

## REGULAR MEETING

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

**September 20, 2022**

The 949<sup>th</sup> Regular Meeting of the Lebanon Township Planning Board was called to order at 7:00 p.m. by Chairman Gary MacQueen. Present were: Mr. Laul, Mr. Duckworth, Mr. Schmidt, Ms. Koehler, Mr. Piasecki, Mr. Rich, Ms. Bleck, Mr. Weiler, Mr. Skidmore, Mr. Abuchowski, Attorney Gallina, Engineer Bayer & Planner Kyle.

In compliance with the "Open Public Meetings Act" the Lebanon Township Planning Board will hold their regular meeting over in the Gym at the Woodglen Elementary School on 70 Bunnvale Road. Notice of this meeting was published in the Hunterdon Review on September 14, 2022, emailed to the Hunterdon Review, Courier News, faxed to the Hunterdon County Democrat, Express Times, Star Ledger and posted on the posted on the Lebanon Township website and posted on the bulletin board in the Municipal Building on September 15, 2022.

### **EXECUTIVE SESSION**

Motion to go into Closed Executive Session. Motion by Ms. Bleck and seconded by Ms. Koehler to go into Closed Executive Session. Unanimously approved

### **THE LEBANON TOWNSHIP PLANNING BOARD WILL GO INTO CLOSED EXECUTIVE SESSION AT THIS TIME**

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

**WHEREAS**, the Planning Board finds it necessary to conduct an Executive Session Closed to the Public as permitted by the N.J.S.A. 40:4-12; and

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

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Lebanon, County of Hunterdon, State of New Jersey that they will conduct an Executive Session to discuss the following topic as permitted by N.J.S.A. 40:4-12.

  x   Matters falling within Attorney-Client privilege, to the extent that confidentiality is required in order for the Attorney to exercise his or her ethical duties as a lawyer or the public disclosure of such information at this time would have potentially negative impact on the municipality's position with respect the matter being discussed; therefore, this information will be withheld until such time as the matter is concluded or the potential for negative impact no longer exists.

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**BE IT FURTHER RESOLVED, that** the Planning Board hereby declare that their discussion of the subject identified above may be made public at a time when the Planning Board Attorney advises them that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Township or any other entity with respect to said discussion.

**BE IT FURTHER RESOLVED,** that the Planning Board for the reasons set forth above, hereby declare that the public is excluded from the portion of the meeting during which the above discussion shall take place.

Motion to reopen the public portion of the regular meeting by Ms. Bleck and seconded by Ms. Koehler at 7:22 p.m. Unanimously approved

Attorney Gallina stated that the applicant has re-noticed this matter for tonight's meeting and at this time, will mark the following into evidence: **A7**-Affidavit of proof of service dated September 15, 2022, **A8**-Notice to property owners & utilities, **A9**- Certified list of Property Owners & Utilities, **A10**-Certified mailing slips, **A11**-Proof of publication in Hunterdon Review. Attorney Gallina announce that the notices are in order.

Chairman MacQueen announced that the letter sent to the Board by Attorney Gary Cucchiara will be addressed at this time.

Attorney Cucchiara went up to the podium and reviewed for the Board and Residents his letter dated September 16, 2022. Attorney Cucchiara addressed the following items in his letter: Attorney Cucchiara stated he wants to bring attention to a few points that the Board Members need to consider. The case cannot go forward because the applicant has failed and refused to follow the Municipal Land Use Law (MLUL) and the Township Ordinances. The applicant has failed and refused to submit an application for a zoning permit to the Zoning Officer. They failed and refused to submit a request for an Interpretation to the Board of Adjustment as to whether this industrial type of cultivation facility is a "Farm" as defined in the zoning code and whether it is a permitted use, principal permitted use in the RC zone (Resource Conservation). They failed and refused to seek a use variance from the Board of Adjustment. If a zoning permit had been denied, they must file an Appeal or Interpretation before the Board of Adjustment. In the event an Appeal or Interpretation is reject, they must seek a Use Variance. They must establish special reasons and satisfy the positive and negative criteria. Also, for a Use Variance you need to have 5 affirmative votes not a majority vote.

