

REGULAR MEETING

Lebanon Township Board of Adjustment

June 28, 2006

Municipal Bldg 530 West Hill Rd Glen Gardner, N.J.

The Regular Meeting of the Lebanon Township Board of Adjustment was called to order at

7:36 p.m. by Board Secretary Gail Glashoff. Present were: Mr. Kozlowski, Mr. Perry, Mr. Nagie, Mr. Abuchowski, 1st Alternate Eberle, Attorney Gallina and Planner Bolan.

Notice of this meeting was provided for in the "Annual Meeting Notice Schedule" adopted by this board on January 11, 2006, mailed to the Hunterdon Review, Hunterdon County Democrat, Courier News, Express Times, Star Ledger and posted on the bulletin board in the Municipal Building on June 20, 2006.

SWEAR IN: Wayne Eberle Class IV Alternate I Member Unexpired Term 12/06

Ms. Glashoff asked Attorney Gallina to do the honors and swear in Wayne Eberle as Alternate I. The board congratulated Mr. Eberle.

At this time, Ms. Glashoff stated that since both the Chairman and Vice Chairman were absent, the board will need to appoint a Chair for this evening.

Ms. Glashoff asked for nominations for Chair. Motion by Mr. Nagie and seconded by Mr. Kozlowski to appoint Mr. Abuchowski as Chairman. Being no further nominations, the board voted unanimously in favor of Mr. Abuchowski.

Mr. Abuchowski took over as Chairman at this time.

PRESENTATION OF MINUTES: June 14, 2006 Regular Meeting

Motion by Mr. Nagie and seconded by Mr. Perry to approve the minutes as presented. Unanimously approved.

RESOLUTION:

Kenneth Secor Block #65 Lot #10

Appeal Dewey Lane R5

Motion by Mr. Kozlowski and seconded by Mr. Perry to approve the resolution for the appeal as presented.

ROLL CALL Yes: Mr. Kozlowski **Absent:** Mr. Machauer **Abstain:** Mr. Nagie **No:** 0
 Mr. Perry Mr. MacQueen Mr. Eberle

 Mr. Abuchowski Mr. Terzuolo

PRESENTATION OF BILLS:

a. John Gallina, Esq.	\$ 210.00 – Meeting 6/14/06
	\$ 157.50 – Escrow – (Secor)
b. Banisch Associates	\$ 698.70 - Escrow (Pfister)
c. Court Stenographer	\$ 200.00 – Meeting 6/28/06
Total:	\$1,266.20

Ms. Glashoff noted the bill from the Agenda Addendum needs to be added to the total. Attorney Gallina for **\$157.50** Escrow for Secor. This brings the total to **\$1,266.20**. Motion by Mr. Nagie and seconded by Mr. Perry to approve the bills with the new total. Unanimously approved.

CORRESPONDENCE:

Ms. Glashoff stated that all the correspondence was handed out to everyone before the meeting.

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UNFINISHED BUSINESS:

Paul Pfister

Block #66 Lot #3.04

71 Forge Hill Road

Forge Hill road RC 7½

Glen Gardner, N.J. 08826

CONTINUATION OF A PUBLIC HEARING

Use Variance for Helistop

Section 18-2.1a.p

Attorney Gruenberg was present along with the applicant to proceed with the public hearing. Attorney Gruenberg addressed the letter that was circulated amongst the neighbors from Sandy Phelps date June 16, 2006. Ms. Glashoff asked Ms. Phelps if the letter she had was basically the same as the one to the neighbors. Ms. Phelps response was no. Attorney Gruenberg reviewed the comments made in Sandy Phelps letter.

Attorney Gruenberg informed the board that he has two expert witnesses for this evening. The first one is Veterinarian Katrina Alger from Califon Animal Hospital. Ms. Alger was sworn in at this time to give testimony. Attorney Gruenberg asked the witness what her experience was with horses and loud noises. Per Ms. Alger, the onset of loud noises are the scariest and the ones that will cause problems, example: trees snapping, load thunder and then sudden onset and sudden stopping are the times she sees horses bolt and scare easily. Ms. Alger stated that these are the times she sees horses get injured and have problems. Attorney Gruenberg asked if she had clients in the area of airports or helicopter areas. Ms. Alger answered yes. She stated that she has 5 clients within a .10th of a mile of local airports such as Somerset Airport, Alexandria Airport where the two main ones. One client's horse farm borders on the Somerset Airport and they have 18 horses. Ms. Alger stated that she had not treated horses with injuries that were related to the airport/aircraft. With speaking to those clients, even foals have not had any issues with aircraft activity from the airport.

