

## **TOWNSHIP COMMITTEE JANUARY 24, 2012 MINUTES**

The Tewksbury Township Committee met in a work session on the above date at the Municipal Building, Mountainville, NJ.

The meeting was called to order at 7:30 PM, roll call held and a quorum established. Mayor Dana Desiderio presided.

Other officials in attendance were Township Committee members Peter Melick, Shaun Van Doren and William Voyce.

Louis DiMare was absent.

Jesse Landon, Township Administrator, Roberta Brassard, Municipal Clerk, Michael Selvaggi, Township Attorney, Charles McGroarty, Township Planner, Shana Goodchild, Land Use Administrator and Randall Benson, Zoning Officer were in attendance.

There were approximately thirty members of the public in attendance.

### **1. Open Public Meetings Statement**

The Open Public Meetings Statement was read by Mayor Desiderio.

### **2. Flag Salute**

Those present stood and pledged allegiance to the American flag.

### **3. Work Session Topics**

Mayor Desiderio explained that tonight's meeting is to hear information on the process of moving forward with the Highlands plan.

Chuck McGroarty, Township Planner presented an overview of Highlands matters and status and how to address immediate tasks. Noting that 2/3 of the Township is in the preservation area; Tewksbury is obligated to conform to the Regional Master Plan (RMP) and development regulations. Tewksbury had asked the Highlands Council for time to consider the matter of opting in as additional information related to affordable housing is needed. Mr. McGroarty noted that the Highlands Council has stated that a letter or Resolution is needed if the Township is requesting additional time related to the decision of opting in to the planning area.

The following is a listing of immediate tasks that the Township Committee needs to address.

- Adopt a RMP. The re-examination report is done every 10 years and recognizes the changes to the MP and the Development Regulations Ordinance (DRO). Cost of the RMP is covered by the Highlands grant.
- Adopt a check list Ordinance. It was noted that an applicant may be advised that they need to present their application to the DEP for approval.
- Environmental Resource Inventory (ERI). It was noted that the Township adopted their ERI which was reviewed and approved by the Environmental Commission. The Highlands has a separate ERI which may be adopted by the Land Use Board, but will only enhance, not replace, the Township ERI.
- Revised Highlands Implementation Plan and Schedule. Timetables must be established for the above noted documents.

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Mr. McGroarty noted that work on the MP re-examination should not incur much work and should move ahead with 60-90 days.

Discussion followed regarding the status of affordable housing in the State. Mr. McGroarty stated that if the Township opts in, the housing obligation will be 81 units-if the Township does not opt in, the obligation will be 99 units. He went on to state that these numbers are only a frame of reference and the growth share methodology is currently under review and there is no clear indication of what will happen to COAH in the future. He stressed that the Committee should not make a decision based on the number of affordable housing units.

Comments were made regarding the transfer of development rights (TDR), the Bellemead property, the creation of a receiving district and the draft State Strategic Plan. Mr. McGroarty noted that work had commenced on a TDR study but is currently on hold pending the resolution of the Bellemead NJPDES permit.

The wastewater management plan was discussed. Essentially the Highlands Council will regulate the plan for all lands in the preservation area and the County will regulate the plan if the Township decides not to opt in.

It was noted that the Highlands Land Use Regulations will not replace the Township DRO but will be an additional layer of protection. Comments were made regarding properties in the preservation area, density in the protection zone and the acreage required for septic systems.

In response to a question from Mayor Desiderio, Mr. McGroarty stated that none of the municipalities for whom he works have opted in to the preservation area. He added that West Milford has opted in but they are entirely in the preservation area and Byram Township may be considering opting in.

Andrew Holt, Township Engineer commented on the Wastewater Management Plan (WMP) that was proposed/adopted in 2008 and placed in the hands of County governance. He noted that the Plan is currently on hold and the Highlands Council has deferred action until plan conformance is finalized. It was noted that a Senate bill was adopted on 01-09-12 requiring that the WMP map be adopted within six months. The plan will designate the sewer service areas and the discharge to ground water of <2000/gpd. If the Township does not opt in, the WMP will go back to the County and they will have to play catch up on plan and map submission.

