

**BLAIRSTOWN TOWNSHIP  
LAND USE BOARD  
June 15, 2015**

**MINUTES**

The Blairstown Township Land Use Board met in a regular session on Monday, June 15, 2015, at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following members were present: Barbara Green, Paul Avery, Herman Shoemaker, Jim Sikkes, Debra Waldron, Harold Price, Dominic Daleo, Mark Ohannesian and Richard Mach. David Keller, Mike Repasky were absent. Also present were: Board Engineer, Ted Rodman, Board Attorney, Roger Thomas, and Board Secretary, Marion Spriggs. Nick Mohr arrived later in the meeting.

**SALUTE TO THE FLAG:** was recited.

**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.

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

Minutes of the May 18, 2015 Regular Meeting of the Land Use Board were approved, as written.

**Action:** A motion was duly made by Mr. Sikkes, seconded by Mrs. Green to approve the Minutes of the May 18, 2015 Regular Meeting of the Land Use Board, as written.

Roll call vote: Green, Avery, Shoemaker, Sikkes, Waldron, Price, Daleo, and Ohannesian - yes.

## **RESOLUTIONS:**

**LB#02-14 NWRHS**, Blk.1402, Lot 21.02, 10 Noe Rd., - **Rezone** request (*rewritten version*)

Roger Thomas stated this matter was discussed in detail on 5/18/15. He noted the 5/18/15 Minutes reflect a consensus. He explained he was directed to contact the LUB Planner, which he did last week. He said he spoke with Attorney Fox last week advising him of his intent to contact Darlene Green, PP.

Darlene Green, PP, who was willing, cannot devote time currently to this matter, due to COAH's expiration date of 7/8/15, for filing Affordable Housing litigations in front of courts.

Roger Thomas revealed he mentioned this info to Attorney Fox, the end of last week, and on a couple of occasions today. He indicated it would be best to defer this matter. He explained, then he, Attorney Fox, the Misses Waterbury, PP, and Green, PP, can resolve the Ordinance in a manner discussed. It would provide many, if not all, the items contained originally but modified as part of a Conditional Use Resolution, so that concerns of both parties can be met. He requested, this matter be deferred in terms of discussion until the 7/20/15 LUB meeting.

Dr. Brian Fogelson, 10 Noe Rd., Blairstown, identified himself, for the record. He noted Mr. Brandt, School Bd. Member, & Ms. Sharkey, Business Administrator, are also present.

Dr. Fogelson stated he was disappointed they haven't been able to move quicker. He continued, when they were here last month, he and Attorney Fox, discussed the possibility of coming to some kind of Conditional Use. He returned to his Bd. of Education to explain, with Attorney Fox's help. He stated at that time, the Bd. of Ed responded they were not interested doing a Conditional Use at this point. They felt this has gone on over the course of a year @ \$25,000. to taxpayers. They were prepared to go back to the Twp. Comm. to re-entertain the original zoning request. He said, they believe Conditional Use would not be a reasonable solution and compromise.

He stated the new Superintendent, Ms. Sarah Bilotti, who starts 7/1/15, will be further apprised.

Mayor Shoemaker explained it has been 5 months since the LUB presented their request to the Twp. Comm. in February. He said the original charge of the LUB was loss of control, and what does it mean? He said LUB hasn't been able to respond to that. Mr. Sikkes and Chairwoman Waldron disagreed. Mayor Shoemaker commented, from the Legislative Body's viewpoint, the request went out to have an explanation of "What do you mean by loss of control"? He noted there has been no response.

Chairwoman Waldron said "No, that is not true, because this was discussed in great length at the last meeting". She said the school is an inherently beneficial use. She repeated, they have never been rejected by this Board. She went back to 2000 documentation. She stated her concern was what negative impact would affect the community, as a whole. She noted the LUB Planner

recommends an R-5 zone w/ Conditional Use. It is not about control but rather to make sure there is not a negative impact to the community.

