subdivision plan amended to reflect Highlands approval dated February 25, 2008.

Attorney Cohen stated that the new lot configuration will be: Lot #17 remaining lands of 29.253 acres with existing house, Lot #17.01 consisting of 7.50 acres on Route 513 and Lot #17.02, which is off of Doefield Road will be 15 acres. Of Lot #17.02, 13.208 acres will be in a conservation easement and Lot #17, 24.052 acres will be in a conservation easement. Per the DEP Highlands, Lot #17.03 off Doefield Road was eliminated. The original two lots have now been combined into one lot which is #17.02. The subdivision is the same except that Lot #17.03 has been eliminated; variances are the same and were originally approved. Only one house will feed into Doefield Road through a dedicated municipal street which is a paper road. This was dedicated when the final map for that subdivision was filed. The final plat

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The final plat for Stone Row was the dedication and it has been carried on the tax maps as a dedicated roadway. The Preliminary subdivision showing the ROW had been approved 21 years ago. The DEP Highlands approval was granted on August 23, 2007. Attorney Cohen stated that a condition in the Final Subdivision Resolution dated May 2004, condition #6 “the applicant will submit the appropriate deed easement indicating the owner of Lot #32.08 giving the appropriate grant of access thru Lot #32.08 and the easement document shall be recorded”. Attorney Cohen quoted case law regarding granting of easements per “Tennis Club vs City of Teaneck. The case law states that you can not put as a condition of approval obtaining an easement over someone else’s property. Attorney Cohen stated this is a municipal roadway and they will petition the Township. It is a dedicated public roadway and has been carried on the Tax Map and the applicant had been granted a variance to build on a property that does not front a public road but allowed since it was part of the original resolution.

Chairman MacQueen asked if the board had any questions of Attorney Cohen. Ms. Bleck asked to see the map on the tri-pod. Attorney Cohen placed the Final Plat of Stone Row on the tri-pod for review. Once the map was posted, Attorney Cohen asked to have it marked into evidence. **A10**-Original minor subdivision approved, prepared by Ferriero Engineering dated June 9, 2003 and revised August 17, 2004. Attorney Cohen reviewed for the board the original approved minor subdivision from 2003. Attorney Cohen referred to A9 which is the approved plan by the DEP Highlands which shows additional conservation easements required by the DEP & Highlands Commission. Part of the approval was to remove the line between Lots #17.02 & #17.03 and have one lot consisting of 15 acres. With the original approval in 2004 the ROW is clearly shown on the plan and it states for future access to Lot #17.02 & 17.03. Planner Bolan said in looking at the plan, it shows a proposed 50’ wide access, drainage and Utilities for the purposed driveway. Attorney Cohen stated it goes within the municipal roadway and it is Shown on the Township map and is dedicated. It is also shown on the Tax Map of Lebanon Township. Engineer Risse noted that the ROW is shown on the final plat of the Stone Row Subdivision. It was noted by Chairman MacQueen that having these ROW’s when a subdivision is granted is not unusual with large tracts to have a ROW adjoining for future access. Planner Bolan noted that a ROW is different than a proposed easement. At this time the following final plat was marked into evidence as **A11**-Stone Row Final Plat prepared by Robert Lee Associates dated May 13, 2002.

Attorney Cohen stated that he would like the subdivision amended to show 3 lots with the conservation easement to be consistent with the new map submitted February, 2008 and remove condition #6 from the new resolution, no problem with the other conditions. Attorney Gallina noted condition #5 becomes

moot since there will not be a common driveway for two lots, there will only be one new lot. Attorney Cohen agreed. Chairman MacQueen asked for a legal opinion regarding eliminating condition #6. Attorney Gallina suggested opening up to the public for questions. The following people asked many questions of Attorney Cohen: Dan Finn and Dan Hughes. After a brief discussion, Chairman MacQueen opened the public hearing for statements and comments. Attorney Robert Marks who represents Mr. & Mrs. Felts owners of Lot #32.08 on Doefield Road asked to speak. Attorney Marks stated there is one basic misconception that Attorney Cohen has and it is that the Felts had participated and agreed to the easement and the board did not make a finding of fact that an easement was necessary and instead the applicant Mr. Klipstein back in 2004 came to the board and said he had an agreement with the owner which was Hickory Developers and that Hickory Developers has agreed to give us an easement. The board never had to consider whether or not the ROW can be used for this purpose or whether it can be used for this single use for a particular developer as purposed or as a road that the Township would need as necessary in a later date.

