

## Township of Vernon

### REGULAR TOWNSHIP COUNCIL MEETING

May 13, 2013

The Regular Meeting of the Township Council of the Township of Vernon was convened at 7:30pm on May 13, 2013, in the Vernon Township Municipal Building, 21 Church Street, Vernon, New Jersey, with Council President Patrick Rizzuto presiding.

#### STATEMENT OF COMPLIANCE

Adequate notice of this meeting had been provided to the public and the press on January 11, 2013, and was posted on the bulletin board in the Municipal Building in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6.

#### ROLL CALL OF MEMBERS

Present were Council Members Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, and Council President Patrick Rizzuto. Also present were Mayor Vic Marotta, Township Attorney Kevin Kelly, CFO Bill Zuckerman, and Auditor Bud Jones. Business Administrator Jerry Giaimis arrived at 8:00pm.

#### EXECUTIVE SESSION

Mr. Kelly advised that Council had one matter of personnel to discuss in Executive Session that was brought to their attention at noon today; and therefore there was no way to give advance notice.

#### RESOLUTION TO GO INTO EXECUTIVE SESSION

**WHEREAS**, the Open Public Meetings Act, N.J.S.A. 10:4-6 permits the exclusion of the public in certain circumstances; and

**WHEREAS**, this public body is of the opinion that such circumstances presently exist;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Vernon as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter.
2. The general nature of the subject matter to be discussed is:  
Personnel Matter – Fire Department application
3. This resolution shall take effect immediately.

MOVED: Daniel Kadish

SECOND: Brian Lynch

All were in favor.

Council exited to Executive Chambers at 7:32pm.

Council returned to open session at 7:46pm.

MOVED: Daniel Kadish

SECOND: Brian Lynch

All were in favor.

#### SALUTE TO THE FLAG

The Council President led the salute to the flag.

## **CAMPAIGN CONTRIBUTION NOTICE**

Ms. Nelson read the following notice per Public Law 1975, Chapter 70.

“No holder of a public office or position shall demand payment or contribution from another holder of a public office or position for the campaign purposes of any candidate or for the use of any political party.”

## **MAYOR’S PROCLAMATION**

Mayor Marotta advised that he had been in attendance when Mr. Pinand was honored by his fellow Building Officials as the 2013 State Building Inspector of the Year. He read the following proclamation:

### *Proclamation*



**Whereas**, Thomas Pinand has been a dedicated and hard working employee for Vernon Township for over eighteen years;

**Whereas**, as the Construction Official, Tom enforces and administers the regulations of the New Jersey Uniform Construction Code (UCC) for the entire Township of Vernon;

**Whereas**, the construction department of Vernon Township is responsible for insuring adequate maintenance of buildings and structures throughout the town to adequately protect the health, safety and welfare of the people.

**Whereas**, on March 1, 2013, the Building Officials Association of New Jersey selected Tom as the 2013 State Building Inspector of the Year and presented him with an award at the annual Building Safety Conference of New Jersey;

**Whereas**, those who have had the pleasure of working with Tom sincerely appreciate his dedication and expertise he has displayed at Vernon Township.

**Now therefore be it Proclaimed, I, Mayor Victor Marotta**, hereby extend my sincerest gratitude and congratulations to

***Thomas Pinand***

for his distinguished public service to the Township and dedication to enforce the State Building Code for the safety and public welfare of the residents of Vernon.

Presented this 13<sup>th</sup> day of May, 2013

Victor J. Marotta, Mayor

Township of Vernon

Council President Rizzuto spoke on behalf of the Council in saying how proud they are of Mr. Pinand.

Mr. Pinand thanked everyone and noted that he couldn't do it without his entire staff.

## **PUBLIC COMMENTS**

Council President Rizzuto asked for a motion to open the meeting to public comments at this time.

MOVED: Daniel Kadish

SECOND: Dick Wetzel

All were in favor.

*Owen Highland* – noted he was a resident and a contractor with Alternative Energy. He addressed the proposed Ordinance #13-12 listed on the agenda. He pointed out what he deemed to be a defect in the ordinance (section C.15. b. (5) f.) on page 10 of the ordinance. He felt the wording appeared out of sync in dealing with time lines. The new ordinance would require a variance which he felt would be a deterrent to developers. He did not feel it was necessary to go beyond the current ordinance.

