

# GREEN TOWNSHIP LAND USE BOARD MINUTES

## REGULAR/REORGANIZATION MEETING, January 11, 2018

**CALL TO ORDER:** The January 11, 2018 Regular/Reorganization meeting of the Land Use Board was called to order by the Land Use Attorney, Mr. David Brady, at 7:06pm. He then led everyone in the PLEDGE OF ALLIGIANCE.

Recitation of the OPEN PUBLIC MEETING STATEMENT by Mr. David Brady.

**OATH OF OFFICE:** Given to reappointed/newly appointed members of the Board. The following members were given the oath: Mr. Perigo, Mr. Chirip, Mr. Holzhauser, and Mr. Muller

**ROLL CALL:** Present: Mr. James Chirip, Mrs. Sharon Mullen, Mr. Michael Muller, Mr. Watson Perigo, Mr. Mr. Jeff Wilson and Mr. Rick Wilson and Mr. Scott Holzhauser.

Also present: Mr. David Brady, Board Attorney and Mr. Cory Stoner, Board Engineer.

Members Absent: Mr. Cercone, Mr. Conkling, Mr. DeYoung, Mr. Lynch and Mr. Walker

Motion was made to excuse the absent members by Mr. Chirip and seconded by Mr. Perigo.  
No Discussion. All in Favor. Motion Carried.

### **Nominations for Chairman of the Land Use Board:**

Mr. Brady opened the floor for nominations for Chairman. Mr. Chirip nominated Mr. Scott Holzhauser for Chairman of the Board.

This nomination was seconded by Mr. Perigo

Mr. Holzhauser accepted the nomination.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions: none

Mr. Scott Holzhauser, Chairman, Presiding.

### **Nomination for Vice Chairman of the Land Use Board:**

Mr. Holzhauser opened the floor for nominations for Vice Chairman.

Mr. Muller nominated Mr. Jeff Wilson for Vice Chairman of the Board. This nomination was seconded by Mr. Chirip

Mr. Wilson accepted the nomination.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions: none

### **REORGANIZATION RESOLUTIONS:**

Motion was made to appoint Mr. David Burton Brady as the Land Use Board Attorney by Mr. Chirip and seconded by Mrs. Mullen.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made to appoint Mr. Cory Stoner as the Land Use Board Engineer by Mr. Chirip and seconded by Mr. J. Wilson.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made to appoint Ms. Jessica Caldwell as the Land Use Board Planner by Mr. J. Wilson and seconded by Mr. Muller.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made to appoint Kim Mantz as the Land Use Board Secretary by Mr. Chirip and seconded by Mrs. Mullen.  
Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made establishing the regular meeting schedule from January 2018 through February 2019 by Mr. Chirip and seconded by Mr. Muller.  
Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made to designate the official newspaper by Mr. J. Wilson and seconded by Mr. Muller.  
Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made to establish an Application Deadline Schedule by Mr. Muller and seconded by Mr. J. Wilson.  
Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Mr. Holzhauser and Mr. Jeff Wilson read the oaths of office for the Chairman and Vice Chairman

**MOTION TO APPROVE MINUTES:**

Land Use Board Minutes of December 14, 2018.

Mr. R. Wilson motioned to approve minutes and was seconded by Mr. Muller. No Discussion. All Ayes.  
Abstentions: None

Executive Session Minutes of December 14, 2018.

Mr. R. Wilson made a motion to approve minutes, seconded by Mr. Muller. No Discussion. All Ayes.  
Abstentions: None

**RESOLUTIONS:**

Mr. Brady briefly explained the reason for the annual report as stated by the MLUL. This annual report is to help address problems that frequently arise. The report cites the issues in the Township and how it should be changed. If the Board approves then the report will be sent over to the governing body along with a letter for them to look at and make suggestions or changes as needed.

