

## SPECIAL MEETING

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

**August 2, 2012**

The 863<sup>rd</sup> Meeting of the Lebanon Township Planning Board was called to order at 7:03 p.m. by Chairman Gary MacQueen. Present were: Mr. Milkowski, Mr. Schmidt, Mr. Rich, Ms. Bleck, 1<sup>st</sup> Alternate Laul, 2<sup>nd</sup> Alternate Skidmore, Attorney Gallina, Planner Bolan and Engineer Risse. **Excused:** Mr. Gerlich, Mr. Piasecki, Mr. Weiler and Mr. Wunder.

In compliance with the "Open Public Meetings Act" notice is hereby given that the Lebanon Township Planning Board has scheduled a Special Meeting at the Woodglen School in the Performing Arts Room on Bunnvale Road Thursday August 2, 2012 to hear the continuation of the application for Gen Psych. Notice of this meeting was published in the August 1, 2012 issue of the Hunterdon Review. Copies of the agenda were faxed to the Hunterdon Review, Hunterdon County Democrat, Express Times, Courier News, Star Ledger and posted on the bulletin board in the Municipal Building on July 25, 2012.

### UNFINISHED BUSINESS:

Gen Psych, P.C.  
1065 Highway 22 W.  
Suite 3D  
Bridgewater, N.J. 08807

Block #43 Lot #1.01  
Route 513 & Trimmer Road I5

### CONTINUATION OF A PUBLIC HEARING Conditional Use/Site Plan/Variance

Chairman MacQueen announced that this evening will be statements and comments by the public only. The first person to give a statement was Neil Grossman of Vernoy Road. Mr. Grossman said he is restricting his comments to two points and is responding to comments made by Planner Bolan at the last meeting. Mr. Grossman referred to the NAIC document, the North American Industrial Classification System. From hearing the comments this document is over 1000 pages and it would be impracticable to include it in the Township Ordinances. Mr. Grossman said this is the encyclopedia of uses and every use in the book has a code and it is very easy to look up a code. If you go into this book and look up light industrial uses, it will give you all of them. Every use is given a definition and a description for each use. The board can decide out of 100 uses for light industrial maybe only ten of those uses would be appropriate in that zone. Mr. Grossman said by using those 10 you are prohibiting the other 90 uses for that zone. By doing this it takes out the speculation of the uses. Those 10 uses are very specific. Even if the applicant finds that he doesn't fall under any of those uses, he can make application to the Board of Adjustment for an Interpretation and if the board doesn't agree with the applicant, the applicant still has another avenue and that is to file a formal application for a Use Variance. The standards before the Board of Adjustment are very difficult because you have to prove positive and negative criteria for a Use Variance. Mr. Grossman said it is a lot easier to go before the Planning Board because you can massage the application to be heard before the Planning Board. Mr. Grossman said you start by having an informal meeting with a concept plan which per the MLUL the purpose of a concept plan is for the Planning Board to review all the points of a Site Plan. The board can make suggestions that are non-binding. There is no language in the MLUL that states a Planning Board besides reviewing a concept Site Plan has the authority to interpret whether it is a permitted use.

Mr. Grossman said his second comment was with Planner Bolan laid out to the board that there is a very large issue on whether or not this board has jurisdiction for deciding how to interpret whether a use is permitted in this Zone. Mr. Grossman said per Planner Bolan "this is the way it has always been done". Mr. Grossman said just because this is how it has always been done doesn't mean it is necessarily right. If you look at the MLUL it establishes for a municipality to create a Planning Board with certain powers and gives the municipality the power to create a Board of Adjustment with certain powers. It states in the MLUL that only the Board of Adjustment has the power to interpret an ordinance and whether that use is permitted. Mr. Grossman said during the board's deliberations they need to decide from listening and getting advice from their professionals, you've heard opinions from the applicant, the objectors and the public. Mr. Grossman stated the board has the power to decide and it is an important decision and make sure you have the authority to make that decision. If the board finds they don't have the power then they should remand this application to the Board of Adjustment. Mr. Grossman said they rely on the board to make the right decision.

The next person to make a statement was Maria Sydor of Vernoy Road. Ms. Sydor read her statement into the record stating that no one in the immediate neighborhood wants this project to go through for a number of reasons. The only person who will benefit from this is person who is leasing the property. The neighbors have made it clear repeatedly they do not want this project in their town and that it will not bring in that much revenue. The homes in this area have already been stigmatized by being in an Industrial area regarding resale values. Attorney Caldwell has made intelligent arguments and valid objections to this project but the board is not listening. If there is no benefit to the township, then don't let this go through. Ms. Sydor said the hostility she and her neighbors have been subjected to by the board is palpable and the favoritism that has been shown to the leaser and Gen Psych has been stunningly one sided. The board has been accused of wrong doing and has ignored a process and over stepping bounds and whether or not this is true, the board has spent extensive energy at these meetings being defensive in the face of these accusations rather than listening to both sides objectively. Ms. Sydor said when the board makes their decision, she

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hopes they can put their feelings aside and do their job that is to look at the testimony without ranker and make a decision in the best interest of the township. The next person to make a statement was James Kennedy of Route 513. Mr. Kennedy thanked the board for allowing this to happen and to the public for their participation. Mr. Kennedy said this is what our country is about, the opportunity to have this discussion between people however their views may differ. Mr. Kennedy said he is not sure if this board should be defining Conditional Uses and noted the stigma that a drug facility will be creating. Mr. Kennedy said that stigma may affect the property values in the area.