*Gary Martinsen* – noticed 5K signs in various towns, some of which are donating the proceeds to benefit the Veteran's Cemetery in Sparta. He wondered if Council could make Friends of Vernon donate their proceeds to past, present, and future veterans.

Council President Rizzuto noted that the Mayor was on the committee to promote the veteran's cemetery. He also noted that the Council has supported this as well as the Township Attorney, Kevin Kelly.

## **CLOSED TO PUBLIC COMMENTS**

No one else wished to speak at this time, and Council President Rizzuto asked for a motion to close the public portion of the meeting.

MOVED: Brian Lynch

SECOND: Dick Wetzel

All were in favor.

## **MAYOR'S REPORT**

Mayor Marotta introduced Mr. Ted Warnet of the Highland Lakes Fire Department to give an update on the fireworks issue.

Mr. Warnet advised that he had met with Mountain Creek and they were able to come to an agreement about the fireworks. Mountain Creek has withdrawn their request for a fireworks display on July 5. Mr. Warnet noted that Mr. Bill Bennion was very understanding and receptive to the Fire Department's request. Mr. Warnet thanked Council for their support. Mayor Marotta asked Mr. Warnet to verify if he had been told that Mt. Creek would be bussing their guests to the Fire Department fireworks on July 6. Mr. Warnet advised that he had the same information. The Mayor thanked Mr. Warnet, the Fireworks Committee members and Mt. Creek for working together to resolve this issue. Mr. Warnet invited everyone to attend the fireworks event, sponsored by the Highland Lakes and Vernon Fire Departments on July 6 at Lounsbury Hollow School, and that the cost was \$15.00.

Mayor Marotta reported on the following items:

- April 27 was the rabies clinic from 10:00am to 1:00pm. About 515 cats and dogs were vaccinated. He gave the following list of people who volunteered their time to assist with this event:
  - ◆ Warren Burgess
  - ◆ Marlene Ford
  - ◆ Christine Brands Davies
  - ◆ George Davies
  - ◆ Tammy Cutler
  - ◆ Cathy Cunningham
  - ◆ Phyllis MacPeek
  - ◆ Debbie Vandermass
  - ◆ Rich Unhock
  - ◆ Jack Stout
  - ◆ Kerrie Scott
  - ◆ JoAnn Hennecke
  - ◆ Valerie Palomba
  - ◆ Gene Osias
  - ◆ Dr. Tim Bingaman & wife Jeanne

- ◆ Tom Maellaro (Animal Control Officer)
  - ◆ Bonita Johnson
  - ◆ Jason Vidal
  - ◆ Jim Epperly
  - ◆ Juan Cardona
- He asked Mr. Giaimis to hand out budget printouts for Council's monthly budget report.
  - He also asked Mr. Giaimis to hand out copies of a letter he received from the law offices of Bromberg & Newman. He explained that this letter was addressed to Mr. Kelly and the Mayor, and was relative to Police Chief Wherry's salary. He advised that this was a confidential matter for future executive session.
  - The Township received a letter from the Council on Affordable Housing (COAH) on May 1 relative to un-appropriated affordable housing funds. He asked Mr. Giaimis to hand out copies to Council. He reminded Council about the pending litigation that was put on hold last July, but which may move forward. Vernon still plans to apply the funds to the senior housing project being proposed by Theta. Mr. Kelly advised that he would have a response ready for the Mayor, and would update the Council on this matter at a future executive session, as well as a response on the Police Chief's salary. The Mayor noted that Jessica Caldwell advised that our COAH litigation will go forward if Council wishes it to. Council President Rizzuto felt Council's initial decision was to protect our money. He felt Council needed to decide about moving forward or not. The Mayor gave an overview of the funding issue. Mr. Kelly pointed out the expenses so far, which are less than \$3,000

## **MINUTES**

Council President Rizzuto asked for a motion to approve the minutes of the Regular meeting of February 11, 2013:

MOVED: Dick Wetzel

SECOND: Brian Lynch

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

The Minutes from the Regular meeting of February 11, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Executive Session meeting of February 11, 2013:

MOVED: Brian Lynch

SECOND: Daniel Kadish

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

The Minutes from the Executive Session meeting of February 11, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Regular meeting of February 25, 2013:

MOVED: Brian Lynch

SECOND: Daniel Kadish

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

The Minutes from the Regular meeting of February 25, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Work Session meeting of March 4, 2013:

MOVED: Brian Lynch

SECOND: Daniel Kadish

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

The Minutes from the Work Session meeting of March 4, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Regular meeting of March 11, 2013:

MOVED: Brian Lynch

SECOND: Daniel Kadish

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

The Minutes from the Regular meeting of March 11, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Regular meeting of March 25, 2013:

Council Member Kadish moved to table the Regular meeting minutes of March 25, 2013.