Motion was made to approve the Annual Zoning report by Mr. R. Wilson and seconded by Mr. Muller.  
Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser  
All Ayes. No Discussion. Motion Carried. Abstentions: none

**OLD BUSINESS:**

Application: #293/378/470  
Owner/Applicant: Forest Knoll/Stuart Salvigsen  
Block 79 Lot 1– Decker Pond Road  
Action: Discussion on Forest Knoll Performance Bond

Mr. Brady gave a brief description of what Mr. Salvigsen's letter requested with regards to the planting of street trees, line striping and the stop bar. He explained Forest Knoll has gone through extensive steps to try and maintain the trees on each property during construction. He does not feel the stop bar and line striping should be placed on the road since there is currently no lines or stop bars in place.

If approved tonight, Mr. Brady will come back in February with a resolution that has a full explanation of what will be removed from the performance bond.

Motion was made to amend the approval such that the items are not required for the release of the Performance Bond by Mr. Chirip and seconded by Mr. J. Wilson.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions:

## **NEW BUSINESS:**

Application: LU#1715

Owner/Applicant: Ronald and Denise Stagnari

Block 20 Lot 11 - 196 Pequest Road, Andover, NJ 07821

Action: Zoning Permit Appeal for permit issued to Mr. Guy Botticelli and Ms. Cristine Tuhy

This application began at 7:26pm

Mr. Brady made a brief statement explaining what this application entailed, an administrative decision by the zoning officer that is being appealed by a neighbor. This neighbor became aware that a permit had been granted and is going to challenge the decision of the zoning officer.

Mr. Bill Hinkes, Attorney for the applicant, began by explaining that this was an unusual case. He stated the following:

- The Stagnari's live on Pequest Road and their lot is approximately the same size as their neighbor's lot where the greenhouse in question is being built.
- The structure, a (commercial) greenhouse, is a permitted conditional use in the AR5/2 zone and he does not believe Mr. Diehl, the Township's zoning officer, has the authority to issue this permit because conditional uses are restricted to the Land Use Board.
- Mr. Botticelli's greenhouse may meet all the requirements, but the Board should make that determination not the zoning officer. He feels the neighbors should have a right to come before the Board to voice their opinions on what is being done within 200 feet of their property.
- Mr. Hinkes stated the proposed greenhouse would be 50 feet away through a thin line of trees and the Stagnari's have no idea what type of lighting, exhaust system, etc. would be used.
- The property has never been used as a farm in at least 50 years, so he believes this is also a change in use. If it is going to be farmed, then it is a different use than a residential one and needs to go before the Board.
- Mr. Hinkes is also concerned about water consumption for the other residents in the immediate area.

The meeting was opened to the public at this point and Mr. David Diehl, zoning officer for Green Township, was sworn in by Mr. Brady.

Mr. Diehl began with the following:

- In 18 years he has never had an appeal and he always tries to work with the applicant.
- This property is in the AR5/2 zone where there are two principal uses. For example, if residential is the principal use a pool or garage would be the accessory use and agricultural would be a farm as the principal use and then the accessory use would be a green house or a barn. He stated he followed that train of thought and he followed the ordinance to conclude the greenhouse was an accessory structure.
- He said commercial greenhouse keeps coming up. He approved a zoning permit for a greenhouse as an accessory use. If you want to become a farm (Q Farm) you must farm and work the land for 2 years. If you don't give the residents the tools how do they ever become farmers?

Mr. Holzhauser's concern was this isn't a farm until 5 acres is actively devoted for a two-year period. He understands why Mr. Diehl made his decision, but he disagrees with it.

Mr. Holzhauser asked what our ordinance said about a structure in the front yard. Mr. Diehl replied by saying it can be put in the front if it is a farm accessory building.

Mrs. Mullen has a concern with Residents in town just randomly placing farm buildings on their property without the Land Use Board knowing what is going on.

Mr. Brady stated that we should hear everything before anyone on the Board decides.

Mr. Brady helped clarify Mr. Diehl's belief that farmland assessed is different from just having a farm.

Mr. J. Wilson asked what the greenhouse details were. In response to that question, Mr. Guy Botticelli and Ms. Cristine Tuhy of 200 Pequest road (owners of the greenhouse in question) were sworn in by Mr. Brady.

