

**TOWNSHIP COMMITTEE
DECEMBER 16, 2013 MINUTES**

The Tewksbury Township Committee met in a regular session on the above date at the Police Administration Building, Tewksbury Township, NJ.

The meeting was called to order at 8:00 AM, roll call held and a quorum established.

Shaun Van Doren presided.

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

Dana Desiderio was absent.

Mayor Louis DiMare arrived at 8:05 AM.

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

There were approximately ten members of the public in attendance.

1. Open Public Meetings Statement

The Open Public Meetings Statement was read by Mr. Van Doren.

2. Flag Salute

Those present stood and pledged allegiance to the American flag.

3. Actions to be taken

➤ **Consent Agenda**

Mr. Van Doren requested that Resolution #105-2013 be removed from the Consent Agenda. It was determined that there would not be a quorum of Committee members to vote on the Resolution so its adoption would be postponed until the 01-14-14 meeting.

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

RESOLUTION #103-2013

RESOLUTION TO CANCEL PREVIOUSLY AUTHORIZED SPECIAL EMERGENCY AND RELATED SPECIAL NOTES

WHEREAS, Resolution #73-2013 and #74-2013 were adopted creating an emergency appropriation of \$2,400,000 to meet expenses related to the extraordinary expense for the repair, reconstruction of streets, road or bridges, or other public property damaged by Superstorm Sandy; and

WHEREAS, BANs were issued in the amount of \$1,915,000.

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NOW, THEREFORE, 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 cancel the authorization to borrow funds in the amount of \$485,000.

Louis DiMare
Mayor

**RESOLUTION # 104-2013
REGARDING OLDWICK SEWER CAPACITY**

WHEREAS the Township Wastewater Engineer has performed an analysis of the Oldwick Sewer Utility (“Utility”) capacity; and

WHEREAS the Township Wastewater Engineer has determined that the Utility has no additional capacity available for additional connections other than those identified in the capacity report dated September 13, 2013 “Update to Capacity Report and Capacity Assurance Plan” (Capacity Report); and subsequent modifications to Table 1 – Summary of Oldwick Sanitary System User Allocations in letter dated October 25, 2013; and

WHEREAS the Township Wastewater Engineer has determined that because there is no further sewer capacity available, no additional users, other than those identified in the Capacity Report, should be permitted to connect to the Utility; and

WHEREAS the Township Wastewater Engineer has determined that pursuant to the regulations of the Department of Environmental Protection (“DEP”) a sewer capacity assurance program should be established in conformance to the following regulations:

- NJAC 7:14A-22.16(a) – When committed flows to a wastewater treatment facility reach 80% of the design capacity of that facility, the facility shall prepare and submit a Capacity Assurance Program designed to prevent overloading of the facility or triggering violations of NJPDES permit conditions.
- NJAC 7:14A-22.16(d) – Upon approval of the Capacity Assurance Program by the NJDEP, the facility shall give public notice of the existence of the Program and continue to operate consistent with the program.
- NJAC 7:14A-22.16(e) – When committed flows reach 100% of the design capacity of a facility, the NJDEP may prohibit any future connections to the facility. [This has not been triggered by the Oldwick Facility to-date.]; and

WHEREAS the Township Wastewater Engineer has prepared the “Village of Oldwick Sewer Service Area Map” also recommends an updating of the mapping of the Township’s Wastewater Management Plan;

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NOW THEREFORE BE IT RESOLVED by the Township Committee of the Township of Tewksbury, Hunterdon County, as follows:

1. Except for those identified in the Capacity Report, no new connections to the Oldwick Sewer Utility, nor any increases in discharge from existing connections, shall be permitted.
2. There is hereby established a Capacity Assurance Program for the Oldwick Sewer System and the Township Sewer Engineer is authorized to take such actions as set forth in his Reports of September 13, 2013 and October 25, 2013 to carry out that program.
3. The Township Wastewater Engineer is hereby authorized to take the necessary and appropriate steps to update the mapping for the Township's Wastewater Management Plan and to submit the new mapping to the DEP and the Highlands Council for approval upon approval of said mapping by the Township Committee.

Louis DiMare
Mayor

RESOLUTION #106-2013

**BANKING OF ALLOCATED FUNDS FROM HUNTERDON COUNTY OPEN SPACE TRUST
FOR FISCAL YEAR 2013**

WHEREAS, the County of Hunterdon has established the Hunterdon County Open Space, Recreation, Farmland and Historic Preservation Trust Fund and has made municipal grant funding available to each municipality; and

WHEREAS, the funds available to the Township of Tewksbury for Fiscal year 2013 are \$518,245.34.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Tewksbury that the County of Hunterdon is requested to reserve and bank the allotment for Fiscal Year 2013.