SECOND: Brian Lynch

All were in favor.

The Minutes from the Regular meeting of March 25, 2013 were tabled.

Council President Rizzuto asked for a motion to approve the minutes of the Executive Session meeting of March 25, 2013:

MOVED: Daniel Kadish

SECOND: Eddie Dunn

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Dick Wetzel, Patrick Rizzuto

NAYS: Brian Lynch

The Minutes from the Executive Session meeting of March 25, 2013 were approved.

## **DISCUSSION**

Council discussed a request to waive Township Code 330-155 – requirement for taxes to be paid before granting event permit for music festival event at Rickey Farm, August 9-11.

Mayor Marotta recommended tabling this request until the applicant can be verified as still owning this property. The Mayor explained that there had been a judgment on the property the previous week, and he wanted the owner to have time to remove the judgment. He noted that this requirement is a useful tool for the Township to ensure that the taxes are paid. He advised that when this Government took office in July of 2011, he had instructed Mr. Roland, the Zoning Officer, to treat everyone equally and to adhere to the requirements.

Council Member Dunn asked if the Council wished to have Mr. Rickey speak on this matter. All were in agreement to do so.

Jamie Rickey advised that this request was not just for these dates, but he was asking for a waiver for the season. He corrected the Mayor, noting that the Sheriff's sale was not on the festival grounds location, but only on his Mom's house. He advised that the first date he was planning would be in June for camping.

## **MOTION TO TABLE**

Motion was made to table this matter.

MOVED: Dick Wetzel

SECOND: Daniel Kadish

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Dick Wetzel, Patrick Rizzuto

NAYS: Brian Lynch

The matter was tabled.

## **CONSENT RESOLUTIONS**

Council President Rizzuto gave a brief description of Resolutions #13-95 through #13-102. He asked for a motion to accept Resolutions #13-95 through #13-102:

MOVED: Daniel Kadish

SECOND: Dick Wetzel

Council Member Dunn asked about the fireworks at Tall Timbers (#13-#13-99) being the same night as the Fire Department's fireworks. The Mayor and Council Member

Lynch advised that the fireworks at Tall Timbers would not be visible to anyone viewing the Fire Department event.

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch\*, Dick Wetzel, Patrick Rizzuto

NAYS: None

ABSTAIN: \*Brian Lynch - #13-100, #13-101, #13-102

Resolutions #13-95 through #13-102 were approved.

**RESOLUTION #13-95**

**AUTHORIZING THE CLOSING OF UNCLAIMED PROPERTY  
VERNON POLICE DEPARTMENT BANK ACCOUNT  
AND RESTORING FUNDS TO TOWNSHIP**

**WHEREAS**, the Chief Financial Officer has determined that the Unclaimed Property Vernon Police Department Bank Account was established in 2009 and has not had any activity since that time period, and;

**WHEREAS**, the balance in the account is \$853.25, and;

**WHEREAS**, no one has claimed the funds in the account nor could the Township determine who the funds belonged to.

**THEREFORE, BE IT RESOLVED** that the above bank account be closed and the funds be restored to the Township as Miscellaneous Revenue Not Anticipated.

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**RESOLUTION #13-96**

**REQUESTING APPROVAL OF THE DIRECTOR OF THE DIVISION OF LOCAL  
GOVERNMENT SERVICES TO ESTABLISH A DEDICATED TRUST BY RIDER FOR  
UNEMPLOYMENT COMPENSATION INSURANCE  
PURSUANT TO N.J.S.A. 40A:4-39**

**WHEREAS**, permission is required of the Director of the Division of Local Government Services for approval as a dedication by rider of revenues received by a municipality when the revenue is not subject to reasonable accurate estimate in advance; and