Further discussion followed regarding the mechanism for opting out if the Township were to change their position if they initially opted in. It was noted that the language in the Highlands rulings is new and not completely clear as to how this might work. Mr. McGroarty noted that there is no clear indication that the Highlands would fund the Township if their position changed.

In response to a question from Mr. Van Doren, Mr. McGroarty stated that the Highlands ERI needs to be reviewed by the Environmental Commission but the LUB does not have to adopt it. Both documents can still be utilized and both are considered guideline documents.

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In response to a question from Mr. Van Doren, Mr. McGroarty noted that the TDR study had stopped because of the uncertainty of the NJPDES permit for the Bellemead property. Further discussion regarding the Bellemead property followed pertaining to the receiving districts, zoning change and other development possibilities.

A letter dated 11-18-11 From Eileen Swan was noted regarding the process for plan conformance.

Mr. Melick questioned how the land use process will work if the entire Township is designated in preservation area.

Mr. McGroarty stated that what the LUB is currently doing is appropriate, and sending applications to the DEP could be a lengthy, expensive exercise. He stated that once an Ordinance is adopted placing the entire Township in the preservation area, the Highlands Act clearly states that the DEP has the authority to grant waivers and exemptions and when in doubt, the application should go to the DEP.

Further discussion followed regarding the Highlands Applicability Determination (HAD).

Mr. Selvaggi noted that the DEP does not impose time limits on itself and review of applications could take 9-12 months. He added that Mrs. Goodchild and Mr. Benson were advised that applicants should go to the DEP if their property is located in the preservation area. This action would be in the best interest of the home owner as it would offer additional protection, but would be the safest avenue for both the municipality and the homeowner.

Further discussion followed regarding contaminants, restricted areas - such as cemeteries And how there is room for interpretation/disagreement with almost all areas of the Highlands Act.

In response to a question from Dr. Voyce, Mr. McGroarty noted the time line for completing the immediate tasks. Completion of the check list and MP reexamination is within 60 days and adoption of the Highlands Ordinances and MP would be allowed a longer period of time. The Highlands Council will require time to review the changes.

Discussion followed regarding how the Right to Farm Act may be affected.

A recent house fire was noted as the structure was in the preservation area. It was stated that the structure will have to be built in the existing footprint. Further discussion followed regarding the use of drywells on a property and whether or not they would be prohibited or allowed if located in a tier 1 area.

Mrs. Goodchild posed the question if a resident wished to erect a 10' x 10' shed if they would have to go to the DEP for a HAD.

Mr. Selvaggi opined that the Township needs to pay attention to the maximum 125% increase in impervious coverage to a property. He added that involvement of the DEP is the prudent course as it will better serve the property owner and clearly define all parameters.

Mrs. Goodchild added that she did not know of any other municipality that contacts the DEP for all land use applications, adding her concern that the DEP may become overwhelmed with applications and short staff.

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In response to a question from Mr. Benson, Mr. Selvaggi affirmed that if a structure existed prior to the 8/10/04 date (of the Highlands Act enactment) it would be considered grandfathered and permitted 25% additional coverage.

Mr. Van Doren requested additional information from Mr. Holt regarding the recently passed bill related to the WMP.

Mr. Holt explained that the latest revision of the WMP from 2008 did include the Bartles site and the Crossroads development, he was unsure if Bellemead was included in the plan.

In response to a question from Mr. Melick, Mr. Selvaggi noted that the definitions for impervious coverage are the same for every entity.

Discussion followed regarding the scenario if an impervious area such as a riding ring were unused for a number of years. It was stated that it would behoove the property owner to keep the area clear even if the ring were not in use.

