

## REGULAR MEETING

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

**October 7, 2008**

The 812<sup>th</sup> Regular Meeting of the Lebanon Township Planning Board was called to order at 7:09 p.m. by Chairman Gary MacQueen. Present were: Mr. Schmidt, Mr. Piasecki, Ms. Bleck, Mr. Piazza, Mr. Weiler, Attorney Gallina, Engineer Risse. Planner Bolan arrived at 7:15 p.m. **Excused:** Mr. Rich, Mr. Gerlich and Mr. Weeks.

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 October 1, 2008.

**PRESENTATION OF MINUTES:** August 5, 2008 Regular Meeting

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

### **FYI:**

- a. Planning H.C. Transportation Future 10/22/08 County Complex
- b. NJDEP – Block #6 Lot #1
- c. NJLM Legislative Development
- d. Article by Kathleen Bird re: Eminent Domain

Chairman MacQueen briefly went over the items listed under FYI with the board.

### **NEW BUSINESS:**

Hunterdon County Planning Board  
Route 12  
Flemington, N.J. 08822

A Representative from the County Planning Board will speak on the new WMP regarding Hunterdon County and other issues. (Enclosed letter from Hatch Mott MacDonald & H.C.P.B. re: WMP Advisory Committee)

Due to illness the representative from the County Planning Board was unable to attend. The County will make their presentation to the Township Committee on October 15, 2008.

### **ITEMS FOR DISCUSSION:**

#### **a. Fire Protection Ordinance**

Engineer Risse said that they modified the Fire Tank Ordinance based on prior meetings and put together a draft with some modifications. We had all the specifics of the fire tank details in the ordinance and that it would make sense to put together a plan and reference the plan in the ordinance and as the plan gets modified we don't have to amend the ordinance every time the plan gets modified. Engineer Risse handed out to the board copies of the plan for their review. Engineer Risse said that he spoke to the Planner who has also made some revisions and they will be putting both their revisions together. In summary, they changed the numbering from the old ordinance book to the new book. At the last meeting the board discussed defining the numbers of minor vs a major along with the creeping majors. It now says 4 lots including lands remaining. Also there was discussion regarding creeping majors and in Section I referring back to 330:22. Engineer Risse clarified when an additional subdivision of the same property is subdivided again within the 4 years.

Engineer Risse stated that instead of specifying certain NFPA standards, it has been changed to say "the current NFPA standards", that way we don't have to amend the ordinance every time the standards change. Engineer Risse said he added a new Section G which is the section that deals with maintenance. In the new section it states: Prior

to acceptance of the underground water tank, inspections of the tank shall be the responsibility of the Lebanon Township Fire Dept. Inspections shall occur at least every 6 months. Any maintenance as determined by the Fire Dept. shall be the responsibility of the developer until such time as the development is completed and the fire tank is accepted by Lebanon Township. This is not in the existing ordinance and now has been included. Maintenance will then transfer to Lebanon Township. When a tank is on private property, the property owner shall permit access to the Fire Dept. for maintenance and inspection activities.

Engineer Risse informed the board that Warren Gabriel and John Kneafsey from the Fire Dept. worked on the drawings along with the ordinance with him. Chairman MacQueen asked Warren and John if they are satisfied with the wording in the ordinance. Warren stated that there were a few minor items to be addressed but other than that they were okay with the wording in the ordinance. Mr. Piazza expressed concern of when the tank is installed that it is done prior to any building permits being issued since this has been a problem in the past. Engineer Risse said that wording is currently in the ordinance. Mr. Piazza said

