

**TOWNSHIP COMMITTEE
SEPTEMBER 25, 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 7:15 PM, roll call held and a quorum established. Mayor Dana Desiderio presided.

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

Jesse Landon, Township Administrator, Roberta Brassard, Municipal Clerk and Michael Selvaggi, Township Attorney were in attendance.

There were approximately thirteen members of the public in attendance.

1. Open Public Meetings Statement

The Open Public Meetings Statement was read by Mayor Desiderio.

2. Executive Session

At 7:15 PM Mr. Van Doren moved adoption of the following Resolution, seconded by Mr. DiMare. The motion was approved. Ayes: Desiderio, DiMare, Melick, Van Doren, Voyce. Nays: None.

**RESOLUTION #77a-2012
A RESOLUTION AUTHORIZING AN EXECUTIVE SESSION OF THE TEWKSBURY
TOWNSHIP COMMITTEE**

BE IT RESOLVED, pursuant to N.J.S.A. 10:4-13 and 10:4-12 that the Tewksbury Township Committee hold a closed session to discuss Personnel and Advice of Attorney.

It is expected that the discussion undertaken in closed session can be made public at the time official action is taken.

Dana Desiderio
Mayor

3. Flag Salute

Those present stood and pledged allegiance to the American flag.

4. Public Participation

The following comments dealt with the Johnson helistop appeal currently filed with the NJDOT. Mr. Van Doren and Dr. Voyce were recused from the following discussion.

Nancy Held noted that she is one of the many opponents of the Johnson helistop. She recently attended a LUB meeting and asked them to fight the appeal to the NJDOT. She stated that she would like the Committee to participate in the public comment period which ends on 10/12/12. She noted that a group of interested residents has available funds to help with the hiring of

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outside council, which she felt would be helpful in arguing in front of the DOT with reference to aviation matters.

She stressed the need for the Committee to stand behind the decision of the LUB, likening it to the JCP&L/BPU matter.

Ms. Held noted that she heard from a reputable source that if the application went to the DOT, the Johnsons said that "all bets would be off" with regard to flight path and noise issues.

She added that Township needs to continue the fight to not allow private helistops: their place is only on Route 78 or the research office/mixed use zone.

Ms. Held noted that she began a search for capable attorneys experienced with aviation matters and introduced James Rhatican as the Attorney chosen.

In response to a question from Mr. DiMare, James Rhatican from Wolff Samson explained that the current comment period could lead to hearings, the Office of Administrative Courts and finally could go to an appeal in the appellate division.

Discussion followed regarding the current comment period in which any party can submit comments which can include legal analysis, lawyers' letters and/or a letter brief explaining in detail the reason(s) the original application was denied. Further comments were made regarding the introduction of any new evidence.

Ms. Held stressed upon the Committee the urgency to hire outside council quickly as she stated there are few aviation expert attorneys in the State and the opposition could move quickly to retain council of their own.

Larry Ross read the following from a prepared statement.

Thank you for meeting once again to weigh the Township's options for supporting the Land Use Board's ruling in regard to the Johnsons' application for a variance to build a heliport. Since I cannot attend the meeting tomorrow, I thought it might be helpful to forward a copy my remarks to the Township Committee last Wednesday night, and reiterate the pledge of support that Amelia and I are making on behalf of the Township's efforts.

In regard to our pledge, we will contribute \$2,000 to help defray the costs of asserting the Township's position to the DOT. We would hope it would go to engage supplemental expertise for Mr. Bernstein, but our offer of financial help is unconditional.

As for the Johnson's insistence on applying to the DOT for a permit to build a heliport on their 2,000-acre Cedar Lane Farm, just outside the village of Oldwick, it is not only inconsiderate of what the community wants for itself, it mocks the democratic process by which we govern ourselves.

Over 19 long months, Tewksbury Township's Land Use Board (LUB) very carefully heard the Johnson's application for a variance, as well as comments from 40 different members of the public, and voted against it. Why? Because even with the help of two lawyers and two land use

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experts, the Johnsons were unable to provide sufficient evidence to the LUB that the helistop would benefit the farm's dairy business, and would not negatively impact the community.