**WHEREAS**, N.J.S.A 40:55D-53.1 provides for receipt of Unemployment Compensation Insurance by the municipality to provide for the operating costs to administer this act; and

**WHEREAS**, N.J.S.A 40A:4-39 provides that the dedicated revenues anticipated from the Unemployment Compensation Insurance Trust Fund are hereby anticipated as revenue and are hereby appropriated for the purpose to which said revenue is dedicated by statute or other legal requirement.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the Township of Vernon, County of Sussex, New Jersey as follows:

1. The Governing Body does hereby request permission of the Director of the Division of Local Government Services to pay expenditures of the Unemployment Compensation Insurance Trust Fund (N.J.S.A 40A:4-39).
2. The Clerk of the Township of Vernon, County of Sussex is hereby directed to forward two certified copies of this Resolution to the Director of the Division of Local Government Services.

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**RESOLUTION #13-97**

**REQUESTING APPROVAL OF THE DIRECTOR OF THE DIVISION OF LOCAL GOVERNMENT SERVICES TO ESTABLISH A DEDICATED TRUST BY RIDER FOR PLEASANT VALLEY LAKE REHABILITATION EXPENSE ESCROW PURSUANT TO N.J.S.A. 40A:4-39**

**WHEREAS**, permission is required of the Director of the Division of Local Government Services for approval as a dedication by rider of revenues received by a municipality when the revenue is not subject to reasonable accurate estimate in advance; and

**WHEREAS**, N.J.S.A. 40:55D-53.1 provides for receipt of Pleasant Valley Lake Rehabilitation Expense Escrow by the municipality to provide for the operating costs to administer this act; and

**WHEREAS**, N.J.S.A 40A:4-39 provides that the dedicated revenues anticipated from the Pleasant Valley Lake Rehabilitation Expense Escrow are hereby anticipated as revenue and are hereby appropriated for the purpose to which said revenue is dedicated by statute or other legal requirement.

**NOW, THEREFORE, BE IT RESOLVED** by the Governing Body of the Township of Vernon, County of Sussex, New Jersey as follows:

- 3. The Governing Body does hereby request permission of the Director of the Division of Local Government Services to pay expenditures of the Pleasant Valley Rehabilitation Expense Escrow (N.J.S.A 40:55D-53.1).
- 4. The Clerk of the Township of Vernon, County of Sussex is hereby directed to forward two certified copies of this Resolution to the Director of the Division of Local Government Services.

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**RESOLUTION #13-98**

**AUTHORIZING CHANGE ORDER #3 TO EARTH-TEC ASSOCIATES FOR IMPROVEMENTS TO COUNTY ROAD 517, MAPLE GRANGE ROAD AND LOUNSBERRY HOLLOW ROAD INTERESECTIONS**

**WHEREAS**, the Township of Vernon awarded a contract for improvements to County Road 517, Maple Grange Road and Lounsberry Hollow Road intersections via resolution #12-133 to Earth Tec Associates for \$924,819.00; and

**WHEREAS**, Change Order #1 in the amount of \$37,783.25 was awarded via Resolution #12-192; and

**WHEREAS**, Change Order #2 in the amount of a \$38,708.71 reduction was awarded via Resolution #13-29; and

**WHEREAS**, additional items, adjustments and/or quantities that were not included in the original specifications totaling \$1,812.00 (asphalt price adjustment), are needed; and

**WHEREAS**, according to NJAC 5:30-1.3, the total amount of all change orders may not exceed 20 percent of the original contract award; and

**WHEREAS**, Change Order #1 plus Change Order #2 and Change Order #3 does not exceed this 20 percent threshold; and

**WHEREAS**, the Township Engineer recommends that Change Order #3 be approved per the attached request.

**NOW THEREFORE BE IT RESOLVED**, by the Township Council of the Township of Vernon, that Change Order #3 be approved; and

**BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately upon adoption according to law.

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**RESOLUTION #13-99**

**RESOLUTION AUTHORIZING FIREWORKS TO BE DISPLAYED ON JULY 6, 2013  
WITHIN THE TOWNSHIP OF VERNON**

**WHEREAS**, N.J.S.A.21:3-1et seq. Explosive and Fireworks, provides that a Municipal Governing Body must authorize the display of fireworks within its boundaries as a pre-condition to such display in accordance with the New Jersey Fire Prevention Code; and

**WHEREAS**, Tall Timbers Property Owners Association has submitted an application to Vernon Township to conduct a fireworks display on July 6, 2013; and

**WHEREAS**, the proposed fireworks display will take place at Tall Timbers Oak Boat Launch / Lake Area on property owned by Tall Timbers Property Owners Association; and

**WHEREAS**, Tall Timbers Property Owners Association has engaged in a contract with Garden State Fireworks, Inc., to perform the public fireworks and special effects display and has provided the required certificate of liability insurance.

