

REGULAR MEETING

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

June 7, 2011

The 840th Meeting of the Lebanon Township Planning Board was called to order at 7:08 p.m. by Chairman Gary MacQueen. Present were: Mr. Milkowski, Mr. Schmidt, Mr. Gerlich, Mr. Rich, Ms. Bleck, Mr. Weiler, Mr. Piazza, Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. Piasecki

In compliance with the "Open Public Meetings Act" notice is hereby given that the Lebanon Township Planning Board will hold a joint meeting with the Township Committee which will begin at the conclusion of the Public Hearing on the Garguilo application on Tuesday June 7, 2011 prevailing time in the Main Meeting Room in the Municipal Building. The purpose of the joint meeting is to discuss the Alternative Energy Ordinance and possibly any other ordinances that need to be addressed. Notice of the joint meeting was published in the Hunterdon Review on May 25, 2011 and 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 June 1, 2011.

PRESENTATION OF MINUTES: May 3, 2011 Regular Meeting

Motion by Ms. Bleck and seconded by Mr. Rich to approve the minutes with a minor correction. Unanimously approved.

May 17, 2011 Regular Meeting

Motion by Ms. Bleck and seconded by Mr. Weiler to approve the minutes as presented. Unanimously approved.

FYI: Letter from Heritage Conservancy re: Musconetcong River Valley Lasting Landscapes Project

Chairman MacQueen reviewed for the board the letter from Heritage Conservancy along with the resolution. Ms. Glashoff said she has prepared the resolution on Township Letterhead in the event they approve the resolution. Planner Bolan said they are trying to get Green Acres funding and it helps to get support from the municipalities. Mr. Milkowski asked if this would be a commitment financially. Chairman MacQueen said no we are not committing any monies just support. Planner Bolan said it was a good idea to support them. Motion by Ms. Bleck and seconded by Mr. Gerlich to approve the resolution to support the Heritage Conservancy in acquiring land along the Musconetcong River. Unanimously approved.

NEW BUSINESS:

Jeffrey Gargiulo
262 Musconetcong River Road
Washington, N.J. 07882

Block #59 Lot #24
Musconetcong River Road RC

PUBLIC HEARING

1 Lot Minor Subdivision with Variances

Due to a conflict of interest Mr. Schmidt stepped down from the Gargiulo public hearing. Attorney Alan Lowcher and Engineer Jess Symonds were present on behalf of the applicant. 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-Certified List of Property Owners, A3-Notice to Property Owners, A4-POD Slips, A5-Affadavit of Proof of Service, A6-Notice in Newspaper.**

Attorney Lowcher stated the property is located in the RC Zone on 9.91 acres with two dwelling units. The applicant would like to do a Lot Line Adjustment and create a 7.5 acre lot for the main house and the other lot with 2.41 acres for the smaller house with the intention of selling the smaller property. Attorney Lowcher said that his client needs bulk variances for lot area, frontage, front & side yard setbacks. Attorney Lowcher had the following marked into evidence: **A7-H.C. Soil Conservation letter dated 2/18/2011, A8-H.C. Planning Board letter dated 2/24/2011.** At this time, Engineer Jess Symonds was sworn in to give testimony. Engineer Symonds had the survey plan of the property marked into evidence: **A9-Minor Subdivision, 2 pages prepared by Jess Symonds, Biggs Engineering dated 3/15/2011.** Engineer Symonds made a presentation to the board. In his presentation he addressed the letter from board Engr. Risse dated 3/4/2011. During Engineer Symonds testimony the following was marked into evidence: **A10-Aerial View of the property.** At the conclusion of Engineer Symonds testimony, Engineer Risse had no questions. Planner Bolan asked what the actual frontage was on Lot #24.01, was it 3.72' or 3.12". Engineer Symonds said it should be 3.14'. Planner Bolan asked if there would be any testimony on why there were 2 dwelling units on one lot. Planner Bolan said it is advantageous to separate the two units that are on one lot. It was a matter of right that you could separate to units. There had been some case law that made it difficult, because the one unit had been an accessory structure and then made into a dwelling and why we would legitimize it. Engineer Symonds reviewed for the board the history of the property. Attorney Lowcher had the applicant Jeff Gargiulo sworn in to give testimony. Planner Bolan asked when the houses were built. Mr. Gargiulo said the main house has 3 bedrooms and was built in the 1940's. The rental house has 2 bedrooms and was built in the 1950's. Attorney Lowcher noted that both houses pre-date zoning in the Township. Mr. Rich asked about the septic on Lot #24. Mr. Gargiulo stated it is next to

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the garage. Mr. Rich noted that the well is near the septic. Mr. Gargiulo said they were near each other but it is pre-existing non-conforming. Ms. Glashoff stated that she got conformation from the Tax Assessor regarding Lot #24.01 and also has a letter from the County Board of Health and asked if Attorney Lowcher wanted these items marked into evidence. The following was marked: **A11**-Letter from H.C. Board of Health dated March 1, 2011; **A12**-Conformation from Tax Assessor for Lot#24.01 dated March 8, 2011.

