

## REGULAR MEETING

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

**December 1, 2009**

The 823<sup>rd</sup> Regular Meeting of the Lebanon Township Planning Board was called to order at 7:06 p.m. by Chairman Gary MacQueen. Present were: Mr. Schmidt, Mr. Gerlich, Mr. Piasecki, Mr. Rich, Ms. Bleck, Mr. Weiler, Attorney Gallina and Planner Bolan. **Excused:** Ms. Schriver and Mr. Weeks.

This meeting was noticed in the "Annual Meeting Notice Schedule" adopted by this board on January 13, 2009, 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 November 24, 2009.

**PRESENTATION OF MINUTES:** November 3, 2009 Regular Meeting

Mr. Rich complimented Ms. Glashoff on the minutes. Motion by Mr. Rich and seconded by Mr. Piasecki to approve the minutes as presented. Unanimously approved.

### **FYI:**

The following ordinances were adopted on November 4, 2009: Minor Site Plan Ordinance, Amend Fee Schedule Ord., Amend Existing Checklist Ordinance and Minor Site Plan Checklist Ordinance.

### **NEW BUSINESS:**

#### **Highland Plan Element**

Notice of this discussion on the Highland Plan Element was published in the Hunterdon Review on November 18<sup>th</sup> & November 25, 2009. A copy of the Land Breakdown for Lebanon Township has been distributed to the board members.

Planner Bolan made a presentation to the board and the members of the public who were present on the draft of the Highlands Preservation Area Element for Municipal Master Plans. Planner Bolan noted that in his cover memorandum this is a supplement to our existing Master Plan. It is not replacing the existing Master Plan. Planner Bolan referred to the colored maps during his presentation. Planner Bolan referred to page 1 and the minor change he had to make regarding the 7 acres on Route 31. Page 9 there were two optional provisions and they were deleted because they were not appropriate because, one was related to mix use development projects and center based planning initiatives with the other referring to compact center language. Page 13, in the second paragraph inserted excluding exempt development because the standards don't apply to exempt development. Page 15, last paragraph refers to having a Cluster Development Ordinance and to incorporate all applicable provisions of the Highlands RMP. On pages 17 & 19 Planner Bolan said he crossed out the 70% impervious coverage because it is too high of a standard for rural community.

The housing plan will be done in June 2010. The next revisions are on page 28, the Lake Management Area including the Spruce Run Reservoir. On page 42 is the Circulation Page, we have a circulation plan which is old and didn't want to prepare a new one because not a lot has change in the past 30 years. There is a list of projects and changes to the transportation system. Most are implacable and the two that will be left in are Bicycle Plan and Pedestrian safety enhancement. Planner Bolan felt that the Environmental Commission might be interested in those two items. Page 46, under item 2, it was all deleted along with the Agricultural Land prioritization on page 47. During the discussion, Mr. Schmidt commented that the maps are not marked or numbered. Last on page 55, Planner Bolan noted that our existing Master Plan does not have a Historic Preservation Plan which is referred to in the Highlands Plan Element.

At this time, Chairman MacQueen asked the board for their comments. Mr. Schmidt said that this is New Jersey's bureaucracy at its worst. Mr. Schmidt said he found a lot of contradictions, referring to the 1<sup>st</sup> map, across the Musconetcong River in Mansfield Twp is a Planning Area and it lines up with the carbonate rock across the

river in Lebanon Township. Mr. Schmidt referred to the 20 sub-dividable lots not counting exemptions, but after reading this he now understands it. Mr. Schmidt said if we follow this to the letter; everyone's property would fall on one of these maps at least once if not multiple times. By following this we would be turning down most applications for 25 acre subdivisions. He said he did not know all this baggage came with it. Planner Bolan said it is 25 and 88 acres per DEP standards. Mr. Schmidt said if we deny someone a subdivision, then we are condemning their land to be worthless. He referred to the well-head protection area, tier 2, which extends out to a lot of land, the 5 year recharge area and that it prohibits subdivisions in that area. Mr. Schmidt said he doesn't like it and is not voting in favor of it and if we are going to challenge now is the time to do it. Mr. Schmidt said he called Michael Doherty office and asked if they knew what the new Governor thinks of all this. They said he doesn't think much of it and that it will probably be changed. Also, Marcia Karrow is chairing the committee to change things at the DEP or at least look into what can be done.

Mr. Rich said he echo's a lot of what Mr. Schmidt said and has felt this way for a long time. Mr. Rich said he feels it will be overturned eventually and still has not gotten a clear answer as to whether the Township opens themselves up to lawsuits or not. Mr. Rich went on to say from what he has read, he feels the Township does open themselves up to lawsuits and wishes that the Township Committee members had been here this evening. Other members of the committee should have been here since this is probably the