Mayor Shoemaker responded, from a Twp. Comm. viewpoint, they have been waiting for 4 months. Roger Thomas interjected, "One would have hoped representatives from the Twp. Comm., who were here at the 5/18/15 LUB Meeting, responded to whatever inquiries there were, made from whoever it was, on the Twp. Comm.". Roger Thomas continued, "That said, - there's no response. Twp. Comm. should know that there was a fruitful and lengthy discussion with the authorization that there would be an attempt to have a resolution".

He declared the only reason that resolution is not forthcoming today, is for the reasons he expressed, which were nothing more than timing reasons - the fact that he did not get in touch with Darlene Green, PP, until last week, and now she is involved with the COAH situation. He continued, "To say there's no response, in fairness, is to say that the Twp. Comm. was not informed". He noted, "If it turns out they were not informed because the Mayor and Committeeman Avery felt that somebody from the LUB should've informed Twp. Comm.", Roger Thomas said, "That should've been made known".

Roger Thomas commented that he thought there was a fairly positive response, despite what Dr. Fogelson said today. The Mayor agreed. Roger Thomas said he would assume the Twp. Comm. would've been aware of that positive response. He concluded, "It doesn't seem to be going anyplace at this time, for the reasons that have been expressed. He declared, "That's not any problem". He said "You can also recall, during the period of March, April and May, there were other issues that were involved with the LUB which created problems in trying to get to this issue". He noted, "It wasn't like the LUB was sitting doing nothing".

Mayor Shoemaker responded, "First of all, he and Paul Avery, have been keeping the Legislative Body informed". He stated his concern during these several months, noting, there have been other things going on but at each of those meetings, subsequent to February, Roger Thomas and the Chairwoman have asked, "Tell us what you objected to, other than loss of control".

Roger Thomas reminded the Mayor there was a personal issue, by one of the LUB members, of which he was aware, whereby this was not addressed until April. He noted in May there was a lengthy discussion which was fully detailed on 3 pages in the Minutes of the 5/18/15 LUB Meeting as to what the concern was. He said, the dialogue resulted in a fruitful exchange between the representatives of the School Board and the LUB, with a direction – to go forward. It was decided specifically, to draft an Ordinance, designed to be a Conditional Use Ordinance incorporating the vast majority of all the things that had been contained in the jointly-prepared Draft Ordinance by the School Bd. and LUB. Then there could be resolution of the concerns of LUB. Also, the Ordinance would meet satisfaction and concerns of the Bd. of Ed.

Roger Thomas concluded, that's where he thought the status is. Thus, up until this moment, he didn't think there was anything further in terms of what are we looking for, rather than let's get this done as soon as possible. He said, that now seems to be off-the-table, for reasons Dr. Fogelson explained.

Paul Avery commented, that is reflected in the Minutes. Chairwoman Waldron noted the 5/18/15 LUB Minutes are very specific in this case.

Roger Thomas revealed between the 5/18/15 LUB Meeting and today, he had a conversation with Twp. Counsel, Robert Benbrook, in which he explained to him what was going on and how the Resolution was working its way through. Roger Thomas conveyed that he thought this matter would be resolved in the July timeframe.

Roger Thomas confirmed for Mayor Shoemaker that right now there will be nothing. He reiterated that the Mayor has heard what Dr. Fogelson has said. He said not only was it a matter of discussion here but he informed Twp. Counsel of the situation. Mayor Shoemaker said he was aware of that.

Chairwoman Waldron said that came about because she was approached by the Mayor and he mentioned to her that they wanted to pursue the NWRHS Rezone at the Twp. Comm. level. Mayor Shoemaker explained Twp. Comm. only wanted verification of their written request. Roger Thomas revealed that is what the Mayor communicated in February. Roger Thomas explained he is unaware of what happened in March since he was absent for the 3/16/15 LUB Meeting. At the 4/20/15 LUB Meeting, there was a personal issue, and the 5/18/15 LUB Meeting discussion is where we are now.