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that it needs to be enforced so that we don't continue to have this problem. Chairman MacQueen asked how are we to enforce this problem. A copy of the Resolution needs to be given to the Construction Official besides the Zoning Officer. The board agreed that this has to be enforced. Chairman MacQueen said everything needs to be spelled out as to who is responsible for different conditions in the Resolution. Planner Bolan asked if a building permit is required for the installation of a fire tank. The answer was yes. At the conclusion of the board's discussion, Engineer Risse will make the modifications needed with a few additional items that were discussed; Engineer Risse will prepare the changes and amendments and have it ready to be on the next agenda for approval on November 4<sup>th</sup>. Chairman MacQueen asked Engineer Risse to give a copy of the final draft to Warren and John before the next meeting. Ms. Glashoff informed the board that in order to have this ordinance adopted this year; it will need to be on the Township Committee's agenda for introduction on November 5<sup>th</sup>. Engineer Risse stated that it will be ready for the board's next agenda. The board thanked Warren and John for their help with the modifications to the ordinance and the drawing.

Chairman MacQueen asked Planner Bolan if the discussion on COAH would be quick. Planner Bolan answered no and stated that he would like to spend some time going over a few items. He informed the board that he has been to the Township Committee regarding COAH and will go over everything with the board.

**b. Home Occupations**

Chairman MacQueen announced that this is not a public hearing on the Home Occupation Ordinance, but some issues have been brought to the board's attention on a few occasions. Chairman MacQueen informed the public that he will be putting together a subcommittee to work on this and to see what will be best for the entire Township. Lebanon Township is a very diverse community and we like it that way and so does the Township Committee. We need to work on the Home Occupation Ordinance with the Planner and Attorney. Attorney Gallina can explain it better in legal terms. We want to expand it to such a point and we need also to expand GVW numbers on trucks because pickup trucks today are much larger and weigh more than they did back when we amended the weight section of the ordinance which was done back in the mid-nineties and around 2000.

Chairman MacQueen stated that this evening this is just a discussion by the board as to the direction we want to go. At this time, he turned the discussion over to Planner Bolan for his input. Planner Bolan informed the board that a month ago he met with Chairman MacQueen, ZBA Chairman Terzuolo and Zoning Officer John Flemming to review the existing Home Occupation Ordinance. The following items were discussed:

- a. The existing definitions of "Light Commercial Vehicle" and "Light Vehicle" needs to be looked at again. These were reviewed and amended back in the mid 1990's and again in 2001.
- b. The Township should consider amending the Ordinance to establish a 3 tier system for analyzing

Home Occupations as follows: 1) some of lesser intensive might not require a site plan approval or zoning permit, 2) some may require a zoning permit but no Site Plan approval and 3) some may require a minor site plan approval.

- c. The Township should consider an ordinance amendment that would permit a Minor Site Plan.

Currently there are no standards for a minor site plan. All applications for site plan must address major site plan standards, which are likely not necessary for some home occupation applications.

- d. Last, the Township should review the non-conforming use provisions of the MLUL and local ordinance to determine the applicability to home occupations.

At the conclusion of Planner Bolan's comments, Chairman MacQueen asked Mr. Flemming for his input. Mr. Flemming stated that the Home Occupation Ordinance is out of touch with Lebanon Township. He would like a 3 tier system like Planner Bolan mentioned and gave some examples of each tier. Mr. Flemming also referred to a 3 tier Home Occupation Ordinance in Montgomery Township. Mr. Flemming said that these new standards would be for someone new coming into the Township. A lot of business owners already in the Township were not aware that they needed to come before the board for any approvals. Even if they were conducting their business for 5, 10, 15 years, they did not pre-date zoning. In order to pre-date zoning you have to go back to the early 1970's, so the majority of the people do not pre-date zoning therefore they do not have protection. If the Township should change the rules and not allow home occupations, they have no rights because they had no protection. Mr. Piazza asked if they would be grandfathered in and Mr. Flemming answered no. What we would do is establish in 2008 or 2009 what they were doing with a resolution would be passed and it would say what they were doing on their property and it would spell out exactly how many employees and what they were doing. The whole idea is that businesses do grow and eventually if you keep growing and growing you have to move out. We limit your expansion in a residential zone so the impact on a residential neighborhood is not there. Mr. Piazza asked what the worse scenario for cost would be. Mr. Flemming said it all depends on if a minor site plan is created. For now all we have are applications/fees for major site plans, so the cost is a lot more. Chairman MacQueen asked if Planner Bolan had any comments at this time. Planner Bolan referred to the ordinance from Montgomery Township that Mr. Flemming reference stating that it would need some tweaking for our circumstances and developing a minor site plan application would help us and it is a good idea. Planner Bolan also stated that we need to look at the definitions for home occupations in terms of vehicle weights etc.