Discussion followed regarding the maintenance of property record cards dated prior to 2004. Additional comments were made regarding the Township's liability regarding coverage and the fact that exemption does not continue forever: the exemption exists with the owner of the property and is not transferable with the land.

Discussion followed regarding Mr. Benson's question as to whether the Township or Township officials would be held responsible if an application were not forwarded to the DEP.

Mayor Desiderio questioned the steps that the Township Committee needs to take with regard to making a decision regarding opting in to the planning area.

The following comments were heard from members of the Township Land Use Board.

Bruce Mackie noted that the Environmental Commission reviewed the Highlands ERI and found no substantive difference between theirs and the Township's. He added that both documents will be used as a factual document vs. a policy document.

Arnold Shapack noted that much of the Township is heavily forested and some aerial mapping would not reveal what is built on a property.

In response to a question from Betsy Baird, Mr. Selvaggi noted that he mentioned utilizing Google maps, but other mapping systems could be used.

Frank Ace of Whitehouse stated that he was in favor of Tewksbury opting in as it would give the Township more control. He added that he is not in favor of developing the Bellemead property as it would negatively affect the trout and there would be no sense moving forward.

Comments were made regarding the past and current zoning on the Bellemead property and the pending NJPDES permit approval.

Frances Spann opined that the Township Committee is making a choice by not taking any action and urged the Committee not to lose control of the matter. She mentioned the various

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plans being discussed at the State level – the State Strategic Plan, the pending WMP extension and the DEP waiver rule. She surmised that all of these plans are coming out of concern for the economy in order to ease regulations to jump start the economy. Comments were made regarding the NJPDES application for Bellemead, which she has been told, will probably be renewed. She commented on the existing sewer service area and the fact that she has spoken to the Committee many times in the past regarding this matter.

She opined that it will be difficult to uphold the 5 acre zoning as there are inconsistencies in the Township MP and Land Use Ordinances.

She cautioned that if Bellemead is granted the NJPDES permit for 100,000 gpd, it will bring growth to that area of the Township and it will be difficult to turn down the priority growth designation.

She stressed that continuing to defer a decision is a grave mistake and working with the Highlands Council would be advantageous for the Township. She urged the Committee to look at the big picture.

Further comments were made regarding the need to comply with the constitutional obligation for affordable housing.

Mr. McGroarty stated that the Route 78 corridor is not identified in the State Strategic Plan or by the State Planning Commission. He stated that the Township's zoning Ordinances are defensible and the Township is in a very good position with affordable housing as they are certified up to the third round.

Mr. McGroarty made further comments regarding being protected from a builder's remedy for the Bellemead property.

Eliot Ruga, Senior Policy Analyst from the Highlands Coalition suggested that the Committee look at the matter of opting in from a different angle. He opined that opting in and conforming the planning area to the Highlands regional MP would aid in preserving the Township and allow additional control.

He noted that the State Strategic Plan of 2001 will be used as an interim document for municipalities. He cautioned that the information from this 11 year old document would be detrimental for the Township as the area of the Township under discussion was part of Planning Area 2 in 2001.

He questioned why the DEP is not considering zoning with regard to the pending NJPDES permit. He added that the Highlands Council will work with the Township to determine their growth and if the area under discussion is considered a TDR receiving zone, the Council would work with the Township. He stressed that no one can work or negotiate with the DEP.

Mr. Ruga noted the good working relationship between the Township and the Highlands Council and stressed that opting in would be advantageous.

In response to a comment made by Mr. Ruga, Mr. McGroarty stated that the State Plan does not supersede or dictate zoning in a municipality. He added that the State Strategic Plan does recommend that the 2001 State Plan may be used as an interim document. Defending the Township's zoning would not be difficult and he added that the presumption of validity goes to the municipality.

Mr. Ruga stressed that opting in and working with the Highlands Council will help determine where growth can occur in the municipality.

