

## REGULAR MEETING

**Lebanon Township Planning Board  
530 West Hill Road Glen Gardner, N.J. 08826**

**July 19, 2016**

The 899<sup>th</sup> Regular Meeting of the Lebanon Township Planning Board was called to order at 7:04 p.m. by Chairman Gary MacQueen. Present were: Mr. Milkowski, Mr. Duckworth, Mr. Rich, Ms. Bleck, Mr. Weiler, Mr. McKee, 1<sup>st</sup> Alternate Gerlich, 2<sup>nd</sup> Alternate Skidmore, Attorney Gallina & Planner Bolan. Also present: Mayor Marc Laul, Committeeman Mike Schmidt and Committeeman Brian Wunder. Attorney Tara St. Angelo arrived at 7:30 p.m. **Excused:** Mr. Piasecki, Mr. Schmidt & Engineer Risse.

In compliance with the "Open Public Meetings Act" notice is hereby given that the Lebanon Township Planning Board will have a Regular Business Meeting & Joint Meeting with the Township Committee on July 19, 2016. At the conclusion of the Regular Business portion of the meeting, the board may possibly go into Closed Executive Session with the Township Committee to discuss possible litigation. Notice of this Joint Meeting was published in the June 29, 2016 issue of the Hunterdon Review. Notice of this meeting was faxed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board on July 13, 2016 in the Municipal Building.

**PRESENTATION OF MINUTES:** June 7, 2016 Regular Meeting

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

**RESOLUTION:**

North Hunterdon/Voorhees Regional High School District	Block #12	Lot #44.01
Capital Improvement Project	Route 513	R3

Motion by Mr. Rich and seconded by Mr. McKee to adopt the Resolution for North Hunterdon/Voorhees Regional High School District.

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Milkowski Mr. MacQueen Mr. Rich Mr. McKee	<b>Abstain:</b> Ms. Bleck Mr. Weiler Mr. Gerlich Mr. Duckworth Mr. Skidmore	<b>Absent:</b> Mr. Piasecki Mr. Schmidt
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**ITEM FOR DISCUSSION:**

**a. Annual Report – Board of Adjustment**

Planner Bolan stated that the Zoning Board is required by MLUL to do an Annual Report yearly. Planner Bolan reviewed for the board his memo which included making any recommendations for zoning ordinance amendments. Planner Bolan said there were no applications for Use or Bulk Variances. There was an Appeal, an Interpretation and two Extensions of Time. Planner Bolan referred to the bullet at the bottom of page one which refers to "Animal Farms". Planner Bolan said there was a concern regarding the definition of animal farm because of an application that had been filed for a horse farm. The ordinance states "indigenous and/or exotic animals". This phrase has caused confusion. Originally, this ordinance was created because of "Animal Actors". After a lengthy discussion at the Board of Adjustment it was decided to make a recommendation to the Planning Board to amend the ordinance to eliminate the wording "indigenous and/or". Planner Bolan said the intent of the ordinance was to address the keeping of exotic animals, not standard farm animals. At the conclusion of the board's discussion, motion by Ms. Bleck and seconded by Mr. Rich to have Planner Bolan prepare an amendment to the ordinance to eliminate "indigenous and/or".

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Milkowski Mr. Gerlich Mr. Rich Mr. MacQueen	<b>Ms. Bleck</b> Mr. Weiler Mr. McKee Mr. Skidmore	<b>Abstain:</b> Mr. Duckworth	<b>Absent:</b> Mr. Schmidt Mr. Piasecki
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Mr. Duckworth said he wanted the board to know why he was abstaining. He didn't have a chance to review the ordinance on Animal Farms.

Planner Bolan referred to the issue of private roads in the Township. Over the years the Zoning Board has dealt with many applications for private roads. The Zoning Board recommends that a subcommittee be formed consisting of members from the Township Committee, Planning Board, Zoning Board, Fire Official and other Township agencies to thoroughly review the issues surrounding private roads. Lastly, since the Zoning Board relies on the enforcement of certain conditions that are placed in the resolutions when granting variances, the board would like to see a better system for the sharing of information and the tracking of application approvals.

**Lebanon Township Planning Board**  
**July 19, 2016**  
**Page 2**

**PRESENTATION OF BILLS & REPORT:**

a. John Gallina, Esq.	\$ 362.50
b. Michael Bolan, PP	\$ 799.60
<b>Total: \$1,162.10</b>	

Motion by Mr. Gerlich and seconded by Ms. Bleck to approve the bills as presented. Unanimously approved.