Louis DiMare
Mayor

**RESOLUTION #107-2013
TRANSFERS AND CANCELLATIONS**

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 transfers and cancellations.

2013 Current Fund Appropriations Transfers

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From:		To:	
Bd of Health S&W	1,902.00	Workers Comp Insurance	1,152.00
Group Ins. Plan	5,000.00	Telecommunications	750.00
Wastewater Management	4,000.00	Lease of Equipment	9,000.00
Christy Bartles S&W	2,000.00	Fleet Maintenance	40,000.00
Public Works S&W	40,000.00	Township Committee OR	1,200.00
Township Committee S&W	500.00	Building & Grounds OE	9,000.00
Finance OE	2,000.00	Police S&W	6,000.00
Engineering	8,700.00		
PBA Benefits	3,000.00		
	67,102.00		67,102.00

2013 Current Fund Appropriations Cancellations

From:		To:	
A&E S&W	8,000.00	Fund Balance	286,268.31
A&E OE	12,000.00		
Financial Administration S&W	4,900.00		
Tax Assessor	2,200.00		
Tax Collector S & W	1,800.00		
Legal Services	12,000.00		
Land Use S & W	16,500.00		
Land Use OE	4,000.00		
Group Insurance Plan	78,000.00		
Other Insurances	5,000.00		
Public Works S&W	45,000.00		
Computerized Data Processing	4,000.00		
Electricity	8,000.00		
Garbage & Trash Removal	10,000.00		
Gasoline & Diesel	40,000.00		
Code Enforcement S&W	12,500.00		
Code Enforcement OE	3,000.00		
Affordable Housing OE	3,000.00		
ER PERS & PFRS	400.00		
ER Share of Deferred Comp	11,500.00		
Interest on Bonds	3,580.45		
Green Trust Loan Program	1.40		
Wastewater Trust Loan Principle	886.46		
	286,268.31		286,268.31

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2013 Current Fund Appropriations Transfers

<i>From:</i>		<i>To:</i>	
Police S&W	49,000.00	Accumulated Leave Time	90,500.00
Police OE	17,500.00		
Police PBA Contract Benefits	24,000.00		
	90,500.00		90,500.00

2013 Hunters Glen Utility Fund Appropriations Transfers

<i>From:</i>		<i>To:</i>	
Hunters Glen Sewer OE	450.00	DEP Permits	450.00

2013 Oldwick Utility Fund Appropriations Transfers

<i>From:</i>		<i>To:</i>	
Oldwick Sewer OE	130.95	DEP Permits	130.95

Louis DiMare
Mayor

RESOLUTION #108-2013

TO CANCEL STALE DATED CHECKS

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 cancel the following stale dated checks.

Check #	Payee	Amount	Issue Date
4021	Greenway Car Wash	\$30.48	04/30/13
4036	McMillan Oil Company	\$29.00	04/30/13

Louis DiMare
Mayor

RESOLUTION #109-2013

A RESOLUTION SETTING THE 2013 SALARY AND WAGES FOR AN EMPLOYEE OF THE TOWNSHIP OF TEWKSBURY

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BE IT RESOLVED by the Township Committee of the Township of Tewksbury, County of Hunterdon, State of New Jersey that the salary to be paid to a certain employee of the Township of Tewksbury be, and the same are hereby determined and fixed, at the respective amount or rates for the calendar year 2013 and until same is amended. This Resolution hereby supercedes previous salary and wage actions taken by the Township Committee.

PUBLIC WORKS			
Name	Title	Salary	Merit Pay
Peter Samski	Senior Public Works Employee	31.77/Hr	\$ 763.19 effective 1/1-7/31/2013

Louis DiMare
Mayor

RESOLUTION #110-2013

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF TEWKSBURY, COUNTY OF HUNTERDON,
STATE OF NEW JERSEY, AUTHORIZING APPROVAL
OF A MODIFICATION TO AFFORDABLE HOUSING AGREEMENT
BETWEEN THE TOWNSHIP OF TEWKSBURY AND
GLENN LIKUS CONCERNING LOT 10 IN BLOCK 12**

WHEREAS, the Township of Tewksbury, previously entered into an Affordable Housing Agreement (“Agreement”) on October 20, 2008, with Glenn Likus (“Likus”) enabling the latter to establish an Affordable Housing Unit on property commonly known as Lot 10 in Block 12 as described on the Township’s Tax Map; and