Attorney Gruenberg asked if there had been any related problems with the Alpacas in relationship to Mr. Pfister's helicopter. Ms. Alger answered no. Ms. Alger stated that her concern with the helicopter would be with wind displacement when the aircraft is flying very low. Ms. Alger said she was under the impression that helicopters do not have a large area of wind displacement with things moving around which would be the biggest issue. She did not feel that noise would be an issue as long as Mr. Pfister had a sufficient warm-up time of 5-10 minutes. Attorney Gruenberg stated that wind displacement would only occur near the ground where the helicopter was. At the conclusion of Ms. Alger's testimony, Chairman Abuchowski asked for questions from the board. Mr. Eberle asked if her testimony was based on personal history or studies. Ms. Alger stated she did a literature search to see if there was any history of animals and issues with helicopters or aircraft in general. She was not able to find anything that reports any real issues with it. Mr. Nagie asked if they use helicopters to round up horses out west. Ms. Alger answered yes and they also use them for rescue operations. R. Nagie asked, doesn't the noise move the horses? They have used helicopters for rescue of horses and they are not scared per Ms. Alger. They are raised from canyons when they have been trapped. With herding they are moved by the wind displacement and noise. Horses are also herded by dogs and people on horseback. Mr. Nagie asked if cattle are affected by a helicopter. Ms. Alger stated that she does not have a lot of experience regarding herding in the west but it is a technique that is used. If they had problems with a lot of injuries they would not be using helicopters. Mr. Perry asked if at the airports she referred to if they had helicopters or just small planes. Ms. Alger answered just small planes. Would a small plane make more noise than a helicopter or does it depend on the plane. Ms. Alger answered it all depends on the engine. Mr. Abuchowski noted that helicopters are used for herding horses, cattle, sheep just about any animal all over the world.

Being no further questions from the board, Chairman Abuchowski opened the hearing to the public for questions of the witness. The following people asked many questions: Steve O'Malley, Esq., Michele Smego and Arthur Bannon.

Attorney Gruenberg introduced his next witness Planner Nancy Weaver-Smith partner in the firm of John Silo Jr. Associates in Somerville, N.J. since 1978. Planner Weaver was sworn in to give testimony. Planner Weaver made a presentation to the board and asked to have the aerial photo & maps marked into evidence. The following item was marked into evidence: **A16**-Aerial photo and maps of Pfister property and surrounding properties, Satellite View (taken from Internet), Tax Map, Survey and Manufacturers Specifications of Helicopter dated June 28, 2006.

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Planner Weaver stated the current use on the property is farm/agriculture which is a permitted use in the R5 zone. The applicant is purposing this as an accessory use. The helicopter will be used for the farming activities. On the Satellite photo it shows approximately where the helipad is located. Planner Weaver reviewed for the board the locations and distances from the helipad to all structures surrounding the property. Planner Weaver noted there is a short warm-up before leaving the site.

Planner Weaver reference Section 18-3.10 of the ordinance that refers to the "Right to Farm". This helicopter will be used for farm use along with the Alpaca farming business. All farming uses have noise. Example: tractors, seeders, mowers, helicopters, airplanes and hay machines. This helicopter will be used for transporting back and forth using as a means of travel. Ms. Pfister will be using the helicopter for traveling to and from shows and meetings. Planner Weaver noted that the helicopter will not be used for herding of Alpacas. Attorney Gruenberg noted that certain agricultural uses do use helicopters as a tool on the farm. The concern here is for noise per Planner Weaver and she read Section 18-3.10, "It is hereby determined that whatever nuisance may be caused to others by these uses and activities is more than offset by the benefits from farming to the neighborhood community and society in general by preservation of open space, the beauty of the countryside and clean air. The preservation and continuance of farming operations in Lebanon Township and New Jersey is a source of agricultural products for this and future generations and saves a non-replenishable resource, the land". The nuisance that comes to mind is noise. This would include all farming operation noises. Attorney Gruenberg asked about the decimal levels and ranges. Planner Weaver contacted the manufacturer and was sent a list of decimal ranges of studies that were done. At this time she handed out to the board the list which was also marked into evidence, **A17**-DBA Test on the Rotor-way Executive 162F Helicopter- noise levels. Planner Weaver went over the different decimal noise levels for the board. The highest decimal reported by this