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Ms. Bleck told Planner Bolan that she was glad that he was looking at the Montgomery standards taking into consideration the uniqueness of Lebanon Township. Mr. Flemming said he can't stress enough the importance of establishing what a business is allowed to do at a specific period of time because then everybody knows what they are allowed to do and they know what the rules are. At the present time we do not have that. Chairman MacQueen stated that this leaves all the people that have a business in this Township in a very vulnerable position, that's why we need to protect what we have. Mr. Flemming agreed and said not only does it protect the business owner but it also protects the neighbors that do not have a business. This way everyone will know where everyone stands.

Chairman MacQueen informed everyone that he will put together this evening two sub-committees, one to work on Home Occupations and one to work on Alternative Energy. He would like to have three members each from the Planning Board and two members each from the Zoning Board. The following Planning Board Members will be on Home Occupation Committee: Doreen Bleck, Rick Weiler and Art Gerlich, Zoning Board will be Al Nagie and Abe Abuchowski along with Mr. Flemming, Attorney Gallina and Planner Bolan. Ms. Glashoff will coordinate both sub-committees. Chairman MacQueen informed the public that these committees will report back to the Planning Board with their recommendations. If anyone in the audience has any recommendations they can submit them to Ms. Glashoff for the sub-committee to review. Mr. Flemming suggested that people read our Home Occupation Ordinance and see what you like and don't like about it. Ms. Glashoff informed the audience that our Land Use Ordinances are on-line and can be obtained through the Lebanon Township Website and if anyone has a problem to contact her for a copy.

Members of the audience asked questions of Mr. Flemming at this time. Mr. Flemming explained that anything not permitted is prohibited. Businesses in residential zones are prohibited unless you fall into the Home Occupation. Unless you have received approval from the board, your business is illegal. It doesn't mean you can't get it to be legitimate, but some businesses will not be able to become legitimize. At the conclusion of the public questions, Chairman MacQueen thanked everyone for coming this evening.

**c. Zoning Recommendations – John Flemming, Zoning Officer**

Mr. Flemming asked that the board consider removing Section 400.52 and expand Section 400.51. Section 400.51 allows conforming additions to be added to structures where part of the structure is within the setbacks. Section 400.52 requires all additions to undersized lots to come before the Zoning Board for a variance. Attorney Gallina said that the ordinance had been amended to allow an addition on a non-conforming structure as long as the addition was conforming. Planner Bolan stated that the Zoning Board had gotten a ton of these applications because there are a lot of older homes in the Township that are non-conforming but the additions that they were putting on were conforming. The Planning Board agreed an amendment to the ordinance has been done.

Mr. Flemming said he would also like the board to consider modifying the side yard setback requirements in the R1½, R3 and R5 zones to either 20' with a combined side yard of 40' or 25' with a combined of 50'. The current standard is confusing to the public and explained to the board the confusion it has caused. The board discussed this issue at length. In conclusion, Chairman MacQueen asked Mr. Flemming for his recommendation. Mr. Flemming said he would like to see 20' for each side, but said it was up to the board. Chairman MacQueen asked Planner Bolan for his recommendation. Planner Bolan suggested 20' for each side. Planner Bolan said that plans have been approved with 20' on one side and to make it now 25' would cause problems besides making side yards non-conforming. The board agreed. Chairman MacQueen suggested changing the side yards in the R15 also to be consistent. Inside of 10' & 15' or 12.5' & 12.5' just make it 10' on each side. Everyone agreed. Ms. Glashoff asked who would draft the amendment to the ordinance. Planner Bolan said because of the time of year and that we are doing a Reexamination Report under the Highlands Grant. Planner Bolan asked if it could wait and he could then put the rational in the Reexamination Report so there is no question about changing zoning classifications. Planner Bolan stated that he has asked for an extension on the Report since it was due by September 30<sup>th</sup> and the deadline now is December 1<sup>st</sup> or 15<sup>th</sup>.