Chairman MacQueen asked Attorney Gruenberg for his response. Attorney Gruenberg said he objects because none of this is in the record and hasn't been submitted to the Board. Attorney Cucchiara interjected saying it has been submitted to the Board since it was an attachment to his letter to the Board dated September 16, 2022. At this time Attorney Cucchiara read into the record Page 7 of the

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Letter/Application to the Board of Adjustment. Attorney Cucchiara asked about an agreement with the Township about zoning and wanted to know what agreement they were referring too. An applicant can go to the Board of Adjustment for an interpretation when a denial is given but can't circumvent that process and go to the Planning Board. Attorney Cucchiara said the applicant has submitted to the Planning Board that they have approval for this type of industrial type of facility based only on opinions. An opinion from the following doesn't constitute an approval, Township Attorney, Attorney Gallina as the attorney for the Planning Board & Board of Adjustment and by any other Township Official. Only the Board of Adjustment can make that decision. Attorney Cucchiara stated that the applicant has refused to follow the letter of the law. Also, you have heard about apparent behind-the-scenes deals which have undermined and tainted these proceedings. Attorney Cucchiara said based on all the information that's been presented to the board, the Planning Board must decline to take jurisdiction in this matter.

Attorney Gruenberg responded saying that the applicant has no obligation to go before the Board of Adjustment because this is a permitted use in the RC zone along with a Forest Management Plan. Also, a farm is a permitted use in the RC zone which is defined as an area of land which is actively devoted to agricultural or horticultural use which is no less than 5 acres. This is defined as production, keeping, boarding, or maintenance for sale, lease, or personal use of plants and animals. This also includes greenhouse uses and soil conservation or forestry management program. Attorney Gruenberg went on to say with a confined use of a medical cannabis cultivation facility with a forestry management plan which is a permitted use. Attorney Gruenberg said you have to take the word of your own legal counsel who provided the same legal opinion along with the Township Attorney. Attorney Gruenberg said they would like to move forward with the hearing on their application and present witnesses and get to the merits of the application.

Attorney Cucchiara responded by saying that a farm is an area of land devoted to active agricultural use and not some wooded area in the corner and the facility is only .4 acres. These opinions were given 3 years ago before any application was filed. The facility itself is the farm and doesn't satisfy the requirements of the ordinance. Attorney Cucchiara said this is an interpretation question for the Board of Adjustment and if you are to believe the applicant, letters and opinions given three years ago represented a decision then why didn't the zoning officer make a decision and issue a denial of the zoning permit. They want the Planning Board to decide an issue which they don't have the authority to decide. Attorney Gruenberg stated there is no obligation for the applicant to appear before the Board of Adjustment to request an interpretation. Attorney Gruenberg noted that the Planning Board has deemed this application complete and the applicant is ready to start the public hearing.

Attorney Gallina stated we have heard the arguments of both Counsels and we can open this up to the public for comments, per Chairman MacQueen this is a legal issue. Chairman MacQueen asked for Board discussion at this time. **Mr. Piasecki** said it is clear the applicant failed to get a zoning permit,

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failed to get a use variance and clear there is a question as to whether this is a permitted use and per Attorney Cucchiara, it has to go to the Board of Adjustment. Mr. Piasecki stated it is clear that an Interpretation is needed and whether or not this is a permitted use and the Board of Adjustment is the Board to take care of that. **Mr. Schmidt** stated the question is whether this is a farm application or an industrial manufacturing operation. The answer is simple, is this a farm application, does it qualify for farmland assessment. If it doesn't then it is an industrial operation/manufacturing. Mr. Schmidt said if the applicant is saying this is an agricultural use and the State said It is not except for a half a sentence that says it's an agricultural use of a property, it is enough of a grey area and enough confusion that he believes it should go to the Board of Adjustment for an interpretation. **Planner Kyle** stated he has no comments on this issue. **Engineer Bayer** had no comments at this time. **Mr. Laul** said this started in 2019 and nobody had a clue as to where it was going to go. Mr. Laul stated that the Township is 99.6 percent in the Highlands and it all has to do with water protection and that one facility can use the equivalent of 100 to 200 homes is a major issue for him. Also, a lot of points were made for this going to the Board of Adjustment. **Mr. Duckworth** said he agrees with most of the comments that have been made already. Mr. Duckworth added that our ordinances do define a farm with a minimum of 5 acres. The spirit of our ordinance with the concept of traditional farming doesn't allow for this particular situation. Mr. Piasecki read into the record **Mr. Rich's** comment: has been a member of this Board for over 50 years and Chairman for 30 years and agrees that the Board of Adjustment is the proper Board for this hearing. **Ms. Bleck** said hearing both sides of this issue, this application definitely belongs at the Board of Adjustment. **Mr. Weiler** said he does not believe that this application is a clearly permitted use and does not think it is up to the Planning Board to make that decision. Mr. Weiler said it is up to the Board of Adjustment and that is where it should be. **Mr. Abuchowski** said he has a farm and doesn't not feel this meets the general definition of a farm. We are not producing hay or anything that's sold to other individuals. This is a medicinal marijuana plant that is regulated by the government and think this should go to the Board of Adjustment. **Ms. Koehler** said she agrees with everything else that has been said. Also, this is not an agricultural crop. Medicinal cannabis can be hemp and derivatives from hemp. It is an agricultural commodity until it reaches that .03 percent THC which puts it in a category of a controlled substance. It goes from agricultural commodity to controlled substance. It should go to the Board of Adjustment. **Mr. Skidmore** said that at the very first meeting, this Board was called corrupt, we had been purchased and bought. I found that there had been a secret meeting held in 2019 and as a result the NAR Group moved ahead as if they had permission. I did some more research and found that applications for development had to be completed and that the procedure started with getting zoning approval. The NAR Group neglected to get zoning approval. The NAR Group acted on the word of one single councilman, one or two attorneys and several other people that it was a permitted use. Those people have no authority to make that decision. That authority rests solely with the Board of Adjustment. **Mr. MacQueen** said he doesn't believe the Board is making their decision of Mr. Webb's motion since we have had these questions all along. Regarding jurisdiction, this belongs at the Board of Adjustment for many reasons. The State of New Jersey has put a lot of this burden on the applicant and on the Boards to prove what is supposed to be where. For the State to actually give permits to build

