

**BLAIRSTOWN TOWNSHIP
LAND USE BOARD
April 21, 2014**

MINUTES

The Blairstown Township Land Use Board met in a regular session on Monday, April 21, 2014, at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey.

The following members were present: Barbara Green, Herman Shoemaker, Charles Anderson, Jim Sikkes, Debra Waldron, Harold Price, Dominic Daleo and Andrew Smith. Mike Repasky, Nick Mohr, Paul Avery, and David Keller were absent. Also present were: Board Engineer, Ted Rodman, Board Attorney, Roger Thomas, and Board Secretary, Marion Spriggs.

SALUTE TO THE FLAG: was recited.

ADMINISTRATION of OATH:

Roger Thomas administered the Oath of Office to Board member, Andrew Smith, as Alternate #1.

ROLL CALL: was taken.

THE SUNSHINE STATEMENT: was read.

Meeting was called to order by Chairwoman Waldron, who stated:

“Adequate notice of this meeting of the Blairstown Township Land Use Board has been provided in accordance with the Open Public Meetings Act (Chapter 231.P.L. 1975)”.

LAND USE BOARD DEADLINE DATES:

Chairwoman Waldron declared that submission of information supporting applications must arrive at Town Hall **10 calendar days prior to meetings**. She explained this is an effort to give the Board members enough time to review the documents and requested this notice be read at each meeting.

MINUTES OF PREVIOUS MEETING: (As distributed prior to the meeting date).

Minutes of the January 20, 2014 Regular Meeting were approved, as written.

Action: A motion was duly made by Mr. Sikkes, seconded by Mr. Daleo to approve the January 20, 2014 Regular Minutes, as written. Roll call vote: Anderson, Green, Shoemaker, Sikkes, Waldron, Smith, Price and Daleo – yes.

RESOLUTIONS:

LB#02-12 Shotwell Family Ltd. Partnership, Blk. 1603, Lot 5.01, 10 Shotwell Rd. (dismiss w/o prejudice)

Action: A motion was duly made by Mr. Shoemaker, seconded by Mr. Anderson, to Dismiss Without Prejudice, **LB#02-12 Shotwell Family Ltd. Partnership**, Blk. 1603, Lot 5.01, 10 Shotwell Rd., and approve Resolution stating same. Roll call vote: Anderson, Green, Shoemaker, Price, Daleo and Waldron – yes. Sikkes and Smith – abstained.

COMPLETENESS:

LB#01-14 Allen Gibson, Blk. 301, Lot 10.14, 8 Mountain Terr. - Bulk Var.

Robert Simon, Esq. of Herold Law, Warren, NJ, represented the applicant. He stated he had received Ted Rodman’s report of 4/17/14 and spoke with him today.

Ted Rodman suggested that this application be found Complete with the proviso that the minor items be provided prior to the next meeting and that Completeness and Hearing be done at the next meeting. He clarified that the applicant has put the driveway in, excavated and done a lot of earth work. No foundations have been poured, there are no forms in the ground. Ted said technically he has not started any construction work yet. A permit is required for the 2nd driveway which he did not get, and is aware of that.

Mr. Simon indicated that a landscape plan will be provided.

Since some work was started, and stopped, and the workers are anxious to continue, Mr. Simon requested a Special Meeting, at an additional expense, after being informed this application will be heard on 5/19/14 after the LB03-14 NWRHS Multi-purpose bldg. Hearing.

Tuesday, May 13, 2014 @ 7:30pm was chosen as the date and time for this Special Meeting.

Action: A motion was duly made by Mr. Sikkes, seconded by Mr. Anderson to deem **LB#01-14 Allen Gibson**, Blk. 301, Lot 10.14 , 8 Mountain Terr. - Bulk Var.- **INCOMPLETE**.

Roll call vote: Anderson, Green, Shoemaker, Sikkes, Waldron, Smith, Price and Daleo – yes.

Mr. Smith, a Board member, asked why the justification for a Special Meeting for Mr. Gibson. Chairwoman Waldron responded the 5/19/14 meeting will be long in duration. She said he would not get on the Agenda. He would sit with his professionals and waste his time financially and personally.

LB#03-14 NWRHS, Blk. 1402, Lot 21.02, 10 Noe Rd., Use Var. – **Multi-purpose building**

Mayor Shoemaker, as a Class I Board member, stepped down for this application.