**d. Alternative Energy**

Chairman MacQueen changed the name for Outdoor Wood Furnaces to Alternative Energy since we have many questions are other types of conserving energy by the residents such as outdoor wood furnaces, solar panels and windmills (wind, solar & wood). These are the three major types. There has been discussion on whether those outdoor wood furnaces are legal in New Jersey or in Hunterdon County. Mr. Flemming said he has asked for clarification from the County Board of Health and has not received anything. Mr. Flemming stated that he had a meeting with a distributor along with members of the board and part of the discussion was on their efficiencies and the legalities. We were informed they were legal and asked the County Board of Health and didn't get the same direct answer. Mr. Flemming is trying to tie down the County Board of Health because he doesn't want to see an ordinance developed and then we have a problem. Mr. Flemming informed the board that he has gotten a lot of calls on this subject. He was informed by the County that if someone complained about smoke, they would shut down the individual.

A resident in Tewksbury Township was sited and got a fine of \$300.00 per day. The resident got zoning approval, all necessary permits and approvals. How do we put our residents in that position. Mr. Flemming informed the

board that he has not issued any zoning permits. The board continued to discuss this issue. At the conclusion of the board's discussion, Chairman MacQueen announced he was putting together a subcommittee to work on this. The Alternative Energy Sub-Committee will consist of: Planning Board – Josh Rich, Darryl Schmidt and Chris Piasecki, Zoning Board – Joe Maurizio and Wayne Eberle along with the Zoning Officer John Flemming, Attorney Gallina, Planner Bolan and Engineer Risse. As previously stated, Ms. Glashoff will coordinate this committee.

**e. Memo from Planner Bolan re: COAH Third Round Rules**

Planner Bolan reviewed for the board his Memo to the Board and Township Committee regarding the Comparison of COAH Third Round Rules. Page 2 of the Memo has a three column chart which categorize the December, 2004 adopted rules, the June, 2008 adopted rules and the October, 2008 proposed rules. In summarizing the chart, the estimates used by COAH are very high and do not factor in the real impact of the Highlands on the Township's growth potential. Planner Bolan said we need to plan from the 35 affordable units to the 15-20 units and said we can apply for a vacant land adjustment, the process is very tedious. Planner Bolan informed the board that RCA's are no longer an option. Hopefully the Highlands and COAH will get together to provide a more rationale estimate. In order to meet the December 31, 2008 deadline, the Planning Board will have to adopt and the Township Committee will have to endorse a revised Housing Plan Element and Fair Share Plan prior to that date.

**CORRESPONDENCE:**

- a. NJPO Newsletter 9/2008
- b. NJLM 9/17/08 COAH Litigation Update
- c. Letter from Planner Bolan to T.C. re: COAH Lawsuits
- d. H.C. Planning Board – Awards Dinner Update
- e. NJLM – COAH Update 9/25/08
- f. Letter from H.C.P.B. to COAH

**PRESENTATION OF BILLS & REPORT:**

a. John Gallina, Esq.	\$ 1,330.00
b. Michael Bolan, PP	\$ 5,443.00
b. Bayer/Risse Engrs.	\$ 345.00
<b>Total:</b>	<b>\$ 7,118.00</b>

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

Being no further business to come before the public, nor comments from the public, motion by Ms. Bleck and seconded by Mr. Piazza to adjourn the meeting at 9:00 p.m. Unanimously approved.

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**CHAIRMAN GARY MACQUEEN**

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