Roger Thomas noted, he wants to be explicitly clear, Dr. Fogelson has indicated that his board no longer is interested in what was discussed jointly at the 5/18/15 LUB meeting. They are concerned with the cost of \$25,000. and he noted, he would be very interested where all that money went.

He said to spend more money for something that they are not going to accept, seems fruitless. Mayor Shoemaker remarked that is a good point.

Roger Thomas stated unless he hears otherwise from the LUB, based upon what the representatives from the School Board said, he will be informing Darlene Green, PP, not to do anything further because there is nothing further this Board can do.

Mayor Shoemaker said “We know what the School Board would and wouldn’t like. The Legislative Body through recommendations made by this Board, will come up with a position”. He said, “Not to be hard-nosed, if they said Conditional Use is the way to go, he doesn’t think the School Board has veto power over that”. Roger Thomas confirmed that.

Roger Thomas declared he would be happy to discuss this with Mayor Shoemaker anytime, with any member of the Twp. Comm., as well as with Twp. Comm. Counsel, so that there can be some further discussion that seems to warrant involvement with the LUB. He will be happy to lend his, and the Chairwoman’s services to that.

Mayor Shoemaker said that from the Twp. Comm.’s viewpoint, they now have before them a request that they must make a decision on. He commented what he is thinking is, if the LUB

thinks a Conditional Use is a viable or better alternative, then this body ought to say, “As you make this decision, you can either say Yes, No, or officially, consider this”.

Roger Thomas suggested in light of the Mayor’s comments, so that it is very clear that Twp. Comm. has a full and complete understanding of what the position of this Board is, is there has been a lot of discussion on this. If, as discussed at the last meeting, the approach LUB would recommend to Twp. Comm. is to provide for a Conditional Use Ordinance incorporating a vast majority of the items that were contained in the original Ordinance, a vote should be taken now so that there is absolutely no misunderstanding by Twp. Comm. as to what this Board feels is appropriate.

Mayor Shoemaker and Chairwoman Waldron agreed this is appropriate.

Harold Price asked if it was ever determined what the decision of the zone was for the school. He also asked how to make it right going forward, having something here (the reason for which) is not known, and now giving something else?

Chairwoman Waldron responded, it is known that it was an R-5 zone. She replied, “We know that they were a Conditional Use in an R-5 zone, at one time but we don’t know why that condition was dropped”. She said, “What is known, is that was the intent and purpose, and it always functioned that way”.

Roger Thomas clarified stating, possibly because of the fire in 2000, some of the previously-available records may have been relevant from a historic viewpoint but that would not necessarily impact what this Board can do at this point in time in relation to that property. He said that does not inhibit this Board from taking an action currently.

Mr. Price asked if the zone, going forward, would still be the R-5 zone. Roger Thomas responded, the Conditional Use will be added, similar to what existed before, with nuances to bring the Township current.

Roger Thomas noted the Board had a number of opportunities to review that Ordinance. He said all that he thinks needs to be done, is that Ordinance needs to be put into a format that allows it to be a Conditional Use in what was, not now, an acceptable position on the part of the Board of Education. He explained that this Board can’t do that. This Board can only recommend. He said if the Twp. Comm. thinks it is a good idea, then that Ordinance will come back to LUB, since technically it has to. The LUB can say, yes they agree, and then it becomes an Ordinance, after the second reading.

He pointed out that right now there is a motion to recommend that there be an Ordinance prepared, which will be Conditional Use, along the lines of the prior Ordinance discussed during the period of 2014 & 2015.

Mr. Sikkes stated that he thinks what happened was, the Planner overlooked it, when redoing the Zoning. As a long-time Planning Board Member, he remembered it as being an R-5 zone with a Conditional Use.

Barbara. Green added that a lot of real estate has been added to the original property since 1970. She noted that's a lot more which now would be involved.