James Fox, Esq. of Morris Downing & Sherred, of Newton, NJ, appeared on behalf of the applicant.

He indicated he had reviewed Ted Rodman's report of 4/15/14.

Ted Rodman stated there is no site plan approval required for this application. It will be for a variance. His recommendation is that this application be found Incomplete with the proviso that the Completeness and Hearing be done at the next meeting on May 19, 2014.

For clearer understanding for a motion, Roger Thomas questioned Ted Rodman regarding waivers. He responded that the issue is with Item 11- Wetlands. Mr. Fox remarked that the wetlands delineation has changed. Dr. Fogelson noted that a new map was presented for LB05-12 NWRHS Solar Panels. He said it has the wetlands boundaries on it that were redrawn after hurricane Irene. Ted Rodman remarked that is good for 6 years and suggested that it be put on the drawing by the architect, Ray O'Brien.

Ted Rodman confirmed that the maps and location drawings prepared by NWRHS's engineer, Elizabeth W. Waterbury, originally for LB05-12 NWRHS Solar Panels referenced above, and most recently, LB02-14 NWRHS Rezone request, is sufficient for Item 5. Mr. Fox revealed they are the closest thing to a survey that is not 30 years old.

Dr. Fogelson revealed he believes they should have the original survey of 30 years or so ago. Roger Thomas verified that there is nothing to indicate that survey is inaccurate, other than the fact, that there has been additional property acquired. Roger Thomas asked Ted Rodman if submission of the original survey, along with the aforementioned Waterbury Solar maps and location drawings, would serve adequately. Ted Rodman agreed.

Mr. Fox indicated he did not have the survey but would look for it tomorrow. Chairwoman Waldron asked if the applicant can't find the original survey, that they please phone Ted Rodman.

Ted Rodman advised that the drawing should be noted, "No landscaping is proposed".

Roger Thomas declared Items 1,2,3,4, and 5 as modified, Items 6, 8, 11, and 12 be deemed Incomplete. At the May 19, 2014 LB Meeting, **LB#03-14 NWRHS**, Blk. 1402, Lot 21.02, 10 Noe Rd., Use Var. – **Multi-purpose building**, can be deemed Complete and have a Hearing.

Action: A motion was duly made by Mr. Smith, seconded by Mr. Daleo, to deem **LB#03-14 NWRHS**, Blk. 1402, Lot 21.02, 10 Noe Rd., Use Var. – **Multi-purpose building**, - INCOMPLETE as noted above. Roll call vote: Anderson, Green, Sikkes. Smith, Price. Daleo and Waldron – yes.

(The applicant took their maps.)

Mr. Fox confirmed Ray O'Brien, the Architect, will attend the May 19, 2014 Hearing. Mr. Thomas asked if Mr. O'Brien is qualified to testify as a Professional Planner in NJ. Mr. Fox said he's not been asked for a Planner and would ask for a waiver for that. He pointed out this should be flushed out now as there is time. He does not feel it is necessary.

Dr. Fogelson noted he is not sure what the Planner would come for. Mr. Thomas responded the requirement under the Municipal Land Use Law, even for inherently beneficial use, is to be able to meet certain standards. He pointed out, generally that testimony is given by a Professional Planner in the state of NJ. They provide reasons why the project meets statutory standards. Mr. Thomas explained he is not telling the applicant what to do but sharing his past experience.

Ted Rodman commented that Additional Comment #1 on his report of 4/15/14 covers what Mr. Thomas said.

Mr. Fox asked for guidance and they will follow it. Ted Rodman responded, provide testimony of what he addressed in #1. Mr. Fox asked if a Planners' report was necessary. Ted Rodman declared testimony would suffice - nothing is required beforehand.

Roger Thomas advised Mr. Fox to talk with Ray O'Brien notifying him there is an D variance involved. If he is comfortable with that, Roger said that is the way to go. He said if he is not comfortable, then they need to consider what is going to happen and what they need to do.

Mr. Fox responded, it is obvious that the Board wants him to hire a Planner. Mr. Thomas declared that is not true and suggested Mr. Fox is making a statement with no basis in fact. Mr. Thomas said nothing is being imposed on them but he is trying to make it a bit smoother. He declared this is not adversarial to the applicant.

PUBLIC HEARING:

(Former LB#01- 12) **LB#06-13 John Clark**, Blk. 801, Lot 1, 2.01 No road frontage

Peter Hilgendorff, Esq. of Sparta, NJ. representing the applicant, was sworn in.