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Robin Love stated her support of statements made by Ms. Spann and Mr. Ruga adding her concern with matters related to the Bellemead matter. She noted that Bellemead has pursued the NJPDES permit for many years and she feels that it likely will be renewed. She noted a public hearing regarding the permit that was held in March of 2011 where over 40 individuals stated their opposition to development of the parcel. She urged the Township Committee and the LUB to move forward with the necessary steps and not defer action on planning area conformance.

Bob Flowers stated his agreement with comments made by Ms. Spann and Mr. Ruga adding that the Township should do their utmost to protect itself from Bellemead.

Mr. Selvaggi stated that Bellemead is doing what any property owner would do with regard to development. He added that Bellemead cannot ride roughshod over Township Ordinances and zoning regulations. He stressed that NJPDES approval does not mean that the Township has to approve high density zoning as there are many variables to consider prior to the Committee making a final decision.

Mr. McGroarty noted that Bellemead is aware that there are formidable obstacle issues involved related to attacking a Township MP and development Ordinances.

George Cassa stated his concern with a letter from the General Assembly supporting the extension of the WMP for large pharmaceuticals based on ties to employment. He noted information he had regarding the core values of the current legislation which could allow an applicant to change a Planning or Land Use Board decision without going back to the governing body. He stated that this would be a terrible thing and should not be allowed to happen.

In response to a question from Mark Newell, Mayor Desiderio stated that tonight's discussion will guide the Committee with regard to a decision on moving forward and determining whether or not to conform.

Nancy Held opined that Bellemead will sue the Township even if they do not have a strong case as she feels that it all has to do with the profit potential. She stated that she did not see any good reason not to conform adding that in a weak economy the risk of the impossible may happen.

Nancy Hance stated that she did not know of a good reason not to conform as there is a need to protect the Township. She added that so much work has been done regarding zoning and there is power when working with other groups. She stressed the need to go with the positive.

Mary Ace stated that the Township needs to move forward well armed, adding that control has slowly dwindled over the past 15-20 years. She opined that approval of the Bellemead NJPDES permit may not be the only thing Bellemead is seeking. She applauded the Township's programs for affordable housing and land preservation, adding that the current economy drives many important decisions.

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Basil Hone noted that the current administration in Trenton is responsible for many issues related to the permit extension act, the WMP and the State Strategic Plan. He noted that an individual recent appointed to the Highlands Council was initially opposed to the Highlands Act. He stated his concern with the governance from Trenton, adding that new legislation could leave the area south of Route 78 vulnerable. He stressed the need to opt in and work with the County now while the opportunity exists.

Frank Ace opined that the lawyers for Bellemead are sharp and questioned why they would be pursuing the NJPDES permit. He reiterated that Tewksbury should opt in.

Eliot Ruga noted that the following municipalities have conformed. Holland, Hackettsown, Chester, Bethlehem, High Bridge, Kinnelon, Byram and Mahwah with others in the pipeline. He supposed that any Mayor from these municipalities would be happy to share their experiences with members of the Committee.

Troy Cook from Whitehouse stated that he is not in favor of having a sewage treatment plant on the Bellemead property.

Bob Flowers suggested that the Readington and Tewksbury Environmental Commissions should have a joint meeting to discuss the Bellemead sewer plant.

Arnold Shapack questioned why Bellemead would be interested in building when there are so many empty office buildings on Route 78. He noted that the Township is doing well with their affordable housing numbers and zoning and this is a good wall of protection. He stressed that the Township should work with adjoining municipalities and the Highlands Council, adding that he felt the Committee should vote to opt in.

In response to a question from Dr. Voyce, Mr. Holt explained the status of the current WMP and the need to take action in a timely fashion - preferably within 180 days. He explained that failure to take action does not mean that no action was taken as recent ruling has been rescinded and the changes made since 2008 are still intact. He stressed the need to make a local decision regarding opting in so that either the Highlands Council or the County will take the lead regarding the WMP.