WHEREAS, the Agreement was recorded with the Hunterdon County Clerk on November 3, 2008, at Book 2220, Page 430; and

WHEREAS, the property includes both a detached single-family home and a barn with an apartment; and

WHEREAS, the barn apartment was used to provide the low and moderate income-eligible housing unit contemplated in the Agreement and was incorporated in the Township’s Affordable Housing Compliance Plan (“Plan”); and

WHEREAS, Likus now wishes to utilize the single-family home as the low and moderate income-eligible unit and not the barn apartment; and

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WHEREAS, Likus agrees that the rent to be charged for the use of the single-family house will be the same as the rent charged for the apartment, said rent to be calculated in accordance with the rules and regulations promulgated by the Department of Community Affairs pursuant to the Fair Housing Act; and

WHEREAS, the Township is willing to allow this modification and to incorporate the single-family house in the Township's Plan.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Tewksbury, County of Hunterdon, New Jersey, that the Mayor and Committee of the Township of Tewksbury consent to a modification of the Affordable Housing Agreement to allow the detached single-family home on Lot 10 in Block 12 on the Township's Tax Map.

BE IT FURTHER RESOLVED, that the Mayor, Clerk, Chief Financial Officer and any other proper official of the Township be and each of them is authorized to execute the Affordable Housing Agreement as required by law in substantially similar form as the proposed Agreement attached hereto as Exhibit "A".

BE IT FURTHER RESOLVED, that said Agreement be promptly filed and recorded with the Hunterdon County Clerk's Office subsequent to its full execution by the Township and Likus.

Louis DiMare
Mayor

RESOLUTION #111-2013

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF TEWKSBURY, COUNTY OF HUNTERDON,
STATE OF NEW JERSEY, AUTHORIZING AWARD OF A CONTRACT
FOR PROFESSIONAL SERVICES WITH MENKES ASSOCIATES, LLC
FOR RADIO FREQUENCY ENGINEERING SERVICES**

WHEREAS, the Township of Tewksbury has a need to acquire professional services in the area of radio frequency engineering relative to a pending land use application filed by Cellco Partnership d/b/a Verizon Wireless & Global Tower ("Cellco"); and

WHEREAS, Menkes Associates, LLC ("Menkes") has been deemed qualified and competent to provide such services as per a proposal dated November 19, 2013, a true and correct copy of which is attached hereto; and

WHEREAS, Menkes shall be paid out of the escrow funds to be deposited by Cellco in connection with its pending land use application in accordance with its proposal.

NOW, THEREFORE, BE IT RESOLVED by the Township of Tewksbury, County of Hunterdon, New Jersey, that the Mayor and Township Committee are hereby authorized to

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enter into an Agreement for Professional Services with Menkes. A true and correct copy of the proposed Agreement for Professional Services is attached hereto as Exhibit "A".

Louis DiMare
Mayor

**RESOLUTION #112-2013
CANCELATION OF TAXES**

BE IT RESOLVED, by the Township Committee of the Township of Tewksbury, County of Hunterdon, State of New Jersey that the CFO is hereby authorized cancel the following tax amount.

Block	Lot	Year	Amount
6	27.03	2013	15.97
31	24	2013	27.12
42	14	2013	56.34

Louis DiMare
Mayor

MISCELLANEOUS

- Claims as submitted by the CFO
- Correspondence List
- Regular and e/s minutes of 11-12-13
- Agreement, COAH Unit Transfer

5. Reports

➤ **Township Committee Sub Committees & Township Committee Comments**

Dr. Voyce noted the recent number of chimney fires.

Mr. Melick noted that the DPW has already been hard at work due to the inclement weather and road clearing, adding that the Department has a new vehicle in service.

Mr. Van Doren noted that he recently attended a meeting in Bedminster Township to discuss their Blue Ribbon Committee Report: Review of Fire and Rescue Services. He suggested having an evening meeting in Pottersville in January to discuss what Pottersville view as "funding inequalities" with regard to payment received from Tewksbury.

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Mr. Van Doren noted recent FCC changes to cell tower rules that would usurp local Land Use and Planning Board control. He suggested that this be further discussed at the Land Use Board and Township Committee level and that comments be submitted to the FCC during the comment period. He further suggested that the NJ State League of Municipalities be brought into the discussion.

He noted that two new Construction Office vehicles were purchased and that the Township is in fine financial standing.

6. Public Participation

The following statement was read into the minutes by Nancy Held.

I am here today as a member of the Friends of Cold Brook Historic District to update you on what has been happening regarding the issuance of helistop licenses in the State, including the one in Tewksbury Twp, and to ask the Twp Committee to join in our appeal at no cost to the town.