James Glasson, P. E. of Civil Engineering, Inc., Budd Lake, also representing the applicant, was sworn in. He stated his qualifications.

John Clark, applicant, of Stockholm, NJ, was sworn in.

Mr. Glasson explained the Exhibits A-1 through A-8, and they were marked.

He noted the 2 lots comply with the R-5 zone. He explained the problem is there is no road frontage. He said it is not a flag lot, as there is no stem. He pointed out wetlands do exist on the property. He pointed out there is an existing straight driveway which serves Mr. Adler.

He claims the applicant has a right of ingress and egress. He said their driveway takes a rt. hand turn. It is an existing old gravel logging road. He said a driveway crosses the area over a wetland area and enters into the property terminating into the middle of Lot 2.01. He said when they got the wetland permit, they received a permit to cross the wetland and improve the driveway. They are improving it by raising the level of the driveway and improving it with replacing the 2 pipe crossings. In the winter there is water on each side of the driveway. The deadline for improvement runs out in 2015.

Mr. Glasson said Mr. Clark wants an eco-friendly lot. He wishes to build 1 home for himself and sell the other. They have obtained permits for septics and wells from Warren Cty. Health Dept.

Mr. Glasson stated the driveway width through the wetland is 10 ft. Vice Chairman Sikkes asked if it is adequate for fire and ambulance. Mr. Glasson said it should be, and they would be willing to widen it to 12 ft. Mr. Glasson said they are hoping 10 ft. is wide enough. He revealed the driveway does get narrower as it crosses the Misses Chiarello's property.

Chairwoman asked when Mr. Clark purchased the lots. The response was 2009. He was aware of the access at that time.

Ted Rodman asked if they had approached Fire Dept. or Emergency Services regarding their ability to access. They responded they had not. Ted Rodman said there should be testimony from them as to their ability to access these lots.

Ted Rodman expressed the following 2 concerns:

That the thrust of Sec. 35:36 of the MLUL is emergency vehicle access. He had hoped that the applicant would have had testimony from Emergency Services, stating after the improvements are made, they had no problems. He noted he hadn't heard any testimony to that effect.

The other concern, as a condition, is the need to resolve whether storm water compliance is required or not.

Ted Rodman stated the determination for whether or not he has to comply with the Ordinance regarding storm water, must be resolved. It can be a condition, with over an acre for the 2 lots, or can it be broken up into 1 lot.

This portion of the Hearing was opened to the public.

Winfred Ginter, Cedar Lake Rd., was sworn in. He questioned the total length of driveway to the Clark property. The response was 2,200 ft. He asked if there would be enough room for an emergency vehicle to get around a disabled dump truck. The response was no. He asked if it was a flag lot, what would be the minimum distance on a road - that would permit ingress and egress. Mr. Glasson responded, whatever the Ordinance allows. Mr. Sikkes pointed there is no Ordinance for flag lots anymore. He said they are not allowed.

Ted Rodman stated he believes, that the Driveway Ordinance indicates that over a certain length, turnouts are required. He said Mr. Clark would have to get a driveway permit for that and all things would have to be shown.

Melissa DeKorte, Four Corners Rd., was sworn in. She had a copy of a Judgement from a lawsuit in 1972. She questioned "lawful rights" to pass through. Mr. Hilgendorff explained the language was regarding adverse possession rights. They didn't want people coming in and stating they can't be stopped now because they had adverse possession rights granted by the McConachys, and they had been walking through for 20 years.

She pointed out there was so much snow this past winter, only their quad fit at the beginning of the entry way. She declared there is no way emergency vehicles could fit in winter.

Wayne DeKorte, Four Corners Rd., was sworn in. He stated he plows a lot with a diesel truck and got stuck on that road. Dean Adler had to help him out with a tractor. He pointed out with snowfall, the driveway by his house narrows to 6 or 7 feet. He stated there is no way a fire truck will ever get through that. He thinks it should be proven.

Mr. Thomas read Section 36 and stated one of the critical issues is not only to establish practical difficulties or undue hardship but also demonstrate adequate access.

He stated there was an issue raised by Mrs. DeKorte as to whether the access really does exist. There have been documents presented that seem to suggest that there will be a colorable access. So the Board has jurisdiction of this matter. However, he wants it made clear the LB is not a court and the LB can't solve Title issues. A challenge of that issue is not something done here but rather in court.