Ms. Tuhy read a letter to the Board in which she stated:

- She and Mr. Botticelli are the owners of Happy Harvest Hydroponic Farms which grows lettuce and leafy greens. They began farming in Denville 4 years ago. They extensively researched the property at 200 Pequest Road to make sure it met all their needs for expanding their farm.
- The Stagnari's welcomed them into the neighborhood by dropping off a plant and when Mr. Botticelli went to thank the Stagnari's he was able to sit down with them and explain the plan for their property. The Stagnari's seemed supportive so Mr. Botticelli and Ms. Tuhy were shocked when they received a letter addressed to Mr. Diehl a few days after Thanksgiving appealing the zoning permit issued for the greenhouse. They were then issued a stop work order.
- They were introduced to the tax assessor during their research on the property and were denied farm land assessment because they had not farmed the land. They were told it was a process.
- It is part of their plan to farm the fertile soil so they chose the location of the greenhouse because it was the least fertile soil on the property having been the previous area of the barn and horse enclosure.
- The water used to feed the crops is used, recirculated, recycled and never leaves the greenhouse. They do not use commercial pesticides or artificial lighting. All the produce is harvested and brought to market with the roots still attached.
- They attend two farmer's markets weekly. So far, they have spent \$40,000 in getting this property ready to farm. This is their full-time job, they do all the work themselves.

Mr. Matt Fox, a licensed engineer, spoke on behalf of Mr. Botticelli and Ms. Tuhy. He was sworn in by Mr. Brady.

Mr. Fox stated the following:

- This has been referred to as a commercial greenhouse and it should be referred to as an agricultural accessory building. Hydroponic farming requires the structure.
- Mr. Hinkes said the structure was about 50 feet away from the neighbor's house and that is not true. It is about 175 feet away from the Stagnari's house to the center of the greenhouse, but this was not surveyed, it was done by scale. There is a row of trees in between the properties. The greenhouse is 35 feet from the property line.
- Mr. Hinkes also stated that the land had not been farmed in about 50 years, but Mr. Fox produced photos from 2002 that showed a barn and horse fencing on the property. This barn and fencing have since been removed.

Mr. Fox submitted the photographs as exhibits B-1 through B-3:

1. Accessory structure - Barn and horse fencing shown exhibit B-1 2002
2. Accessory structure – Barn and horse fencing shown exhibit B-2 May 2015
3. Barn and horse fencing have been removed exhibit B-3 August 2016

Mr. Brady clarified that Mr. Fox was a professional engineer and a land surveyor but not a professional planner.

Mr. Brady feels the weight given to Mr. Fox's testimony is less than if he was a professional planner.

Mr. Fox believes it is an agricultural accessory building.

Mr. Fox referred to a color-coded property survey prepared by William S. Zimmerly which is marked Exhibit B-4 that shows the greenhouse is 35 feet from the property line. This was submitted by Mr. Botticelli as part of the zoning application.

According to the township's bulk schedule, this greenhouse complies fully with the requirements.

Mr. Brady and Mr. Fox both agreed that this should have come to the Board and Mr. Fox stated the property owners are more than willing to plant trees to help buffer the greenhouse from the neighbors.

The following details were given by Mr. Fox:

-The greenhouse will be 30' X 96' and 12'-14' high. It has a square footage of 2180 feet where 3200 feet is permitted.

-It will be made out of 2 layer poly sheeting and is held up by 2 and 1/8 inch tubular steel with trusses.

-Posts go into the ground 36 inches.

-There will be no artificial lighting except for a low-level light to move around at night. Their plan is to eventually use solar to heat the greenhouse with supplemental propane heater if needed.

-The water is a close looped system. They go through about 500 gallons per week max in the summer and 200 gallons in the winter. This is 80 % less than traditional farms.

Mr. Botticelli asked why he must put a shovel in the ground to produce on his farm, this is the way they produce their crops. The ultimate plan is for a second greenhouse in the future.

One of the requirements of being farm land assessed is that at least one acre is dedicated to the homestead.