The Township and residents engaged in the democratic process to hear the Johnson's case fairly and squarely. Significant expense, in time, as well as legal and consulting fees, were devoted to what is clearly a whim. That the applicant has ignored the sensibility of the community, as well as our local government, by applying to the New Jersey Department of Transportation (DOT) for a license, in spite of this, is particularly distasteful. It also sets a terrible example. It diminishes the democratic process.

Now, the Township is placed in a difficult position. At a time when the necessary funds and efforts would be better applied to real issues of health and education, it must decide whether it wants to shoulder the expense of defending its sovereignty in this matter --- all because just one person would rather land their helicopter on their property than drive a few minutes to a nearby airport.

Very soon, the DOT will consider whether overriding the Township's ruling will better serve the public health and safety. Most likely, the Johnsons will continue to argue that the helistop would provide another place for medevac landings. However, no one lives close enough to their proposed site to merit overruling the Township. It's the most sparsely populated area of the community, and everyone who lives there is adjacent to field where medevac can land. In an emergency, why would anyone want to be driven to the Johnson's farm, when a helicopter can land much closer to their house?

In response to a question from Mayor Desiderio, Mr. Ross stated that he would contribute "at least \$2000.00".

David Cohen noted that he was involved in the LUB hearings since the fall of 2009. He praised the LUB resolution as written by Dan Bernstein, adding that if the matter were to go to the superior court, perhaps Mr. Bernstein could help with the appeal. He added that it would be beneficial to have council experienced in working with the DOT and requested that the Committee earmark funds for special council.

George Cassa stated that he read the NJAC statutes cited in the DOT letter and felt it was not a "foregone conclusion" that the DOT could grant approval as the applicant must show conformance with local zoning. He agreed that expert council would be beneficial to the Township.

In response to a question from Mr. DiMare, Mr. Rhatican surmised that the initial cost for his firms' services would be \$10,000 with an additional \$30,000 if the matter went to the hearing phase.

Mr. DiMare further asked Mr. Rhatican if he would be averse to lending his expertise in support of the Township or LUB attorney. Mr. Rhatican stated that he would work in whatever capacity was needed.

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In response to Mr. Selvaggi' s statement that the DOT had the LUB resolution, Mr. Rhatican stated that his firm could review transcripts for additional information and prepare legal arguments that may not have been presented in the resolution.

In response to a question from Mayor Desiderio, Mr. Rhatican stated that his firm has a working relationship with James Simpson, DOT Commissioner.

Discussion followed regarding the amount of time needed to review documents for submission by the 10/12/12 deadline.

In response to a question from Mr. Melick, Mr. Rhatican explained the working relationship with members of his firm, the DOT and the Port Authority.

Ms. Held reiterated that Mr. Rhatican would offer a "fresh pair of eyes" and the introduction of possible new legal arguments.

Mr. Van Doren and Dr. Voyce returned to the meeting at this time.

Bob Flowers was present to discuss his plan for a memorial in Mountainville. He stated that he attended an Historic Preservation Commission (HPC) meeting on 09/24/12 and received a letter tonight stating that they had denied his application. He opined that they were giving incorrect advice as the gazebo he recommended was not in the Victorian style and he did not feel that their statement that "the gazebo would be in keeping with the the Mountainville Historic District" was accurate.

Mr. Melick read from the HPC memo stating they felt benches and a stone would be more appropriate in Mountainville.

Mr. Flowers stated that he has contacted the Peapack Gladstone Bank and VFW and sent letters to neighbors requesting funding for the project.

Mr. Selvaggi noted that if the HPC denied the application, the proper procedure for approval would be for Mr. Flowers to go to the LUB.

Discussion followed regarding whether the presentation at the HPC meeting was a formal or informal presentation and whether an application was submitted.

Mr. Flowers stated that that he would like the HPC to choose the location for the proposed gazebo. He added that he felt his idea of a gazebo, memorial stone and benches would be an enhancement to Mountainville. Discussion followed regarding other possible sites in the Township.