Roger Thomas recapped to the applicant, what to bring to the next meeting:

Title information consisting of the existence of Lot 2.01
Information regarding emergency services from Police, Ambulance and Fire Depts.,
either in writing or in person.

He noted there was a discussion if there was going to be a favorable action, there would be other conditions requiring clarification, such as issues to clarify storm water management, issues regarding cutaways.

Mr. Thomas said there should be a Joint Maintenance Agreement. He said if the Board was going to grant this, there have to be provisions made by the owners of this property to account for their pro-rata responsibility from Four Corners Rd. whether it is part of the Joint Maintenance Agreement or not.

Chairwoman Waldron asked if they tried to work out a maintenance agreement with existing neighbors. Mr. Hilgendorff indicated, not currently.

This matter will be carried, without further notice, until the May 19, 2014 meeting.

Mr. Sikkes left the meeting @ 9:26pm.

LB#02-14 NWRHS, Blk. 1402, Lot 21.02, 10 Noe Rd., – Rezone request

Jim Fox, of Morris, Downing & Sherred, Newton, NJ, attorney for the applicant, noted the North Warren Regional High School was opened in 1969 and is currently in the R-5 (residential – 5 acre) zone. It is not a conditional use, thus considered non-conforming. This results in the school coming before the Land Use Board for an overview on an informational application. This is required by Statute but they must also ask for a variance, which triggers other requirements. They desire to place this property in a zone which is dedicated to public education only.

He noted on the application that he indicated NWRHS desires either a zoning change for public educational purposes, or as a conditional use in the R-5 zone. He explained the reason was to give the Board an alternative, if not inclined to change the zoning. Their belief is it would be better suited for everyone involved to change the zone to public educational use only. It would not apply to private educational facilities and have no effect on other R-5 properties.

He noted they must go to The State Board of Education on all of their applications on construction projects. They feel variance applications trigger a redundancy. He explained they must still appear on informational applications, as required by law.

Mr. Fox pointed out that they recognize that this Board does not have the authority to grant this but asks that the Board give approval in a report to the Township Committee and presumably he said, they would have to discuss it with them as well.

Chairwoman Waldron inquired why they singled themselves out for a single zoning rather than have the Elementary School join with them to create a school zone. Mr. Fox responded they did not think it appropriate, he commented, it is up to them. He declared he does not even know

their zone. He stated the Elementary School may have problem associated with their property that NWRHS does not know about. Further, he noted NWRHS is a regional high school which has a different constituency than Blairstown Elementary School. He commented they have greater need for potential growth.

Mr. Fox declared they have 105 acres which have always been used for educational purposes. They do not contemplate any other use going forward.

Brian Fogelson, Superintendent of NWRHS, Noe Rd., was sworn in.

He reflected on the discussion from the last LB mtg. regarding different educational entities. He said he came away feeling it was the desire of this Board at the time, for them to go forward on their own.

Chairwoman Waldron questioned if the enrollment has changed since the defeated referendum for expansion in 2007. Dr. Fogelson admitted it is down by 150 students since then. There are now approximately 963 students.

Mr. Fox noted they can now accept students from other districts. They will have 2 of these students in the Fall.

Mr. Fox noted this project is already in budget and not going out in a Referendum. The size is smaller than that in 2007.

Dr. Fogelson said this can be a 5 yr. plan within the budget, which is allowable in the Statute. He revealed this was presented to the Township Committee and there will be a formal Hearing.

Chairwoman Waldron asked if the Rezone Request LB#02-14 were granted, would NWRHS have to reappear before this Board with any future expansion requests. Mr. Thomas responded, probably not for public notice but they would be required to appear before this Board for an Informational Hearing on future plans.

Mr. Thomas explained guiding standards will be needed. He suggested there be discussion between the Planner, Attny. Fox, and himself as to what would be reasonable standards for the zone, so NWRHS could do what they wanted to do in reasonable expansion. He noted there are issues in terms of 105 acres. He stated there has to be certain levels of control in consideration of good planning.

Mr. Fox responded they would be more than happy to work with Mr. Thomas in resolving any definitional issues.

Mr. Thomas suggested if there is to be any recommendation the following be considered:

1. Should such a zone exist.

2. Standards should be outlined from a planning and educational viewpoint.
3. Recommendation (close to being in Ordinance form) is then presented to the Twp. Committee.