**Action:** A motion was duly made re: **LB#02-14 NWRHS**, Blk. 1402, Lot 21.02, 10 Noe Rd., - **Rezone**, by Vice Chairman - Sikkes, seconded by Mayor Shoemaker, to recommend an Ordinance be prepared that will be along the lines of the prior Ordinance which included the existence of schools in an R-5 Zone as a Conditional Use. Roll call vote: Green, Avery, Shoemaker, Sikkes, Waldron, Price, Daleo and Ohannesian – yes.

(Former LB#01-12), **LB#06-13 Clark**, Block 801, Lots 1 and 2.01 No road frontage

Roger Thomas explained he did not have the opportunity to prepare this resolution. It will be available in advance of the next meeting on 7/20/15 in order to give the Board Members the opportunity to review it.

**LB#02-15 Buck Hill Properties. LLC (Buck Hill Brewery & Rest.)** Blk. 2001, Lot 1.01, 45 Rt. 94 – Prel. & Final Major Site Plan, + Bulk Variances

Roger Thomas noted, Richard Keiling, attorney for this applicant, left a message that he has no objections with this Resolution.

**Action:** A motion was duly made by Mr. Sikkes, seconded by Mr. Daleo, to approve the Resolution for **LB#02-15 Buck Hill Properties. LLC (Buck Hill Brewery & Rest.)** Blk. 2001, Lot 1.01, 45 Rt. 94 – Prel. & Final Major Site Plan, Bulk Variances, and waivers with aforementioned conditions. Roll call vote: Green, Avery, Shoemaker, Sikkes, Waldron, Price, Daleo, and Ohannesian – yes.

**COMPLETENESS:**

None

**PUBLIC HEARING:**

None

**CORRESPONDENCE:**

Resignation from LUB letter from Charles Anderson, Class IV member.

Chairwoman Waldron announced, with regret, that Charles Anderson submitted a letter of resignation from this Board, citing health reasons for his decision.

**OTHER BUSINESS:**

## **Darst #ZB04-10 – Compliance**

Ltr. 6/2/15 Debra Waldron to Mayor Shoemaker re: Violations, fines, & enforcement

Chairwoman Waldron understands that David Diehl, Zoning Officer and Ted Rodman, will visit this site.

Ted Rodman said he did a memo in March, 2014. He plans to update the memo to see if anything has been done since then. That will be available at the next meeting. He said he believes that David Diehl will follow up on that. She expressed her appreciation to Mr. Rodman, Mr. Diehl and Twp. Comm.

At the end of the meeting, Chairwoman Waldron again thanked Twp. Comm. for acting on her letter. She asked the Twp. Comm. to continue to press for those types of issues. She said it is vital to this Board to have resolutions that are enforced by the Township. Mayor Shoemaker added “that have teeth in them”.

## **COAH**

Roger Thomas explained 6/8/15, began the time for the Municipalities to file their Declaratory Judgement Action. In response to this Township’s request, he hopes to finish preparing appropriate Declaratory Judgement Action on their behalf. He will be forwarding that to Twp. Comm., LUB, and Messrs. Benbrook, Twp. Counsel. He said they can accept or reject it.

He is concerned because failure to participate in this process, leaves a Municipality in a position for a developer, or even a non-profit to come in and indicate to a Judge, (Judge Coleman, Somerville – for Blairstown), that The Township hasn’t participated. Therefore there would be a Non-Compliance Determination, which authorizes that entity to file a Builder’s Remedy Lawsuit.

He applauds this Township’s continued efforts. He noted there needs to be a Certification, by the Twp. Planner, attached to the DJ Action.

He said up to today, The Township’s Planning Office does not feel it has received any authorization to become involved in that process.

Roger Thomas stated this LUB has done what it can do, which is to authorize him to assist, but it doesn’t have the ability to authorize The Planner.