Mr. Melick thanked that Mr. Flowers for the amount of time and energy spent on the project. He added that he felt having benches and a memorial stone would be the best thing to do at the moment and to plan for a gazebo in the future.

Mr. Flowers stressed that the entire concept was based on having a gazebo.

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Mr. DiMare stated that he supported the concept.

Mr. Flowers reiterated that he wanted the Committee to adopt a resolution authorizing the plan for a gazebo, benches and memorial stone in Mountainville.

Mr. Van Doren stated that attention should be paid so as not to be set up for a conflict between the Township Committee and the HPC. He added that the Section 106 application review would have to go to the State Historic Preservation Office and these meetings and not held monthly. He added that he was in favor of Mr. Melick's suggestion to undertake the project with benches and a memorial stone as this would leave the decision solely in the hands of the Committee.

In response to a statement by Mr. Flowers, Mr. Van Doren stated that the HPC is not advisory and if they deny an application, the matter goes to the LUB.

Mayor Desiderio noted that an LUB variance would be needed to site the gazebo in the triangle because of setbacks.

Dr. Voyce noted that the process should go through the proper channel and Mr. Flowers should make a formal presentation to the HPC.

Janet Clark noted that Mr. Flowers came to the HPC for an informal discussion and the Commission members looked at the proposed gazebo. She added that at the end of the meeting, the group discussed the matter and decided that a more contemplative setting would be appropriate-the benches and stone were preferred.

In response to Mr. Flowers' request for a resolution stating that a gazebo would be acceptable in the future, Mr. Van Doren stressed that a future Township Committee could not be bound to that decision.

Mr. Selvaggi noted that the Township would have to consent to the application as they are the property owner.

Further discussion followed regarding the importance of the idea and to not let any technicalities delay the project.

Mr. Flowers stated that he felt the project should be handed over to the Parks Committee.

Mr. DiMare made a motion to support Mr. Flowers' endeavor and to proceed with the project of having a gazebo, memorial stone and benches placed in Mountainville. Additionally he made a motion to forward the application to the HPC for review, seconded by Mayor Desiderio. The motion failed. Ayes. Desiderio, DiMare. Nays: Melick, Van Doren, Voyce.

In response to a question from Mr. Flowers, it was noted that if any money had been received, it should be returned.

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Mr. Cassa questioned if the proposed resolution could be more open ended so that the memorial project could commence as phase 1 and the possibility of a gazebo could be considered in the future as phase 2.

Further discussion followed regarding other groups who could work on making the project happen. It was noted that no funds have been received yet.

Nancy Hance stated that she was concerned with the cyclist situation in the Township, specifically that groups were painting directional symbols on Township roads. She requested that cycling events be registered with the Township and the participants pay for additional Police coverage.

Mayor Desiderio stated that she brought the information regarding road painting to the attention of the Police Chief.

Mr. Van Doren noted that he saw a Wayne Police Officer monitoring traffic related to a bicycle event this past weekend.

Mrs. Hance stressed that she would like additional Police coverage for bicycle events and would like to not have directional signals painted on Township road.

Discussion followed regarding a comment from a resident related to painting on Township roads and that the Township does not have any Ordinances related to this matter.

5. Actions to be taken

➤ **Consent Agenda**

Mr. DiMare requested that the regular and executive session minutes of 09/11/12 and the authorization to have the Mayor sign the Shared Services Agreement for Lebanon Township Court be removed from the Consent Agenda.

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

**RESOLUTION #78-2012
TAX REFUND**

BE IT RESOLVED, by the Township Committee of the Township of Tewksbury, County of Hunterdon, State of New Jersey that the Chief Financial Officer is hereby authorized to make the following payment for a refund of taxes caused by a successful tax court appeal.

<u>Block</u>	<u>Lot</u>	<u>Name</u>	<u>Year</u>	<u>Amount</u>
10	5-09	Daniel Scott Van Volkenburgh Trust Skoloff & Wolfe, P.C. 293 Eisenhower Parkway Livingston , NJ 07039	2011	6,412.14

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Attn: Saul A. Wolfe

Dana Desiderio
Mayor

**RESOLUTION #79-2012
CANCELLATION OF TAXES**

BE IT RESOLVED, by the Township Committee of the Township of Tewksbury, County of Hunterdon, State of New Jersey that the Chief Financial Officer is hereby authorized to make the following cancellation of taxes.