**Lebanon Township Planning Board**  
**December 1, 2009**  
**Page 2**

most important decision the committee will make in many years and they are not here to get any of the flavor of this meeting. The board needs to communicate to the Township Committee what the board discussed tonight and how they feel about it. This is a tragedy in his opinion. Ms. Bleck said she is overwhelmed with it and her concern is what Mr. Rich said about lawsuits and people who are stuck with their land. But asked what is our recourse and the board was told that the Highlands people would have control. Ms. Bleck said she needs a better understanding of the overall picture. Planner Bolan noted that the board would still do development application review but then the Highlands get to override. Planner Bolan said you need an act of legislature to change this, but all this comes out of the Highlands Act. Mr. Weiler said he concurs with Mr. Rich and added that this is a bureaucratic mess. He felt this was a Trojan horse from the beginning. They talked about saving water and water quality. All it is an attempt to stop development. Chairman MacQueen said he agrees with the comments made by board members. He feels this is creating a very bad atmosphere for what our community is. People are afraid to move here. What happens when 20-30% of those people who live here then they retire and move? You still need people to live here and work. With all the rules at the DEP, people are going to have enough trouble building here. Has anyone looked to see what it costs to build a house in Lebanon Township and do the Storm Water Management Plan? Chairman MacQueen mentioned someone who built on a 10 acre lot and spent \$80K to keep the water on his property. We are not going to get a lot of building because it is too expensive. This has created a very bad atmosphere. Chairman MacQueen said he would like more answers as far as the lawsuit problem.

Mr. Piasecki asked about the lawsuits. What is the basis and what are the chances of its success. The Township has immunity for the decisions it makes and when we are compelled by state legislation to do the things we are doing, there is no liability. Mr. Piasecki stated that not one person has addressed the fact that our legislature has taken upon themselves to preserve one of the most pristine areas in this state for the conservation of resources that it just should go by the wayside. Mr. Schmidt referred to the time when Mr. Gerish came before the Planning Board to do a subdivision. Mr. Gerish was subdividing 100 acres with a cluster subdivision with 12 lots. It was based on the Highlands Act at that time. The 25 and 88 acres hadn't been established. After the board approved the application, then the 25 and 88 acres were established. The DEP turned down the subdivision. Planner Bolan stated the original act said that DEP would develop standards for septic density and that's where the 25 and 88 acres came from. Attorney Gallina said that regulations can be amended.

Mr. Gerlich said this legislation isn't going anywhere and said if we don't work with them, they will roll us over and what will it cost us in the end. Mr. Gerlich said we are at the point of having to deal with it. We need to make it work for us. Ms. Bleck referred to the time when municipalities made their comments and suggestions whether they

were good or bad and wanted to know if there was any compromise and any benefit from all the comments. Planner Bolan said there were some compromises some places. Referring to the preservation area, the Highlands Council has tried to do what they can with the preservation area. Planner Bolan stated that for conforming municipalities to have local control on things like exemptions so people would not have to go to DEP to get an exemption. If you don't conform you will not have that opportunity.

Being no further comments from the board, Chairman MacQueen opened the meeting to the public for any comments on the board's discussion. The following people made statements and comments: Hank Klumpp of Cokesbury Califon Road. Mr. Klumpp owns property in Lebanon Township. Mr. Klumpp stated if Lebanon Township opts in to the Plan every property with a septic system will be required to pump and a licensed engineer inspect the system yearly. What will the cost be per household? What happens if a system fails? If it fails and needs to be perc and it fails, does the house get condemned. The 88 Highlands municipalities are now in the process of conforming to the Highlands Regional Master Plan which was adopted last year. This should have been done within the 18 months, it took 5 years. At the conclusion of Mr. Klumpp's statements, David Shope landowner on Penwell Road gave his comments. Mr. Shope said that another state assemblyman was indicted. Most of the people who supported this Act are now in jail. This Act is corrupt and conceived in the corrupt bowels of Trenton and the taxpayers have to pay the consequences. Mr. Shope said that he feels there will be a lot of changes in Trenton with the new Governor. Mr. Shope quoted from an article by Juliet Hirsch a Land Use Attorney from Archer & Greiner, "Even after approval is granted locally, the Highlands Council by a process called Wolfback can have them before them to reassess the approvals. The board has no power; they will take all the heat from the residents that come before them. Mr. Shope said that Independence Twp, Mansfield Twp, Tewksbury Twp decided not to opt in and they all have more area for planning. Lebanon Township has only 7 acres. The board needs to say what they think and act accordingly.

Ed Gagne a resident and land owner on Red Mill Road. Mr. Gagne said this is ruining our tax base and any further planning possibilities will go out the window and the board will have no power. Last month when the Highlands Council Chairman John Weingarden left he passed the baton over to the Executive Director and gave her totally unlimited control to make all decisions. Apparently White Twp is looking to opt out. This is a diabolical set of rules and regulations. Mr. Gagne asked that the board not go along with this and try and say to the Township Committee members that we want to keep control in the Township for the residents instead of setting everything up for the people below us who have absolutely no restrictions placed on them. Mr. Gagne noted that in Delaware Township someone is trying to get permission to be able to pump 30 gallons per minute out of the aquifer to sell their bottled water and it looks like they will get there approvals to operate.