Attorney Marks stated that Hickory Developers didn't do properly was to recognize in 2002 that they entered into a contract with the Felts to build a house. That contract stated that Hickory Developers will not give any rights to anybody else that affect his client's rights to the property. Attorney Marks informed the board that he had contacted Hickory Developers attorney letting them know that the board's intent to give an easement to Klipstein was a violation of the contract with the Felts and that steps will be taken to block it. Attorney Marks said they were successful in convincing Hickory that they couldn't do it because the easement never went into effect. After the Felts purchased the property, they were approached by Mr. Klipstein requesting an easement. Attorney Marks stated that when this happened he contacted in writing board Attorney Gallina, letter dated September 29, 2006. The letter was then read into the record by Attorney Marks. Chairman MacQueen asked if Attorney Marks agrees there is a ROW. Attorney Marks answered yes. At this time, Mr. Felts gave his comments to the board. Attorney Cohen referred to the deed specifically page 3 indicating the metes and bounds description which refers to a 50' wide future ROW which is shown on the filed map. Attorney Cohen asked if Mr. Felts was aware that when this deed was recorded was subject to a 50' ROW. Mr. Felts answered yes. At this time the following was marked into evidence: **A12-Deed** from Hickory Developers to Felts dated July 1, 2005 and recorded at the county on July 7, 2005. Attorney Cohen asked to have in the approval/resolution to state that the board approves this lot, but in the event that the applicant is unable to get access through Doefield Road and if he can not get access then he has a problem. The condition should be that we have to get a connection sighting MLUL 40:55D-36. Attorney Cohen stated that in paragraph 40 of the resolution of May, 2004 granted that relief for Lots #17.02 & 17.03 for a common 16' driveway which is a Class III Common Driveway. Attorney Cohen stated they will need to go before the Township Committee regarding the access. Attorney Marks made comment on the proposal of Attorney Cohen. Attorney Cohen noted that the ROW is shown on the Township Tax Map, on the filed final subdivision map with the county. Mr. Schmidt had questions of Attorney Cohen. The board continued to discuss this issue at length.

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Chairman MacQueen asked Planner Bolan for his input on this issue. Planning Bolan stated that from a Planning perspective the board had approved 2 lots off of the cul-de-sac. Now the board has been asked to change the approval from 2 lots to 1 lot which is simple. Any impairment that had occurred as a result of the 2 lots would be lessened by the fact that you now only have 1 lot. Engineer Risse did not have any comments since we are going from 2 lots down to 1 lot. Chairman MacQueen asked if the board had any additional questions. There were none. Attorney Marks stated his concerns for his clients regarding the ROW. The new driveway would be 10' from the Felt's existing driveway and there would be proper landscaping for the Felt's property. Attorney Cohen agreed that they don't want to create an unsafe condition.

Chairman MacQueen asked Attorney Gallina for a legal opinion. Attorney Gallina stated that Attorney