The next person was Judy Warmingham of White Oak Ridge Road. Ms. Warmingham expressed concern on how the facility will be operated. Ms. Warmingham said if this facility gets approved then we should have a community leader sit on the board of this facility so we would have more information on what is going on in the facility. Next was the final site plan and engineering and when would it be complete and would there be any public comment on the final engineering plans. Ms. Warmingham said the third item was the property values. The last person to make a statement was Ruth Blemmings of Spring Mountain Road. Ms. Blemmings said she has lived in Lebanon Township for 44 years and she wants to keep this a great place to live.

At this time Chairman MacQueen asked several times if anyone else wanted to speak. There were none. At this point, Chairman MacQueen asked Attorney Tubman if she wanted to go first with her summation, she said she preferred to go last. Attorney Caldwell gave his summation. Attorney Caldwell said some of the comments made this evening are not relevant because there is no evidence in the record to make a decision regarding property values. The law requires the board to rely on the facts on your jurisdictional powers. Attorney Caldwell said he thinks this is where the process is fatally defective because this is the wrong board to be deciding this application. The board chose to be in this position because the applicant put you in that box. The applicant put the board in that box by circumnavigating a normal practice by the way applications start. Attorney Caldwell referred to the Zoning Officer and said the Zoning Officer is the enforcer against violation, the gate keeper of applications, to be the traffic control officer to make sure applications go where they belong. The applicant knows this and the applicant choose to ignore it. The applicant engaged the board in a process which was against the Open Public Meetings Act because the concept of an informal application. The board was to look at the design for a site plan not determining the use. Attorney Caldwell said there is nothing in the statute that said the board has the power to decide if a use is permitted. Attorney Caldwell referred to the Court hearing and Judge Buchsbaum said there was no emergency for him to stop the processing and allowed the Planning Board to continue with the public hearings on this application. Attorney Caldwell then referred to the wording in the ordinance that states "such as" which is so broad which provides no structure. Attorney Caldwell said it is the applicant's burden all the time to prove each and every element of their entitlement on every specific issue. It would take an enormous amount of courage on the part of the board that they don't have jurisdiction to decide this application, which you are being asked to decide a use issue. The board needs to step back from this and recognizing that sending this application to the Board of Adjustment for an Interpretation does no harm to the public interest. Attorney Caldwell went on to say when a board makes a decision on an application gets the benefit of the doubt when and if it goes up on appeal. That isn't true about issues that involve the law. The board is not presumed to know the law better than a Superior Court Judge. But failure to recognize the limits of your jurisdiction with a well organized represented opposition and persist in moving forward is not what your oath of office is all about. Even though we have a driveway that will be moved away from the flood plain and a light switch at night for people to find their way into the facility, Attorney Caldwell said this ship is going down over jurisdiction. Attorney Caldwell said he hopes the board will see that this application needs to go to the Board of Adjustment where it belongs.

Attorney Tubman gave her summation at this time. Attorney Tubman said this is an application for Site Plan, Conditional Use and a sign Variance. The property consists of 15 acres on the corner of Route 513 and Trimmer Road where Institutional uses are permitted. Attorney Tubman said through out these hearings Attorney Caldwell has attempted through out these hearings turned this into an Interpretation and to make a record for court and has done so through his Planner. Attorney Tubman said he has had Planner Madden read from Moskowitz and Lindblum the definition of a quasi public or public use. This is an antiquated term and goes to institutional uses which are identical to the definition in the Lebanon Township Ordinance. Attorney Tubman said what Attorney Caldwell has attempted to do through his Planner and through the NAICS code to require an institutional use to be a general hospital sighting Sector 62 but to a particular use. Sector 62 refers to hospitals and Planner Madden read the definition as a general medical and surgery hospital. Attorney Tubman said 4 numbers down within Sector 62 is Residential Treatment Facility. Attorney Tubman said during her questioning of Planner Madden she gave the board a number of cases. One was a D.A.R.E house which is in a residential neighborhood is a hospital and an institutional use also the DePetro case solely for the proposition that the board has the inherit right to understand and act Planning Board on the terms within the ordinance. Attorney Tubman said she pointed to Article 30 of the code of the State of New Jersey. Its caption is Institutional and Agencies, Subtitle 7 within Title 30 is labeled private institutions and within that is and specific statute definitions for residential health care facilities. Referring back to the chapter on institutions, Attorney Tubman said they do have a burden and that is to establish that a conditional use that meets the conditions within the ordinance. The conditions here are limited; they are greater then 5 acres, certain setbacks, all parking to be located on the property in question. Attorney Tubman said they meet those standards. Attorney Tubman said in prior testimony she gave the board a case that the court said that language does not apply anymore than it applies to an animal hospital which is also a permitted conditional use. Attorney Tubman said their burden in this case is to