Mr. Thomas commented the Board should consider what they, and the community gains or loses if the approval is given for their own zone. He noted frankly, some level of control is lost. He explained the Board has the right to review their applications under D variance, which is not permitted. They would then be reviewed as an inherently beneficial use which is a lower standard than for a normal D variance. They still have to get 5 votes.

Mr. Thomas noted if the Twp. comes up with a set of standards that it is comfortable with, theoretically, the applicant is acting within guidelines that are permitted.

He explained whether it is coming from the Twp.'s or school's budget, it is still coming from the taxpayers.

He said it is not an easy process. He indicated he would be concerned from a legal viewpoint of how it is crafted in the R-5 zone, and still make it rational. He noted there are various types of schools in the area. Mr. Thomas explained the standards are very difficult.

He recommended if the Board chooses to do it, since it is 105 acres, it can't be rationally considered that it be spot zoned. He explained the work is in the details - to be sure from a Land Use Planning viewpoint, there is a good zone. Also to be considered, are the educational responsibilities of the Board of Ed, so that they have a reasonable basis to expand.

For the record, Mr. Thomas agrees that schools are inherently beneficial use and he agrees with Mr. Fox that the standard is lower. He stated that he does not agree that it is virtually impossible to deny such an application.

This portion of the Hearing was opened to the Public.

Winfred Ginter, Cedar Lake Rd., wants to know what will be discussed at the next meeting. Chairwoman Waldron indicated if the LB so authorizes, Attny. Dolan will meet with Attny. Fox and bring suggestions back after they meet. She advised the public to come to the meeting as nothing will be sent out by mail.

Mr. Thomas suggested that rather than a yes or no vote, the LUB vote on authorizing him to work with the Board of Ed and their representatives to come up with the details to present, hopefully at the next meeting.

He alluded, if so authorized, that he may have to contact Darlene Green, PP of Maser Consulting for input.

Action: On a motion duly made by Mrs. Waldron, seconded by Mr. Shoemaker, to authorize Roger Thomas to meet as outlined above. Roll call vote: Green, Shoemaker, Smith, Daleo, and Waldron – yes. Anderson and Price – no.

This matter will be carried until May 19, 2014 without further notice.

CORRESPONDENCE:

E-mail from **Brian Walsh, Alternate #4, resigning from Land Use Board**

Chairwoman Waldron noted, for the record, that Mr. Walsh phoned her this evening, and sent her a note. His working hours preclude him from arriving on time for Land Use Board meetings. She invited him, should his hours change, and he'd like to come back, to contact the Board.

OTHER BUSINESS:

2013 Land Board Annual Report – vote

Although this report was presented awhile ago, Marion Spriggs pointed out, it was never voted on.

Action: A motion was duly made by Mr. Shoemaker, seconded by Mrs. Waldron to approve the **2013 Land Board Annual Report** as written. Roll call vote: Anderson, Green, Shoemaker, Waldron, Smith, Price and Daleo – yes.

Darst #ZB04-10 – Compliance

Ltr. 3/13/14 Ursala Leo, Esq.,Laddey, Clark & Ryan, Re: update Darsts' progress on conditions

This matter will be discussed at the next meeting.

COAH

Ltr. 2/19/14 R. Thomas, Esq. to Mayor Shoemaker Re: Status of COAH trust funds

Article Star Ledger 3/11/14 Re: NJ Supreme Ct. Reprieve in Affordable Housing Case

NWRHS LB#05-12 – Solar Panels (dying trees)

A Board member pointed out the landscape trees surrounding the solar panels are dying. Ted Rodman responded, they all will be replaced – even if it is a year later, they must be replaced.

NEW BUSINESS:

None

PUBLIC PORTION:

No members of the public were present at this time.

VOUCHERS: Professional services rendered.

Action: On a motion duly made by Mr. Shoemaker seconded by Mrs. Waldron, escrow and general vouchers, as attached to these minutes, were approved. Roll call vote: Anderson, Green, Shoemaker, Waldron, Smith, Price, and Daleo – yes.

ADJOURNMENT:

Chairwoman Waldron asked the Board for a motion to adjourn.

Action: On a motion duly made by Mr. Shoemaker seconded by Mrs. Waldron, and unanimously carried, the meeting was adjourned at 10:16 pm.

Respectfully submitted,

Marion C. Spriggs, Board Secretary