He added that the Highlands Council staff has stated that they are not sure if they can get all of the mapping completed within the time frame and the matter is still a "work in progress".

Mr. Van Doren noted three changes that have occurred since 2009 when the Committee adopted two Resolutions relating to the matter of opting in.

- 1- The municipality is now living under a 2% cap and there is one more year of this imposed limit.
- 2- Monies have been spent over the years to help relieve development and the only area in the Township where growth can continue is in the planning area. He surmised that when the economy turns around, this is where growth will occur as Tewksbury will continue to be a desirable location.
- 3- Growth will continue as the LUB recently approved 8-9 large lots for subdivision and the development pressure will continue.

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In comparison with the 2003-2004 MP amendment, he stated that there is a small window of opportunity to act on a matter that can positively impact the rest of the Township.

Mr. Melick stated that many good comments were heard at tonight's meeting. He stated that making a decision that will affect the entire Township based on two lots located south of Route 78 may not be the most prudent move.

Mayor Desiderio stated that it would not be fair to make a decision without Committeeman DiMare being present. She added that the positives (for opting in) seem to outweigh the negatives and it would be the right thing to do to help preserve the Township.

Mr. Selvaggi stated that the Committee needs to make a decision regarding opting in within 30 days, adding that the Township cannot commence with Ordinance adoption until this time. He added that the Committee can always reconsider their decision with the Highlands Council, adding that COAH is no longer the "carrot" being used by the Council.

It was stated that the professionals need direction regarding the four matters noted by Mr. McGroarty earlier in the meeting, adding that Ordinances should be prepared for the first meeting in March.

It was the consensus of the Committee to continue the discussion to the 2/14/12 Township Committee meeting.

In response to a question from Betsy Baird, Mr. McGroarty stated that the LUB should wait for a decision from the Township Committee prior to the MP conducting a reexamination report.

**4. Actions to be taken**

➤ **Consent Agenda**

Mr. Melick moved adoption of the Consent Agenda, seconded by Dr. Voyce. A roll call vote was taken and the motion was approved. Ayes: Desiderio, Melick, Van Doren, Voyce. Nays: None. Absent: DiMare.

**MISCELLANEOUS**

- Claims as submitted by the CFO
- Regular and e/s minutes of 01/10/12
- Authorization to have Mayor sign Voorhees Municipal Alliance Contract for 2012

**5. Township Committee Comments**

Mr. Van Doren noted the recently held Town Hall meeting to discuss school related issues. He noted that the County is looking at creating a regionalized school board district, adding that if Tewksbury were to join in, the tax rate would increase per resident.

Mr. Melick noted that the School Board will be discussing the matter of holding School Board elections in November at their meeting scheduled for 01/25/12. He stated that he hoped moving the election to November would not politicize the school election.

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Dr. Voyce noted that there have been a few recent cases of pertussis in Hunterdon County.

In response to a question from Mayor Desiderio, Mr. Van Doren stated that he had not sent the letter to the BPU regarding the concerns of power outages on Hell Mountain.

**6. Appointments**

Dr. Voyce made a motion to appoint Miriam Murphy to a one year term to the Forestry Advisory Board, seconded by Mr. Melick. The motion was approved. Ayes: Desiderio, Melick, Voyce. Nays: Van Doren. Absent: DiMare.

**6. Township Committee Comments (continued)**

Mayor Desiderio noted that the members of the Historic Preservation Commission (HPC) wish to attend a Township Committee meeting to discuss matters pertaining to the Commission.

Discussion followed regarding a matter that was brought up at the HPC meeting pertaining to lighting the flag pole at the athletic fields in Oldwick. It was the consensus of the Committee to not have a light on the flag as it is only raised when the fields are in use and if there were a light on the flag, it would have to be raised/lowered dependant on flag protocol as outlined by the Governor.

**8. Adjournment**

There being no further business, the meeting was adjourned at 10:28 PM.

Roberta A. Brassard  
Municipal Clerk