Within the past 12 months the DOT has issued three helistop licenses and one authorization to construct a helistop in four different townships, all after the local municipality denied the requests. And Overlook Hospital has just filed an application for a helistop with the DOT after Summit denied it and after the Superior Court ruled that the town of Summit was within their rights to deny it.

In the Kingwood Township case, after the DOT issued an "authorization to construct" letter, the DOT Commissioner went out to the site at the Township's urging and concluded that the proposed location was an inappropriate spot for a helistop. The DOT has now put a halt to the construction in Kingwood, but whether the landing zone will simply be moved to another location on the property that is acceptable to the DOT or be denied altogether remains to be seen.

In the case of Fairfield Township, Michael Kates of Kates, Nussman, Rapone, Ellis & Farhi in Hackensack was hired on behalf of the New Jersey Planning Officials to file an amicus (or friend of the Court) brief arguing that the DOT should not have approved a helistop there.

The primary arguments in Kates' brief were as follows:

- In the Trump, Johnson and Fairfield cases the DOT has acted on the mistaken assumption that Garden State Farms v. Mayor Louis Bay gives the Commissioner authority to ignore or devalue municipal opposition by relegating it to "uncontested" status, thereby systematically avoiding the procedural safeguards of a "contested" administrative hearing.
- The Trump decision was not "published" (and therefore cannot be cited as precedent)
- The DOT relegates municipal opposition to a small number in a "matrix" of numbers that minimizes municipal opposition and assigns little importance to municipal decisions regarding planning and zoning which flatly contravenes the tenor of the Garden State Farms case.
- The matrix that the DOT uses in deciding to recommend approval of a helistop is fundamentally flawed.

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Only two weeks after Kates' brief was filed, the DOT sent a letter to the Appellate Court saying "In the interest of justice, this Court should enter an order remanding this appeal to the DOT for reconsideration of the DOT's issuance of the Pio Costa helistop." In other words, the DOT asked the Appellate Court for a do-over. It remains to be seen whether the DOT will ultimately reissue the license, perhaps using different evaluation criteria and/or conducting a public hearing, or withdraw the license.

In the case of the Johnsons helistop, the Friends twice attempted to settle their appeal by meeting with the DOT, members of the Johnson family, and the Johnsons' attorney, Jack McNamara. Unfortunately, and even in the face of the DOT asking for a remand in the Fairfield Township case, no settlement could be reached as the Johnsons were unwilling to accept dismissal of our appeal in exchange for limiting their helicopter operations to two or three round trips per day. Rather, they were only willing to limit daily helicopter operations if the Friends would give them night flights which we feel would be most problematic to Tewksbury's citizens. Therefore, the Friends have decided to proceed with their appeal.

The Friends decided to change legal counsel and hired Michael Kates because of his familiarity with the issues and his Firm's willingness to cap their fee in view of the fact that the amicus brief filed in the Fairfield Township case has addressed three of the four points on which the Friends filed their appeal. Nearly 85% of the legal fee has already been advanced by the Friends and other members of the community, and we will pay the remainder as billed.

Our former counsel, our current counsel, the Land Use Board's attorney, and even the Johnsons' attorney, believe that the Friends' appeal is weakened without the Township joining our appeal. This is true because the Township Committee and the Land Use Board represent the interests of the entire township, whereas the Friends can only represent their own interests – even if one of their own interests is to defend the town's regulations. And, as a member of the Friends who lives about as far from the helistop as is possible in this town, I can tell you that for me the issue is – and always has been – about defending the town's regulations.

Without the Township joining in the Friends' appeal, the Court is likely to view the appeal as a neighbor dispute rather than a defense of the town's regulations. In fact, this is exactly how the Johnsons' attorney is characterizing our appeal. He also told us – in front of the Johnsons at one of our settlement discussions – that the town is on their side BECAUSE they are not participating in our appeal.

At a prior Township Committee meeting in which the helistop was being discussed, Shaun Van Doren said that the Township Committee SHOULD defend the decisions of its Land Use Board. However, without the Township joining in the Friends' appeal the Township Committee is not defending the decisions of its Land Use Board, the town's regulations, or its citizens.

We went to the Land Use Board last week and they made a motion to send a letter to the Township Committee recommending that they join our appeal which you presumably have received at this point. Therefore, based on all of this information, the Friends are asking the Township Committee to join in our appeal at no cost to them as we will pay 100% of the legal fees.

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Our legal briefs are currently due to the Appellate Court by January 13th. Although we expect to obtain deferral of this date with a motion we will be filing by month-end, if the Township Committee wants to join our appeal they should decide to do so as soon as possible.