**Lebanon Township Planning Board  
December 1, 2009  
Page 3**

David Tullo a resident and land owner on Stillwater Way said he sees sympathy and the fact that there are board members who care about the residents in the Township along with the large landowners and farmers. Mr. Tullo feels there should be some development allowed. Nancy Darios a resident on Butler Park Road stated she agreed with all the comments and statements made by the members of the public. All these comments that were made were to express strong concerns and opposition to the Highlands Plan Element and hoped that the Township would opt out along with several other municipalities who are opting out.

At the conclusion of the public comments and the board's lengthy discussion, motion by Mr. Rich and seconded by Mr. Schmidt to recommend to the Township Committee that they vote not to submit a petition for Plan Conformance to the Highlands Council for lands in the Township lying in the Preservation Area.

**ROLL CALL**    **Yes:** Mr. Schmidt    Ms. Bleck    **No:** Mr. Gerlich    **Absent:** Mr. Weeks  
                         Mr. Rich            Mr. Weiler            Mr. Piasecki            Ms. Schriver  
                         Mr. MacQueen

Ms. Glashoff will prepare a Memo to the Township Committee for their meeting on December 2, 2009

**FYI:** Copy of Email regarding “Independence Township re: Highlands”

**ITEMS FOR DISCUSSION:**

**a. Set Reorganization Meeting Date:** January 12<sup>th</sup> or January 19<sup>th</sup> 2010 7:00 p.m.

The board agreed to have their Reorganization meeting on January 12, 2010 at 7:00 p.m.

**b. The following board terms expire on December 31, 2009:** Class I – Mayor, Class II – Art Gerlich (1 year terms) Class IV- 4 Year Terms - Gary MacQueen, Rick Weiler, Chris Piasecki & Darryl Schmidt

Everyone present whose terms are up said they would like to be considered for reappointment. Ms. Glashoff will send a memo to the Township Committee for their next meeting on December 16<sup>th</sup>.

**c. Alternative Energy Ordinance – Planner Bolan**

Planner Bolan stated the two definitions that are in the proposed ordinance are from the new state act SB#1303. Planner Bolan said he used the definition from that act and said using it won't do us any harm. This act deals with if it is not permitted. It gives a definition to the Zoning Board for applications of what is an Inherently Beneficial Use. When you need a use variance before the Zoning Board there are two prongs to it. The first is the special reasons which are considered the positive criteria and second is the negative criteria which are substantial detriments to the public good, substantial impairment to the zone plan and zoning ordinance. If you are an inherently beneficial use you do not have to prove before the zoning board the special reasons, you are deemed satisfied. They would then go to the negative criteria for the review of the application. Mr. Rich asked about Section II of the proposed ordinance. Planner Bolan said that we are adding a Subsection D to Section 400-10 under Accessory Uses and Structures.

Planner Bolan went over the draft of the proposed ordinance with the board. **Solar Energy** facilities will be permitted on the roof of buildings and ground mounted solar energy facilities shall comply with the setbacks for the principal structure. **Outdoor wood-burning furnaces** shall have a minimum lot size of 7.5 acres, minimum height of the chimney shall be 12' from ground level with a maximum height being 2' higher than the peak of any residence. Period of operation shall be October 1<sup>st</sup> to April 30<sup>th</sup>. Only seasoned wood may be utilized and stoves shall be located a minimum of 200' from any property line. **Windmills** will have a minimum of 25 acres. The maximum height shall be 120' and the minimum setback from any property line shall be 200% of the windmill's height and will not be permitted in the front yard. Mr. Rich had many suggestions to add to the Windmill portion of the ordinance which he shared with the board and Planner Bolan. Planner Bolan added several of the suggestions to the ordinance.

The board discussed the proposed ordinance at length. In conclusion, Planner Bolan will make the revisions and have it ready to be on the agenda for January 12, 2010.

**d. Inherently Beneficial Uses/Renewable Energy Sources** (Court Ruling & SB #1303)

This was discussed under c “Alternative Energy Ordinance”. Planner Bolan did note that SB1303 is now law and in the Municipal Land Use Book.

**Lebanon Township Planning Board**  
**December 1, 2009**  
**Page 4**

**PRESENTATION OF BILLS & REPORT:**

a. NJPO – Membership Dues 2010	\$ 140.00 – PB share of bill
b. John Gallina, Esq.	\$ 455.00
c. Michael Bolan, PP	\$ 1,055.20
d. Bayer/Risse Engrs.	\$ 119.50
<b>Total:</b>	<b>\$ 1,769.70</b>

Ms. Glashoff informed the board since this is the last meeting for the year; she had a few more vouchers to add to the bill list. One bill from Attorney Gallina **\$770.00** and several from Planner Bolan for **\$700.20**, totaling **\$1,470.20**, with a grand total of **\$3,239.90**. Motion by Mr. Gerlich and seconded by Mr. Rich to approve the bills as amended. Unanimously approved.

**CORRESPONDENCE:** NJPO Newsletter – November 2009

**OPEN TO THE PUBLIC**

John Locker from Route 513 had a couple of questions regarding the discussion on Inherently Beneficial Uses. David Tullo had a question regarding the Wood Burning Furnaces and David Shope thanked the board in reference to the Highlands discussion early in the evening.

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

---

**CHAIRMAN GARY MACQUEEN**

---

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