Mr. Weiler asked if there were any rules that needed to be followed regarding the Highlands with doing this Lot Line Adjustment. Engineer Symonds said it may be an issued at some point but for now it is not an issue. Mr. Piazza didn't see anything wrong with what was being proposed, but wanted to know if there would be a problem if the new owner decided to have a pool etc because of the size of the lot they might have to come before the Zoning Board and asked if we should put some restrictions on the lot. Attorney Gallina said it will be noted in the deed regarding the Lot Line Adjustment and if there was a problem, then it would be judged on its own merits. Chairman MacQueen followed up with concern if we create a hardship. Attorney Gallina said if the new owner wanted to build a structure and was unable to meet the setback requirements they would go to the Board of Adjustment.

Chairman MacQueen opened the hearing to the public for questions of the witnesses. There were none. Attorney Lowcher gave his summation at this time. Attorney Lowcher stated that Planner Bolan had pointed out that this matter could go forward as a C1 or C2 variance. As a C1 the application refers to two houses on a single lot. As a C2 it is an existing lot with two dwelling units and what the applicant is proposing to do is to locate one house on one lot and the other house on the other lot which will be what the zone district requires. Attorney Lowcher referred to the MLUL 40:55D2a and 40:55D2e. At the conclusion of the summation, motion by Ms. Bleck and seconded by Mr. Piazza to close the public portion of the hearing.

The board deliberated at this time, at the conclusion of the deliberations, motion by Mr. Rich and seconded by Mr. Gerlich to approve the Lot Line Adjustment, variances with the following conditions:

- a. Deeds to be approved by the board attorney.
- b. Approval from all outside agencies having jurisdiction
- c. All fees and escrows to be current
- d. Plans to be revised to show the 8' boundary adjustment

ROLL CALL	Yes: Mr. Milkowski	Mr. MacQueen	Absent: Mr. Piasecki
	Mr. Schmidt	Ms. Bleck	
	Mr. Gerlich	Mr. Weiler	
	Mr. Rich	Mr. Piazza	

Attorney Gallina will prepare the Resolution for the July 5th meeting agenda.

Mr. Schmidt returned to the board for the balance of the meeting.

ITEMS FOR DISCUSSION:

a. Highlands Plan Conformance Update – Planner Bolan (memo enclosed)

Planner Bolan referred to the memo he sent the board that included an attached summary. Planner Bolan said when you read through the bullet points of the summary, there were some modifications to the Land Use Plan and the other 12 Plan elements were fine. The same holds true the Land Use Ordinances. There are a few things added that are good regarding exemptions and the definition of agriculture. The grandfather provisions have been extended from the time periods that were in the original legislation from the time you actually adopt an ordinance. Planner Bolan said he spent an hour on the phone with the principal planner Judy Thornton just to confirm his understanding of everything. Chairman MacQueen asked what the next step was. Planner Bolan said we submit the info that the board has tonight... They will look at any changes made and then put it on an agenda for certification. Mr. Piazza asked if there was another grant we can apply for. Planner Bolan said we need to wait for the certification. Mr. Piazza asked about the grant money that we had been approved for which was originally 50K with an additional 50K and wanted to know if we can use that grant money for the work that is being done now. Planner Bolan said yes, we are under the amount of the grant money that was approved.

b. Alternative Energy Ordinance (Back from Township Committee-refer to Page 3 Item (memo enclosed))

Mr. Piazza asked to speak before opening it up to the public for comments. Mr. Piazza said the ordinance was introduced at the Township Committee Meeting. The committee reviewed the ordinance and during the discussion, the 180' regarding the Wood burning Furnaces became a big issue. There were also members of the public that expressed concern with the 180'. Mr. Piazza said the Committee voted to send the ordinance back to the Planning Board to discuss only the 180' which was the problem. Chairman MacQueen said people he spoke with expressed concerns with other aspects of the ordinance. Even board members have spoke to members of the public that had questions and concerns.