manufacturer is 92 decibels which are measured inside the cockpit during a hover position. At a minimum height of 500' at 70 miles per hour, the decibel level was 62 outside of the cockpit. Attorney O'Malley objected to the Exhibits being marked into evidence since the document can not be cross-examined. Attorney O'Malley stated that Planner Weaver is not an expert on acoustical engineering. Attorney O'Malley went on to say if the applicant wants to pursue this line of testimony then a qualified person should be here to give testimony. Attorney Gruenberg responded to Attorney O'Malley's objections. Also, Attorney Gallina responded to the objections stating that this board is not bound by the strict rules of evidence and generally there is an exception to the rules of evidence that if an expert relies on a certain type of evidence to form their opinion, it is admissible even though it is hearsay. Attorney Gallina asked Attorney Gruenberg to lay some foundation for this type of data. Attorney Gruenberg asked Planner Weaver what research was done regarding these noise levels in regards to Exhibits **A17** & proposed Exhibit **A18**. Planner Weaver investigated the OSHA noise levels, charts that list common things like trucks, tractors and what noise level they produce. Exhibit **A18** was found on the internet. This particular article was a very good one compared to the many articles that was researched. At this time the following was marked into evidence: **A18**-Noise Center of the League Article on Decibel Levels – 3 pages dated May 18, 2006. With loud negative comments from the public, Attorney Gallina asked the public to be orderly or they would be asked to leave. Chairman Abuchowski asked that all cell phones be turned off. Planner Weaver continued with her testimony regarding decibel levels.

Attorney Gruenberg asked Planner Weaver about the types of agricultural uses that we are discussing in terms of other equipment used on a farm, such as tractors, plows, combines etc. Planner Weaver stated that tractors are on the list and are at 90 decibels which is in the same range as a helicopter hovering. Attorney Gruenberg asked how a flight path is determined. The FAA has to approve all flight paths. Attorney Gruenberg asked in terms of a helicopter being used as an agricultural use would a use variance be needed. Planner Weaver said no, if it is used as an accessory use, it would not need a use variance and the helicopter is going to be used as an accessory use for the Alpaca farm. Farmers today use all types of new equipment. Attorney Gruenberg asked if there was case law regarding helicopter use as a business use. Planner Weaver answered yes. Attorney Gruenberg noted that the applicant has applied for a use variance in the event the board does not agree that the helicopter is an accessory use for the farm and asked Planner Weaver what the special reasons are for granting a use variance? Planner Weaver stated the applicant has to prove the positive and negative criteria and there are some special reasons in this case. The positive criteria being that planning benefits outweigh the detriment and the variance would advance one or more goals of the municipality or the Municipal Land Use Law. In this instance, in accordance with the MLUL the goal that this use would encourage

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would be: a. to encourage a municipal guide, action to guide, appropriate use or development of all lands in the state in a manner that would promote public health, safety and general welfare, b. to provide sufficient state in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses in open space for public and private in respect to the environmental requirements in order to meet all the needs of New Jersey. The Township Ordinance is specific in the “Right to Farm Ordinance”.

Planner Weaver stated that the applicant is willing to limit the use from 9:00 a.m. to dark and in the summer no later than 8:30 p.m. and would not be operating in high wind conditions, or in 30 degrees or lower. Planner Weaver noted that the applicant is willing to make the Helistop pad available as a designated pad for emergency vehicles. At the conclusion of Planner Weaver’s testimony, Chairman Abuchowski asked if the board had any questions of the witness. At the conclusion of the board questions, Chairman Abuchowski announced that the board will take a recess. Board recessed at 8:50 p.m.