He urges the Twp. Comm. do that because The Planner is needed to do the Certification, at a minimum – plus more.

He would like to authorize this LUB to recommend to the Twp. Comm. that this is an important process and Darlene Green, PP, needs to be involved.

Mayor Shoemaker revealed he saw an e-mail from Maser Consulting today which said the Mayor had verbally withdrawn them from their contract. He called to inquire what that was about but Darlene Green, PP, was not there.

He said what happened, that she needs to clarify, was - first there was a movement to recertify Third Round calculations and have them redone. The decision was to wait until The Rules are established. So, Darlene Green, PP, was told not to do that.

Roger Thomas, who is concerned about the timeframe, asked the Mayor to confirm that Twp. Comm.'s, (who hold the purse strings), Contract is still in force and effect, to the extent that it is necessary to have a functioning or a procedurally-sufficient Declaratory Judgment Action. He remarked that Paul Avery, "is nodding his head".

If this is correct, Roger Thomas will communicate that to her tomorrow because he knows she is willing to participate but was reluctant perhaps due to lack of communication.

Mayor Shoemaker indicated a request from Attny. Benbrook's office emanated saying, provide evidence of what you have done to comply with COAH. Roger Thomas noted that would have been sent to Theresa Tamburro, MHL. Mayor Shoemaker revealed Darlene Green, PP, responded she could not do that because she was taken off The Contract.

Roger Thomas reiterated that compliance of what has been done re: Rounds I, II, III is okay, as well as her authorization to prepare or review a Certification, on her behalf. Roger Thomas asked if she is authorized to do those 2 things. He sought confirmation, so he could call her tomorrow. Mayor Shoemaker answered, "Sure, if you can get a hold of her". The Mayor pointed out, "but it isn't to recalculate".

Roger Thomas responded, "He is 100% crystal clear".

Mr. Avery also agreed to enlist the aid of Dr. Burchell. Roger Thomas heartily complies with that, stating that would be very beneficial.

### **NEW BUSINESS:**

Ted Rodman noted during Mayor Mach's administration, there was discussion with Blair Academy about putting a parking area at the intersection of Park & Main Sts.

Blair Academy has come up with a proposal using Blair property which will be transferred to the Township, for 17 parking spaces at that intersection.

Ted Rodman talked today with Roger Thomas, who has indicated this can be done as an informal process. There does not have to be a site plan with the Township as applicant.

Roger Thomas explained whether it is deeded or an easement, he urges from an efficiency viewpoint, the Township become The "Presenter". He explained under the MLUL, when this is done, it becomes a capital improvement program. The Twp. Comm. has the obligation to come

before the LUB for informational purposes only. He said it is the most expeditious and cost-effective way. He noted this Board can only offer comment

Chairwoman Waldron asked for confirmation that the Township would own the property... Ted Rodman interjected it does include the corner of the Blair Academy building. He has a drawing of it. He said it does include part of their property. The attorneys would agree on deeding or leasing it. The Township would maintain it.

Ted Rodman pointed out that part of the property was on a county road which was vacated, so, it is all on Blair Academy property.

Mr. Mach noted he had nothing to add.

Chairwoman Waldron said it is a great idea, beneficial to the community and help to the businesses.

**PUBLIC PORTION:**

There were no comments or questions from the public.

**VOUCHERS:** Professional services rendered.

**Action:** On a motion duly made by Mr. Sikkes, seconded by Mr. Avery, escrow vouchers, as attached to these minutes, were approved. Roll call vote: Green, Avery, Shoemaker, Sikkes, Waldron, Price, Daleo, Ohannesian and Mach – yes.

**ADJOURNMENT:**

Chairwoman Waldron asked the Board for a motion to adjourn.

**Action:** On a motion duly made by Mr. Avery, seconded by Mr. Shoemaker, and unanimously carried, the meeting was adjourned at 8:16pm.

Respectfully submitted,

Marion C. Spriggs, Board Secretary