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something in the Highlands with the New Jersey Water Supply Authority down the road with the reservoirs practically empty is bizarre. We have worked very hard to keep this community the way it is. Both the applicant and Webb's attorney had good points on both. I believe our Board just made a good decision and I agree with everybody 100%. I believe the Board of Adjustment is the best Board for the question of jurisdiction.

Attorney Gallina said based on the comments of the Board, we will need a Resolution stating that the Planning Board has decided not to retain jurisdiction in this matter and should proceed to the Board of Adjustment by way of either request for Interpretation or application to the Board of Adjustment. After several comments and questions by the board, Attorney Gallina informed the board that they are not transferring the application and gave the board the correct wording for the motion. Motion by Mr. Rich and seconded by Mr. Abuchowski that any further application would need to be to the Board of Adjustment. The Planning Board is not exercising jurisdiction, not retaining jurisdiction, any further application by the applicant should be made to the Board of Adjustment.

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Laul	Mr. Rich	No: None
	Mr. Duckworth	Mr. MacQueen	Absent: None
	Mr. Schmidt	Ms. Bleck	Abstain: Mr. Skidmore
	Ms. Koehler	Mr. Weiler	Mr. Abuchowski
	Mr. Piasecki		

**The resolution will be on the Planning Board Agenda for October 18, 2022 meeting at the Woodglen School Gym.**

NAR Group	Block #57 Lot #23
Nitin Manglani	62 Anthony Road RC 7 ½ zone
P.O. Box 4098	
Warren, N.J.	

**PUBLIC HEARING** Preliminary/Final Site Plan & Variances

Due to the decision by the board earlier in the meeting, the application for the NAR Group will not be heard.

**PRESENTATION OF BILLS:**

a. John Gallina, Esq.	\$2,175.00 - Escrow – NAR GROUP
	\$ 337.50 - Memo to Board Clerk, attend PB Meeting 8/30/2022
<b>Total:</b>	<b>\$2,512.50</b>

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Motion by Mr. Schmidt and seconded by Mr. Weiler to approve the bills for payment. Unanimously approved.

**ITEM FOR DISCUSSION:**

- a. Dates for November & December 2022 - Off at this time for discussion.


**CORRESPONDENCE:**

- a. Report from Engr. Bayer – NAR Group
- b. Memo from Atty Gallina – NAR Group
- c. NJPO Newsletter July/August 2022

**OPEN TO THE PUBLIC FOR COMMENTS**

A few people from the public made comments.

Board Member Josh Rich left at 8:21 p.m. Being no further business to come before the board, nor comments from the public, motion by Mr. Piasecki and seconded by Ms. Koehler to adjourn the meeting at 8:25 p.m. Unanimously approved

  
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CHAIRMAN GARY MACQUEEN

  
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GAIL W. GLASHOFF, PLANNING BOARD CLERK