When the board reconvened at 9:00 p.m. Chairman Abuchowski asked Planner Bolan if he had questions of the witness. Planner Bolan referred to Section 18-3.1b which states: “After the adoption of this Section no use or structure shall be permitted in the Township which is not listed as a permitted, accessory or conditional use, or unless permitted by the Board of Adjustment”. Planner Weaver stated this is why they are before the board. Planner Bolan stated the testimony given was that since it was not specifically permitted or prohibited that it was some how permitted. Planner Weaver stated that it has been ruled in prior cases that accessory uses such as this being sited in Cox that dealt with a helipad and a commercial use. Planner Bolan asked if Planner Weaver has written ordinances. She responded yes. Planner Bolan asked if she list prohibited uses. Planner Weaver answered yes. The next question by Planner Bolan was why? Planner Weaver said that most towns have specific uses they want prohibited. Planner Bolan again read the Section 18-3.1b. Further in the ordinance it talks about zone district regulations and that no building or structures shall be erected and no existing building or structures shall be moved, altered, added or enlarged, nor shall any land, building be designed used or intended to be used for any purpose and any manner as specified among the uses listed as permitted, accessory or conditional in the districts that they are permitted. Attorney Gruenberg stated that Planner Bolan was mischaracterizing her testimony. Planner Bolan asked to have their Planner characterize it again. Planner Weaver went over her testimony again. Planner Bolan stated referring to Helicopters that they are not an accessory use to farming. Planner Bolan then referred to the testimony on noise and asked if Planner Weaver was a noise expert. Planner Weaver answered no. Planner Bolan asked if the noise testimony goes to the fact they are in fact structures or dwellings immediately adjacent to this property and the impact to those properties. Planner Bolan in reviewing the ordinance stated that no where in the ordinance does it say you can have a Helistop. Planner Weaver referred to Item #1 which includes aerial and ground seeding and spraying, tractors and other equipment. Planner Bolan asked if this helicopter was going to do aerial seeding on the property. Planner Weaver stated the problem she has with the Right-to-Farm Ordinance; it does not include all agricultural uses. The ordinance only generalizes. Planner Bolan asked if a helicopter is a general agricultural use. Planner Weaver answered yes to many farms it is an agricultural use stating that many farms in the Bedminster area use helicopters.

It was noted that there was a Helistop over on Red Mill Road, but that it has been abandoned and no longer in existence. Attorney Gruenberg responded to Planner Bolan stating that this relates to the question about other helipads in Lebanon Township or in the area. Planner Bolan questioned the comments regarding Helistops for agricultural uses in Bedminster Township since they are the Planners for Bedminster and there are no Helistops in Bedminster Township for agricultural uses.

Planner Bolan asked if they had looked at the Master Plan. Planner Weaver answered that she had reviewed the Master Plan. Planner Bolan asked if she had looked at the objectives of the Master Plan and if she found anything that stated a Helistop in a residential zone was a good use. Planner Weaver stated that she did not find anything in the Master Plan that supported having Helistops in residential zones. Planner Bolan asked if she had looked at the guiding principals of the Master Plan. Planner Weaver stated yes and the Master Plan did not say it would allow or welcome a Heliport. Planner Bolan quoted the Master Plan stating: "Lebanon Township as a community of single family homes and farms should be maintained". Planner Weaver stated they are trying to maintain the farm as a viable business. Planner Bolan referred to the second guiding principal in the Master Plan stating: "Residential and agricultural zones should provide a restful

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environment secure from intrusion by uses not directly related to residential and agricultural pursuits". Planner Weaver stated the applicant is in the Rural Agricultural Zone. Planner Bolan asked if she looked at the rationale behind the Zoning and Master Plan in the Township. Planner Weaver said that the zoning ordinance specifically states that it is determined that whatever nuisance that can be caused by these uses more than offsets the benefits to the community for these farming activities generating a slight noise. Attorney Gruenberg did not agree with Planner Bolan's characterization because Planner Weaver's testimony was under other equipment and it encompassed to include helicopters under these circumstances. Planner Bolan stated that this helicopter is not being used to do anything on this farm. It is a convenience aspect. Attorney Gruenberg objected stating that the testimony has been that it is a promotion tool. It will be used to market the product and to take Ms. Pfister to different events where she can judge and promote her products which are an extension of the agricultural use.