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Chairman MacQueen opened the meeting to the public for comments. Deputy Mayor Schriver said after the last Committee Meeting she received phone calls with concerns. The height of the chimney should be higher than what is proposed in the ordinance. Does not want the grandfathering to apply to using the furnace all year long, those people should have to comply with the October 1st through April 30th? EJ Skidmore referred to the packets that were mailed to the Township Committee and to the Planning Board. Mr. Skidmore went over the information that he sent and stated that the board should stay away from long unilateral setbacks. The new stoves have very little smoke and don't need the setbacks like the old stoves do. Mr. Skidmore said the people who need these stoves don't have the money to have large pieces of property. No one had questions of Mr. Skidmore. Mr. Casale said he has heard from people that these stoves should be prohibited altogether and he doesn't agree with that. Mr. Casale referred to the Appeal that had been before the Zoning Board where they said these were accessory uses. Even though they limited it to that applicant. The board still said these stoves are a customary accessory use which was unanimous by the board. Mr. Casale noted the zoning officer has been issuing permits using the setback requirements for accessory structures. Mr. Casale said he didn't agree with Ms. Schriver. He also feels that you should be able to use the stove all year long otherwise it would be a hardship. Also, the Board of Adjustment has deemed these stoves as a customary accessory use. Mr. Schmidt asked what the cost of an electric hot water heater since you refer to this as a hardship if you can't use your stove all year long. Mr. Casale said the cost doesn't matter because people have the right to use their stoves all year long. Mr. Schmidt this is stretching the term hardship. Mr. Casale said he is referring to the existing furnaces not the new ones to be installed.

Marc Laul said he got his permits 9 years ago and his furnace is 75' from his neighbor's house and the other neighbor it is a 100'. It was deemed as an outbuilding by the Zoning Officer back then. Mr. Laul said the grandfathering applies to him. Mr. Laul stated he starts using his furnace for heating his house in September. October may be considered late in the season for some people. Mr. Laul said his furnace is the source for domestic hot water and uses it year round. Mr. Laul said he runs it about 35 minutes per day which is done late at night. Mr. Weiler said if we don't have a grandfather clause and the ordinance passes stating that it could only be the Class A burners, he asked Mr. Laul if his furnace would have to be replaced. Mr. Laul said yes. Mr. Gerlich asked what the life expectancy was of Mr. Laul furnace when he purchased it. Mr. Laul said 40 years. The stack now is in need of repair. Planner Bolan asked the height of the stack. Mr. Laul said 8' but the stack starts at 42" off the ground. Mr. Bolan said at grade level it would be about 12'. Chairman MacQueen said that the stacks need to be at least 18'. Mr. Skidmore referred to his letter and the attached comments that were given to the Township Committee and Planning Board. Mr. Skidmore asked who would do the enforcement of these furnaces. Attorney Gallina said the Zoning Officer. At the conclusion of Mr. Skidmore's comments, Chairman MacQueen asked for a motion to close the public portion of the meeting. Motion by Mr. Gerlich and seconded by Mr. Piazza to close the public comment period of the meeting. Unanimously approved.

Mr. Piazza said that we have 4 Township Committee people present and these are the ones we have to convince this evening to vote on this ordinance. Mr. Piazza said if we are unable to resolve these issues, then we should pull out of the ordinance the wood burning furnace section and get the balance of the ordinance adopted. Mr. Piazza suggested regarding the footage 180' for the old stoves and 100' for new stoves which would require 80' of the person's property and 20' of the neighbor's setback. Committeeman Brian Wunder said we need to have the grandfathering and he agrees with Mr. Piazza in reducing the setbacks. Mr. Wunder agreed with Mr. Piazza's suggestion about lowering the setbacks. Mr. Milkowski suggested the distance to a residence made more sense than to the property line. Mr. Milkowski said there are going to be properties that are just too small to have one of these furnaces. The board agreed. Mr. Gerlich stated that it needs to be from the property line. Mr. Gerlich said these furnaces have changed a lot since we started talking about this ordinance two years ago. These boilers are much more efficient and the units are much better than they were which needs to be taken into consideration. Mr. Schmidt said he will not vote to have these boilers used all year long and suggested just using the required setbacks for accessory buildings.

Chairman MacQueen referred to the furnace that was installed on Hickory Run Road and when it is burning the smoke comes down and across the road. Chairman MacQueen stated the Planning Board and Township Committee are hear for all the residents in the Township not just a few. The board has been trying to appease everyone and it not working. Chairman MacQueen's opinion is to have it 180' from the property line, 18' stack and they can't run all year long which he thinks is fair for everyone. Chairman MacQueen said he hears what everyone is saying but we can't be sending everyone to the Board of Adjustment. Mr. Wunder said his opinion is not a popular one, but he is for as little control with this as possible regarding restrictions. There are too many laws and restrictions and felt that people should have the opportunity to put one in if they choose. Mr. Wunder felt it was a basic right to be able to have a wood boiler. Mr. Gerlich asked Attorney Gallina, if we send this ordinance back to the Township Committee and they don't like it, the Township Attorney told them they can not change it that night. All they can do is reject it or pass it. Planner Bolan said you can not make a substantive change to the ordinance that night. You would have to reintroduce it again. Mr. Rich said he agreed with Chairman MacQueen about the chimney height, the 180' and not being able to burn all year long.