#

In response to a question by Mayor DiMare, Ms. Held surmised that their attorney's fees would be capped at \$15,000.00. Discussion followed regarding the Friends of the Cold Brook Historic District (Friends) request to have the Township Committee join in their appeal and the associated costs related to Township Attorney review.

Mr. Selvaggi estimated that he would be able to review the documents submitted by the Friends at a cost of approximately \$1500.00.

In response to a question from Mr. Van Doren, Mr. Selvaggi stated that he did not see any conflict for Mr. Van Doren who is a sitting member of the NJPO.

Bill Clark stated that he has logged many hours in a helicopter, adding that they are dangerous machines and not a "toy for an over privileged child." He cautioned the Committee of the inherent dangers of helicopters in the vicinity of horses.

Chris Kennedy urged the Committee to uphold the decision of the Land Use Board and to join the Friends in their appeal.

Discussion followed regarding whether there would be any added strength to the Friends' appeal if the Committee chose to join in.

In response to a question from Mr. Van Doren, Ms. Held stated that the Friends are asking the Committee to join in their appeal and ask for a stay on flights.

Jane Chapin stated that the Committee should join in the appeal and should uphold the LUB's decision. She opined that there are no communal benefits to having a helistop in the Township.

Ms. Held reiterated that documents were omitted from those filed with the DOT; specifically LUB transcripts and comment letters from the public.

Mayor DiMare stated that he was in favor of joining the Friends' appeal if they paid the Township Attorney's fees for his review of documents.

Mr. Melick opined that the site is beneficial to the community for use in emergency situations and reiterated his opinion to not join in the appeal.

Mr. Van Doren noted that he witnessed a medivac landing and the reaction of the animals on the ground and was please to report that they did not seem to be bothered by the noise. He added that he believes in defending the Township's zoning and supports the Friends' appeal. He suggested presenting a separate motion to take the decision making (regarding

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helistops) out of the hands of State agencies so that local governing bodies could control their own municipalities.

Mayor DiMare agreed with Mr. Van Doren's suggestion based on conversations he had with DOT Commissioner Simpson.

Dr. Voyce agreed that the Township should join in the appeal and defend Township Ordinances. He added that the number of flights should be reviewed and to have "a fresh pair of eyes" review the matter should prove beneficial.

Further discussion followed regarding the number of flights and how landings are logged.

Mayor DiMare made a motion to support the LUB decision and join in the Friends' appeal regarding the Johnson helistop with the condition that the Friends cover the Township Attorney's legal fees, seconded by Dr. Voyce.

In response to a question from Mr. Melick, Mayor DiMare suggested creating an escrow account funded by the Friends to cover Mr. Selvaggi's fees. Mr. Selvaggi suggested an amount of \$2500.00 for the escrow account.

A roll call vote was taken on the above stated motion and was approved. Ayes: DiMare, Van Doren, Voyce. Nays: Melick. Absent: Desiderio.

Dr. Voyce left the meeting at 8:51 AM.

It was stated that the reorganization meeting of the Township Committee should be scheduled for 01-01-14 at 11:00 am dependent on availability.

7. Reports (continued)

➤ **Township Attorney**

Mr. Selvaggi noted that he received a signed Access Agreement from the Platts (block 23 lot 24) that needs to be executed by the Mayor. Copies were distributed to the Committee for review prior to signing. It was noted that the Platts are currently using the driveway for access to chicken coops.

It was noted that a sewer easement for property owned by John Melick needs to be authorized, but quitclaim language needs to be included in the document.

➤ **Township Administrator**

It was agreed that the scheduled 12-24-13 be cancelled.

7. Executive Session

At 9:02 AM Mr. Van Doren moved adoption of the following Resolution, seconded by Mr. Melick. The motion was approved. Ayes: DiMare, Melick, Van Doren, Voyce. Nays: None. Absent: Desiderio.

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**RESOLUTION #113-2013
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.

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

Louis DiMare
Mayor

7. Reconvened

The meeting reconvened at 9:27 AM.

Mr. Van Doren questioned the action that needs to be taken regarding item "I" from the Correspondence List. Mr. Landon stated that he met with the property manager of the Crossroads development regarding the letter from Lee Bartolomeo pertaining to tree removal.. Mr. Landon state that he would contact the resident to relay his conversation to her pertaining to the matter.

It was stated that 1-1-14 is the first choice for the 2014 reorganization meeting with 1-6-14 being the alternate.

8. Adjournment

There being no further business, the meeting was adjourned at 9:32 AM.

Roberta A. Brassard
Municipal Clerk