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establish the standards and they have done so. Once those conditions are met then the use is permitted in the zone. Attorney Tubman said they have listened to the board, the public and they have revised the plans. They have relocated the existing driveway. At the last meeting other items had been brought up by Engineer Risse and they have been addressed. Two items in particular, one is to declare the driveway entrance and they have agreed to do it, secondly is to provide some banked parking, 5-10 parking spaces that they think they will never need, that is because back in February when Dr. Odunlami testified visitors are limited to immediate family for a period of two hours only on a Sunday. With 13 residents and weekend staff they do not believe they will use 23 parking spaces. Their Planner said they can add additional 6 spaces which would require an additional handicap parking space. Attorney Tubman stated they have met the standards and are entitled to an approval. There is a variance associated with this application which is for a second sign and the Industrial Zone only allows for one sign. Both signs that are proposed are within the size limit of the ordinance. They feel since there are two frontages, for safety reasons there should have two signs. Attorney Tubman said this concludes her summation. Chairman MacQueen said he needs a motion at this time. Motion by Mr. Rich and seconded by Mr. Skidmore to close the public portion of the hearing.

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Milkowski	Mr. MacQueen	<b>Absent:</b> Mr. Gerlich
	Mr. Laul	Ms. Bleck	Mr. Piasecki
	Mr. Schmidt	Mr. Skidmore	Mr. Weiler
	Mr. Rich		Mr. Wunder

Chairman MacQueen said we need to cancel a few upcoming meetings. Ms. Glashoff informed the board of the following meeting dates: August 7<sup>th</sup>, September 4<sup>th</sup> and will send this info to the newspapers. Also, she will contact Laurie at the school regarding the September 6<sup>th</sup> date to be cancelled. The September 6<sup>th</sup> date has not been advertised. Chairman MacQueen asked for the next available date if needed. Ms. Glashoff said it would be Tuesday September 18<sup>th</sup> which is the board's backup regular meeting night. Ms. Glashoff informed the board that she has booked that night with Laurie just in case the board needed it. At this point, Chairman MacQueen asked each board member their option on whether they should proceed tonight with deliberations or come back on September 18<sup>th</sup>. Mr. Milkowski said he would prefer to come back on the 18<sup>th</sup> since this is a serious decision and would like more time. Mr. Laul said he wasn't ready either to deliberate this evening, Mr. Schmidt said he was ready, Mr. Rich said he was ready and wanted to continue this evening with the deliberations, Ms. Bleck said she agreed with Mr. Rich. Mr. Skidmore said he wanted more time. Chairman MacQueen said since it is 3 to 3 and that it is important that everyone is on board and ready to deliberate and vote, he agrees to carry over to the September 18<sup>th</sup> meeting. Ms. Bleck asked Attorney Gallina about the letter the board received from Attorney Caldwell and if it was to be an exhibit. Attorney Gallina said that a copy has been given to Attorney Tubman and she has had the opportunity to respond to the letter. It is more like a brief that has been submitted which details Attorney Caldwell's closing arguments. Attorney Tubman said she declines to respond to Attorney Caldwell's letter of August 2, 2012.

Someone from the audience asked what was going to happen on September 18<sup>th</sup>. Chairman MacQueen stated the board will deliberate and vote on this application at that time. Chairman MacQueen thanked everyone for their participation with this application. Attorney Gallina said the board needs to make a motion and vote to carry over to the September date. Motion by Mr. Skidmore and seconded by Mr. Laul to carry this application over to September 18<sup>th</sup> here at the Woodglen School at 7:00 p.m.

<b>ROLL CALL</b>	<b>Yes:</b> Mr. Milkowski	Mr. MacQueen	<b>Absent:</b> Mr. Gerlich
	Mr. Laul	Ms. Bleck	Mr. Piasecki
	Mr. Schmidt	Mr. Skidmore	Mr. Weiler
	Mr. Rich		Mr. Wunder

**PRESENTATION OF BILLS & REPORT:**

a. John Gallina, Esq.	\$1,015.00
b. Michael Bolan, PP	\$4,004.40
c. Bayer/Risse Engrs.	\$2,250.00
<b>Total:</b>	<b>\$7,269.40</b>

Motion by Ms. Bleck and seconded by Mr. Rich to approve the bills as presented. Unanimously approved.

**OPEN TO THE PUBLIC** No public comments

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 8:00 p.m. Unanimously approved.

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**CHAIRMAN GARY MACQUEEN**

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