Cohen is arguing regarding the condition of obtaining an easement from Lot #32.08 which is beyond this board's authority since it seems to control other people's property. There was representation earlier in the testimony regarding the application and the agreement of easement. Attorney Cohen said that it is a legal issue that his client has access or he doesn't have it. Doefield Road which is a dedicated street and this would possibly have to go before the Township Committee to resolve the access issue and is seeking to have the condition removed. Attorney Marks claims there is a big difference between a 50' ROW and a 16' common driveway even though it is not going to be a common driveway. Generally the board does not get involved with legal issues. The board has given these approval and whether or not the applicant can get legal access is a legal issue. Condition #5 has become moot since it is no longer a common driveway. This issue over the access was discussed at length. At this time, Chairman MacQueen asked if Attorney Cohen had any other witnesses. Attorney Cohen said no. Chairman MacQueen asked if anyone from the public wanted to give testimony. Sig Shorr, a Realtor from Long Valley who represents David Klipstein in this real estate transaction. Mr. Shorr stated for the record that Mr. Felts offered to sell Mr. Klipstein the easement for \$250,000.00 which was totally unreasonable. During the discussions while waiting for Highlands/DEP approval, Mr. Klipstein offered to pay the Felts \$25,000.00. Attorney Cohen noted that you can't sell what you don't own. Where we propose the driveway is a Municipal dedicated ROW to the municipality. Mr. Felts property line goes up to the boundary of the 50' ROW. At this time, the map showing the driveway and ROW was reviewed. Planner Bolan interjected asked where is the lot line between Lots #32.08 & 32.07? The board discussed and reviewed this issue with the board's professionals and Attorney Cohen along with Mr. Felts at length. Attorney Gallina stated it appears the proposed driveway going into Lot #17.02 and coming off of Doefield Road is outside the boundary line of Lot #32.08. Attorney Cohen answered yes. At the conclusion of the board's lengthy discussion regarding the ROW, Attorney Cohen gave his summation. Motion by Ms. Bleck and seconded by Mr. Gerlich to close the public portion of the hearing. Unanimously approved.

During the board's deliberations, it was agreed to eliminate conditions #5 & #6 as they are both moot. Motion by Mr. Gerlich and seconded by Ms. Bleck to approve the subdivision as amended per Highlands/DEP approval eliminating Lot #17.03 with the following conditions:

- a. Eliminate conditions #5 & #6 from prior Resolution.
- b. All prior conditions will remain in effect except for the elimination of conditions #5 & #6.
- c. Driveway to be located outside of the boundary line of Lot #32.08
- d. Applicant to get the appropriate driveway permit and establish with the appropriate body being either the Township Committee or board that they have the right to access along the extension of Doefield Road to access Lot #17.02.
- e. Comply with all outside agencies having jurisdiction.

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Weeks	Mr. MacQueen	<b>No:</b> None	<b>Absent:</b> Mr. Rich
	Mr. Schmidt	Ms. Bleck		Mr. Piasecki
	Mr. Gerlich	Mr. Weiler		Mr. Piazza

**Attorney Gallina will prepare the Resolution to be placed on the May 20, 2008 agenda.**

**PRESENTATION OF BILLS:**

- a. John Gallina, Esq. \$ 315.00
- b. Bayer/Risse Engrs. \$ 632.50
- Total: \$ 947.50**

Ms. Glashoff stated she had an addendum to the agenda for the bills which included a bill report. The additional bills are from Planner Bolan in the amount of **\$1,339.20** which brings the grand total of bills to **\$2,286.70**. Motion by Mr. Gerlich and seconded by Ms. Bleck to approve the bills as amended. Unanimously approved.

**CORRESPONDENCE:**

- a. Memo from Zoning Officer – referred from TC Meeting 3/19/2008

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The board discussed the memo from the Zoning Officer at length stating that all the issues in the memo are good ones and agreed to have him come in to discuss his memo at a future meeting. Mr. Gerlich suggested having a subcommittee consisting of 2 members of the Township Committee and 2 members of the Planning Board along with the Zoning Officer to work on the issues that Mr. Flemming has brought up.

Ms. Glashoff reviewed for the board a few items that came in after the packets were mailed. One item was regarding grant monies from the Highland Council. This was passed on to Planner Bolan to look into. The board received a very nice Thank You card from Doreen & Tom Bleck for the Fruit Basket.

**OPEN TO THE PUBLIC**

Being no further business to come before the board, nor comments from the public, motion by Mr. Weeks and seconded by Ms. Bleck to adjourn the meeting at 9:10 p.m. Unanimously approved.

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**CHAIRMAN GARY MACQUEEN**

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**GAIL W. GLASHOFF, PLANNING BOARD CLERK**