**CORRESPONDENCE:** a. Law of Land Articles

Chairman MacQueen noted there was additional correspondence and asked if the board had a chance to read it. Ms. Glashoff informed the board that one of the items was email correspondence between Engineer Rissee and the Engineer for the horse farm and that she wanted the board to have this update. Ms. Glashoff stated that the 3 items in question needed to be addressed and can't be conditions of approval. The board agreed. Chairman MacQueen asked when the applicant would be on the agenda. Ms. Glashoff said not until those items have been addressed per Engineer Rissee. Mr. Duckworth asked to speak to the board and public. The Environmental Commission is having their Farm Passport Challenge again this year. Mr. Duckworth handed out to everyone the form for when you visit the Farm Stands listed. The Green Team is sponsoring the Farm Passport Challenge. Mr. Duckworth said last year Farm Passport Challenge was a big success and they are looking to have another successful year.

Chairman Mac Queen asked when is the next PB meeting. Ms. Glashoff said either August 2<sup>nd</sup> or 16<sup>th</sup>. At this point nothing is scheduled. The board decided to cancel the August meeting. The next meeting is scheduled for September 20<sup>th</sup>. Chairman MacQueen informed the board that he would not be available on that date, Ms. Bleck as Vice Chair will cover the meeting. Ms. Glashoff informed the board that the Governor signed into law another extension of the Permit Extension Act of 2008. This time it only includes counties that were impacted by Superstorm Sandy.

**DISCUSSION ON AFFORDABLE HOUSING - Attorney St. Angelo**

Attorney St. Angelo informed the board that most of the discussion can be done in open meeting, but that she will want to go into closed executive session near the end of the update. Attorney St. Angelo informed the board that she did have some good news. Attorney St. Angelo said a published opinion on July 11<sup>th</sup> by the Appellate Division ruled that there is no mandate in the fair housing act regarding the gap period obligation. It reduces the Fair Share Housing Centers alleged numbers by 145,000 statewide a third of what they were claiming. This is great for the municipalities. The two thousand dollars that the municipalities paid into the municipal consortium because Fair Share Housing opposed it and made the argument to the Appellate Division. Fair Share Housing will appeal it to the Supreme Court. Attorney St. Angelo said that one good thing that happened is Fair Share already made an emergent application to the Supreme Court and asked that they stay any trial court action on this and the Supreme Court denied it and told Fair Share Housing that they would have to make a motion in the normal course.

Attorney St. Angelo referred to the case management conference back in April with Judge Miller for our small group and with summer vacations he has given us to the end of September to complete our depositions. Also, Judge Miller hasn't set any return dates on the motions on the compliance mechanisms, Highland motions and the vacant land adjustments motions that were submitted. Attorney St. Angelo said probably because of the gap period issue and putting it off until that issue was resolved and hoping that things will be scheduled soon. At this point Fair Share Housing hasn't submitted anything. Attorney St. Angelo said she received a response to her letter from the Fair Share Housing Center asking for a 30 day extension to respond to her Highlands motion. Attorney St. Angelo said she agreed to the extension which was 60 days ago.

Attorney St. Angelo stated at this point we could go into Executive Session. Chairman MacQueen asked if anyone had a questions. Committeeman Schmidt asked what would be the schedule for the time line for the Supreme Court review on the gap period. Attorney St. Angelo said the Court will probably move quickly on it before the end of the year. Chairman MacQueen asked for a motion to go into Closed Executive Session. The public who was present left the meeting at this time.

**Resolution 03-2016**

**WHEREAS,** Section 7(b) of the Open Public Meetings Act 1.1975 c. 231 NJSA 10:4-12(b)(8) permits the exclusion of the public from Planning Board Meetings where certain matters are to be discussed; and

**WHEREAS,** the Open Public Meetings Act also recognizes exceptions to the right of the public to attend portions of such meetings; and

**WHEREAS,** the Lebanon Township Planning Board is desirous to meet to discuss potential litigation – affordable housing; and

**Lebanon Township Planning Board**  
**July 19, 2016**  
**Page 3**

**WHEREAS,** the Lebanon Township Planning Board will reconvene in public session at the conclusion of the Executive Session;

**NOW, THEREFORE BE IT RESOLVED,** by the Lebanon Township Planning Board of the Township of Lebanon, Hunterdon County, New Jersey, that this Board met in Executive Session.