The back yard has a riparian buffer so that is why it needs to be put in the front yard which is permitted for agricultural use.

Mr. Holzhauser questioned why the greenhouse needed to be placed in that area on the property. Mr. Botticelli explained it was placed there because it has the least fertile soil of the entire property due to the leftover sand and gravel from the horse paddock. He thought it was also a good spot because the trees provide some shade so that the greenhouse isn't in the sun all day long and would cool down quicker at night.

Mr. J. Wilson asked if the property owners asked why the greenhouse could not go in the footprint of the barn. Mr. Botticelli explained that the barn was falling off the hill in the back and it there was too much shade in that area.

Mr. Chirip asked Mr. Botticelli if they had met with the Stagnari's to inform them of their plan with the greenhouse. Mr. Botticelli said that he did when he went to thank them for the plant they gave him.

Mr. Perigo asked whether the Board was there to hear about the greenhouse or to decide whether Mr. Diehl made the right decision. Mr. Brady agreed that the Board was there to decide about Mr. Diehl's decision but some of the facts are needed to determine if it is a conditional use, commercial use, etc.

Mr. Botticelli explained this greenhouse is used to grow lettuces and leafy greens that are brought to sell at farmer's markets and nothing will be sold from the property at 200 Pequest Road.

Vince Stenziano of 190 Pequest Road asked about the circulating pumps and wondered if he would hear them during the summer. Ms. Tuhy explained they use a pool pump and it is very quiet. Mr. Botticelli explained the sound is minimal, he measured the current pump he uses in Denville from about 35 feet away with an app on his phone. It was 55 decibels outside and about 61 inside. The pump is a 3/4 horse power pump.

Mr. Botticelli explained that he did not add "commercial" before greenhouse on the zoning application. Mr. Diehl stated he did not either. After a brief discussion, it was determined Mrs. Stagnari added the word "commercial" to the application.

Mr. Fox, at the objection of Mr. Hinkes, began to speak about the fact that the word commercial was placed on the application and was misleading to the Board members.

Mr. Brady made it clear that the word commercial was not written on the application by Mr. Botticelli.

Mrs. Denise Stagnari was sworn in by Mr. Brady.

Mr. Stagnari explained that Mr. Botticelli came over and to tell them what his plans were. She stated she told him they would need to come to the Land Use Board to get a variance for the accessory building in the front of the house. She said that Mr. Botticelli told her that Mr. Diehl stated that in some towns they can put you directly in farmland assessment. They went to the tax assessor and she denied them farmland assessment because they had not farmed the land for 2 years.

Mrs. Stagnari moved to that property in 1973 and there has been no agricultural activity since then. There was a barn but no animals or activity.

Mrs. Stagnari believes Mr. Botticelli had the zoning permit already when he came to visit with them in August.

Mrs. Stagnari feels that her property rights, have been disregarded.

Mr. Ron Stagnari was sworn in by Mr. Brady

Mr. Stagnari's concern is that without any type of control Mr, Botticelli could build 10 more greenhouses and he feels that should be regulated by the Board.

After all the testimony was given, Mr. Brady stated the Board needed to decide what, exactly, the greenhouse is. He does not believe it is a residential permitted accessory use. The other option is an agricultural accessory use, but he doesn't believe it is this either because this isn't a typical structure like a barn or a silo. He then went on to state that hydroponic may be the new wave in agricultural, but the problem is that commercial greenhouses are conditional uses not permitted uses. Therefore, this greenhouse should go before the Board. Mr. Brady believes, as stated in his memo, this is a conditional use.

It is commercial in the sense that the harvest is to be sold for profit.

Mr. Holzhauser specified that right to Farm does not give anyone the right to do whatever you want on the property. It is for people who are qualified to conduct certain activities on their farm.

Mrs. Mullen feels this is absolutely something that should have come before the Board.

Mr. J. Wilson stated that the future use of the property should be looked at as well. If there is more than one greenhouse the Board can take a look at the impact on the neighbors.

Mr. Chirip also agreed it should come before the Board so that the neighbors can have a say.