Planner Bolan asked where the closest dwelling was located. Planner Weaver stated approximately 750'. Planner Bolan asked why this site was particularly suitable for this use. Planner Weaver stated it is in proximity to other farms and the open space. Planner Bolan referred the ordinances and asked if Planner Weaver understand why the R5 zone was zoned R5. The reason why the boundary for the RC zone was drawn around the R5 was to acknowledge the residential development in the R5 that has taken place. Planner Bolan referred to the Master Plan which states: "The R-5 District is designed to recognize those areas of the Township which have largely developed under the 5-acre zoning that has prevailed in the Township". Planner Weaver stated that the 5-acre is the minimum with many tracts that are very large that are still left in the R5. At this time Attorney Gallina asked if there testimony is that this is an

accessory use, that it is customary and incidental. Planner Weaver answered yes. Attorney Gallina asked how common is a Helistop on a residential farm in New Jersey. Planner Weaver stated a farm has many uses depending on their needs and how modern they are. Attorney Gallina asked how many farms in New Jersey use Helipads. Planner Weaver said she didn't have a list with her. Attorney Gallina referred back to the testimony of Mr. & Mrs. Pfister regarding the Helipad that it would be convenient for Mr. Pfister to engage in his flying hobby rather than to take the Helicopter to an Airport. Planner Weaver agreed it was part of his testimony. Attorney Gallina asked if they would be transporting goods in the helicopter. Planner Weaver answered yes, the sheered wool. Planner Weaver stated an amount equivalent to a fluffy pillow. Attorney Gallina stated that the R5 was a residential zone. Planner Weaver said it was a rural agricultural zone. Attorney Gallina noted that farms have as their residence as a primary use. Planner Weaver agreed. Attorney Gallina asked if allowing this helipad wouldn't it have an impact in this residence zone. Planner Weaver answered no and not on the surrounding area. Attorney Gallina noted that in the ordinance book, if it is not listed it is not permitted as Planner Bolan had pointed out. Attorney Gallina asked if Planner Weaver had done a search for other farms in New Jersey that use a helicopter. Planner Weaver answered that she felt she could find many but did not have the information with her this evening.

Chairman Abuchowski stated that Ron Beam former Lebanon Township Mayor who lived on Red Mill Road was a helicopter pilot for Prudential and had a helipad on his property which consisted of 5 acres. There is also an established helipad out behind the Municipal Building. Mr. Beam flew out of his property for 10-12 years, flying in at night and in all kinds of weather and there were never any complaints. Also, there is one airstrip in the Township.

Chairman Abuchowski stated before opening the hearing to the public announced that we will be adjourning at 10:00 p.m. Chairman Abuchowski acknowledged Attorney O'Malley. Attorney O'Malley stated that the witness testified that she was familiar with case law regarding ancillary use. Planner Weaver answered yes. Attorney O'Malley asked Planner Weaver if she also claims familiarity with case law regarding use variances. Planner Weaver answered yes. Attorney O'Malley referred to the Medici Case and asked Planner Weaver if she was aware that when an application is brought before a Planning Board and has been rejected and a sufficient period of time has intervened and the Municipality has done nothing to rectify the situation by a change in the ordinance, isn't it implied that the Municipality does not care to change the ordinance. Planner Weaver answered yes. Attorney O'Malley informed Planner Weaver that in 1988 there was a Helipad application rejected in this Township. Chairman Abuchowski interjected stating that it was withdrawn. Planner Bolan stated that the application was denied went to court and appealed and the board's decision was upheld. Per Planner Weaver, she was not aware of the 1988 Helipad application and decision. Attorney O'Malley stated under the reasoning of Medici, wouldn't that imply that because the Municipality has not taken any action to correct the zoning ordinance or to deal with the issue in the Master Plan doesn't that imply that the Municipality

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does not wish to have a helipad. Planner Weaver answered not necessarily since she does not know the particulars of the case. During the lengthy questions by Attorney O'Malley, Attorney Gruenberg interjected stating Attorney O'Malley was being argumentative. At the conclusion of the questions by Attorney O'Malley, the following people asked questions of Planner Weaver: Andrew Pierro, Tom Burrell, Arthur Bannon.

At the conclusion of the questions from the public, Attorney Gruenberg asked for a continuance date. Ms. Glashoff offered July 26th or August 23rd. Attorney Gruenberg requested the August 23rd date. Attorney Gallina asked Attorney Gruenberg for an extension of time. Ms. Glashoff asked to extend the time to August 30th. Attorney Gruenberg agreed. Attorney Gallina announced that this hearing will be carried to August 23rd at 7:30 p.m. with no further notice being given. Chairman Abuchowski asked for a motion to adjourn.

Being no further business to come before the board, nor comments from the public, motion by Mr. Nagie and seconded by Mr. Perry to adjourn the meeting at 10:03 p.m. Unanimously approved.

CHAIRMAN ABE ABUCHOWSKI

GAIL W. GLASHOFF, BOARD SECRETARY