<u>Block</u>	<u>Lot</u>	<u>Year</u>	<u>Amount</u>
31	24.08	2012	60.55
37	3.50	2012	10.43
42	5	2012	<u>18.20</u>
			89.18

Dana Desiderio
Mayor

MISCELLANEOUS

- Claims as submitted by the CFO
- Authorization to have Mayor sign F & D for 10/5/12 Matheny School event
- Authorization to have Clerk sign SA application for 10/5/12 Matheny School event

ITEMS REMOVED FROM THE CONSENT AGENDA

Mr. Dimare presented corrections to the regular and executive session minutes of 09-11-12.

Dr. Voyce made a motion to adopt the regular and executive session minutes of 09-11-12 as corrected, seconded by Mr. Van Doren. The motion was approved. Ayes: Desiderio, DiMare, Melick, Van Doren, Voyce. Nays: None.

- Regular and executive session minutes of 09-11-12

Discussion regarding the Shared Services Agreement for Lebanon Township Court will be discussed in Executive Session.

- 6. Reports**
- **Township Committee Comments**

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Mr. DiMare expressed his concern with the fact that Mr. Flowers' plan to build a memorial in Mountainville was not realized. He added that he hoped it would not "fall through the cracks and not get done."

Dr. Voyce noted recent traffic accidents that occurred over the weekend.

Mr. Melick noted that he attended two back to school nights at Township schools. He added that a search will be commencing for a school superintendent and OTS principal.

Mayor Desiderio noted a 10/04/12 County meeting to discuss shared services. She noted a letter that was received from Stryker Heating-Cooling & Plumbing regarding construction office fees.

➤ **Township Administrator**

Permission was given to Mr. Landon to contact the Green Energy group to perform work at the DPW building and Mountainville at a cost of \$12,000.00. The work that will be done should save the Township \$8,000.00 annually.

First Responder forms were distributed to Township Committee members for completion. They are due back on 09/27.

➤ **Appointment**

Mr. Van Doren made a motion to appoint Jennifer Kraft to the unexpired Alternate #1 term through 12/31/12 on the Board of Health, seconded by Dr. Voyce. The motion was approved. Ayes: Desiderio, DiMare, Melick, Van Doren, Voyce. Nays: None.

7. Executive Session

At 9:00 PM Mr. Van Doren moved adoption of the following Resolution, seconded by Dr. Voyce. The motion was approved. Ayes: Desiderio, DiMare, Melick, Van Doren, Voyce. Nays: None.

**RESOLUTION #80-2012
A RESOLUTION AUTHORIZING AN EXECUTIVE SESSION OF THE TEWKSBURY
TOWNSHIP COMMITTEE**

BE IT RESOLVED, pursuant to N.J.S.A. 10:4-13 and 10:4-12 that the Tewksbury Township Committee hold a closed session to discuss Contract Negotiations and Potential Litigation.

It is expected that the discussion undertaken in closed session can be made public at the time official action is taken.

Dana Desiderio
Mayor

8. Reconvened

Mr. Van Doren and Dr. Voyce left the meeting at 9:20 PM.

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The meeting reconvened at 9:35 PM.

Mr. DiMare made a motion authorizing the Mayor to sign the Shared Services Agreement for Lebanon Township Court, seconded by Mr. Melick. The motion was approved. Ayes: Desiderio, DiMare, Melick. Nays: None. Recused: Van Doren, Voyce.

- Authorization to have Mayor sign Shared Services Agreement for Lebanon Township Court

It was stated that a special meeting of the Township Committee needs to be coordinated to discuss the matter related to the NJDOT Johnson heliport matter. It was added that a legal technicality would prohibit making decision at this point.

9. Adjournment

There being no further business, the meeting was adjourned at 9:40 PM.

Roberta A. Brassard
Municipal Clerk