Each Board member present agreed this application should have come before the Board.

Motion was made to find the zoning permit was issued in error and is now revoked by Mr. Muller and seconded by Mrs. Mullen.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions:

Mr. Hinkes made a request for Mr. Chirip to ask the governing body to waive the fees for the Stagnari's since an employee of the township made an error which cost them \$2750 to exercise their rights.

The Stagnari application ended at 8:53pm

Mr. Holzhauser opened the public portion of the meeting.

No one had any comments so Mr. Holzhauser closed the public portion.

## **Announcement of Standing Committees:**

Technical Review Committee – Mr. Holzhauser, Mr. Muller, Mr. Perigo, Mr. Conkling and Mrs. Mullen as an alternate.

Ordinance/Master Plan Committee – Mr. Holzhauser, Mr. R. Wilson, Mr. J. Wilson and Mr. Perigo and Mr. Muller as an alternate.

Personnel Committee – Mr. Holzhauser, Mr. Chirip, Mr. Cercone and Mr. R. Wilson

After a brief discussion about Mr. Diehl's decision Mr. Brady began discussing the revised ordinances.

• **ATTORNEY'S REPORT** – Revised ordinances – Mr. Brady began explaining the hospital uses.

Hospitals are allowed in every zone but aren't particularly defined which leaves the door open for almost anything. We need to make sure the township is not in a position where we have a "hospital" in an area we that doesn't work for the township. Ms. Caldwell and Mr. Brady thought it would be best if there was a designated area for "hospitals" within the township. That will be addressed during the re-examination of the master plan this year. In the meantime, this stop gap will make it more difficult for a "hospital" to come in wherever they want. Hospital and Treatment Centers would be prohibited, should this become an ordinance, while we study the existing one.

Mr. Holzhauser feels there should be a time frame on this stop gap so it doesn't fall through the cracks.

Mr. Brady stated he will be sending this over to Governing Body by next week with a cover letter so they can take a look at it. If they would like to adopt it then they can. If not, they can send it back to our Board for changes.

The farming ordinance is to make sure that Green Township gets a chance to see what has been approved through the Sussex County Agricultural Development Board (SCADB).

Mr. Brady explained the Land Use Board (LUB) gets to look at public health and safety and drainage issues as the SCADB does not have an engineer.

Mr. Holzhauser asked what the trigger would be, not all of these will be as easy to determine as Larry Freeborn's plan.

Mr. Brady said "If you're doing one of these activities that normally would require you to come here then you are coming here and showing us the basic layouts so we can comment on it".

This application would need to be submitted to the LUB within 10 days of SCADB approval.

Mr. Muller stated that he did not think it was fair to have these farmers pay to provide the LUB with a minor site plan when they already have the approvals need especially since we can't override the SCADB.

Mr. Chirip suggested that since this is a "courtesy" then the Township should pay for it.

Mr. Holzhauser requested that Mr. Chirip take this back to the Township Committee and discuss the fees to make them fair.

Motion was made to recommend to the Township Committee that the hospital draft ordinance be adopted by Mr. Perigo and seconded by Mr. Chirip.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions: none

Motion was made to recommend to the Township Committee that the commercial farm draft ordinance be adopted by Mrs. Mullen and seconded by Mr. J. Wilson.

Roll Call Vote: Mr. Chirip, Mrs. Mullen, Mr. Muller, Mr. Perigo, Mr. J. Wilson, Mr. R. Wilson and Mr. Holzhauser

All Ayes. No Discussion. Motion Carried. Abstentions: none

• **CHAIRMAN'S REPORT** – None

• **CORRESPONDENCE** – None

• **SECRETARY'S REPORT** – Kim asked for corrections for the contact list, some were given so she will update it and have it ready for the next meeting. Invitation to the township Thank You Party was handed out and discussed.

A Motion was made by Mr. Muller to adjourn the meeting at 9:30pm and seconded by Mr. Perigo.  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Respectfully Submitted:



Kim Mantz, Land Use Board Secretary

Date approved: 2.8.18