Motion by Mr. Rich and seconded by Ms. Bleck to return to the public portion of the meeting. Unanimously approved. The public returned to the meeting room.

Chairman MacQueen opened the meeting to the public for questions and comments. David Shope asked to address the board. Mr. Shope asked the board why they were spending money to be involved with the affordable housing since the Township is in the Highlands and the risk is zero. Planner Bolan said in the eyes of the Fair Share Housing Center they have the Township with an obligation of 188 affordable housing units. Planner Bolan said the Township has to protect themselves from the possibility of a builders remedy lawsuit brought against them. The only way you can get that protection is to get a judgement of compliance from the Court. Otherwise you are not protected from a builders remedy lawsuit. Mr. Shope said it seems to him we have some conflicting issues, one being the Highlands preservation area requires 25 acres for open land and 88 acres for forested land for a single housing unit. Plus all the other restrictions like steep slopes and stream setbacks. Mr. Shope asked if anyone has figured out what the available land is for building in Township and when the Township was downzoning back in 2000, they never bothered to calculate the number of lots that would be left after you did all the subtractions of steep slopes etc. Mr. Shope stated it seems it is a knee jerk reaction without any analysis and said it is his tax dollars and he wants to know where it is going. Mr. Shope said he has a handout for the board which consists of a letter to Judge Michael Dressler and Freeholder Robert Walton, both are members of the Highlands Council and are both on a subcommittee for land equity. Also included are the 2007 & 2012 USDA Ag Census Data for NJ Counties in the Highlands and a letter from First Pioneer Farm Credit to Robert Tucker. Mr. Shope reviewed for the board the Census Data for Hunterdon County in 2007 under the net earnings per acre was \$39.27 and the net earnings per acre in 2012 was minus \$16.21. Mr. Shope asked how viable is agriculture as an activity in Lebanon Township when there is far better farmland in other municipalities in Hunterdon. Mr. Shope ask the board to consider the economic impact of what is one of the only land uses that is left in the Township as a result of the Highlands Act and with the downzoning in 2000 what is your return on your investment calculations. Mr. Duckworth invited Mr. Shope to attend an Environmental Commission meeting which is held on the 3<sup>rd</sup> Monday of each month.

At the conclusion of Mr. Shope's comments, Chairman MacQueen asked if anyone else had a comments from the public. Mr. William Phillips asked to address the board. Mr. Phillips informed the board that he is looking at a piece of property on Hollow Road that has a lot of problems. There is a block building on the property that was used as a home, but does not have a well and septic. The property consists of only a ½ acre. It has an outhouse and they used the spring for their water. The block building is 700-800 square feet and hasn't been lived in about 14 years. Also, the taxes on the property haven't been paid in 5 years. Mr. Phillips said he would pay the taxes owed and then make the building livable. Mr. Phillips said he thought he might need a variance. Chairman MacQueen informed Mr. Phillips that he would need to go see the Zoning Officer and bring along a copy of the survey so he could see where the building was located on the property. Mr. Phillips said he did approach the Zoning Officer and he had hoped that the building would be grandfathered in before he would spend a lot of money. Mr. Phillips said he knows it's not in the setback but it doesn't meet the zoning requirement for land and knows he will need a survey. Mr. Milkowski said he needs to see if there is enough room for a septic system and well. Mr. Phillips said he spoke to Engineer Symonds. Mr. Milkowski said he will need to get approvals from the County Board of Health. At the conclusion of the discussion, Mr. Phillips thanked the board for their input.

Mr. Skidmore had a question regarding the affordable housing and asked if we had a builder's remedy lawsuit and we lost what are the penalties and what could they do to us. Planner Bolan said we would have to build the houses and Attorney Gallina said a lawsuit would be very costly. Chairman MacQueen stated that is what happened up in Bedminster with the Hills. Bedminster fought and lost. Mr. Skidmore said in answer to Mr. Shope's question, we need to stay on top of this so we don't get in that predicament. Chairman MacQueen noted that the Highlands is not helping us, so it is important for the Township to stay on top of this and not assume we are protected by the Highlands.

Being no further business to come before the board, nor comments from the public, motion by Ms. Bleck and seconded by Mr. McKee to adjourn the meeting at 8:10 p.m. Unanimously approved.

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**CHAIRMAN GARY MACQUEEN**

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