**NOW THEREFORE BE IT RESOLVED**, that the Council of the Township of Vernon, in the County of Sussex, hereby authorizes the fireworks display with special effects, performed by Garden State Fireworks, Inc. and sponsored by the Tall Timbers Property Owners Association on July 6, 2013 upon satisfaction of all statutory and departmental requirements.

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**RESOLUTION #13-100**

**RESOLUTION AUTHORIZING FIREWORKS TO BE DISPLAYED ON JULY 6, 2013,  
WITHIN THE TOWNSHIP OF VERNON**

**WHEREAS**, N.J.S.A.21:3-1et seq. Explosive and Fireworks, provides that a Municipal Governing Body must authorize the display of fireworks within its boundaries as a pre-condition to such display in accordance with the New Jersey Fire Prevention Code; and

**WHEREAS**, Highland Lakes and Vernon Fire Departments have submitted an application to Vernon Township to conduct a fireworks display on July 6, 2013; and

**WHEREAS**, the proposed fireworks display will take place at the Lounsberry Hollow Middle School grounds at dusk; and

**WHEREAS**, the Highland Lakes and Vernon Fire Departments have engaged in a contract with Garden State Fireworks, Inc., to perform the public fireworks and special effects display and has provided the required certificate of liability insurance.

**NOW THEREFORE BE IT RESOLVED**, that the Council of the Township of Vernon, in the County of Sussex, hereby authorizes the fireworks display, performed by Garden State Fireworks, Inc. and sponsored by the Highland Lakes and Vernon Fire Departments on July 6, 2013, upon satisfaction of all statutory and departmental requirements.

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**RESOLUTION #13-101**

**APPROVING ACTIVE VOLUNTEER FIREMAN FOR MEMBERSHIP IN THE  
NEW JERSEY STATE FIREMEN’S ASSOCIATION**

**WHEREAS**, the Township Council recognizes the extraordinary contributions made by volunteer firefighters to our community and seeks to encourage their full participation in professional organizations; and



**WHEREAS**, Michael P. Basso, an active firefighter and member of the McAfee Volunteer Fire Department, is requesting approval to submit an application for membership to the New Jersey State Firemen's Association.

**NOW, THEREFORE, BE IT RESOLVED** that the Township Council of the Township of Vernon, Sussex County, New Jersey hereby approves Michael P. Basso for membership in the New Jersey State Firemen's Association.

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**RESOLUTION #13-102**

**APPROVING ACTIVE VOLUNTEER FIREMAN FOR MEMBERSHIP IN THE NEW JERSEY STATE FIREMEN'S ASSOCIATION**

**WHEREAS**, the Township Council recognizes the extraordinary contributions made by volunteer firefighters to our community and seeks to encourage their full participation in professional organizations; and

**WHEREAS**, Earl R. Plavier, an active firefighter and member of the Highland Lakes Volunteer Fire Department, is requesting approval to submit an application for membership to the New Jersey State Firemen's Association.

**NOW, THEREFORE, BE IT RESOLVED** that the Township Council of the Township of Vernon, Sussex County, New Jersey hereby approves Earl R. Plavier for membership in the New Jersey State Firemen's Association.

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**RESOLUTION #13-103**

Council President Rizzuto asked for a motion to approve Resolution #13-103, noting this was the matter discussed in Executive Session:

MOVED: Daniel Kadish

SECOND: Dick Wetzel

A roll call vote was taken:

AYES: Eddie Dunn, Daniel Kadish, Dick Wetzel, Patrick Rizzuto

NAYS: None

ABSTAIN: Brian Lynch

Resolution #13-103 was approved.

**RESOLUTION #13-103**

**APPROVING ACTIVE VOLUNTEER FIREMAN FOR MEMBERSHIP IN THE NEW JERSEY STATE FIREMEN'S ASSOCIATION**

**WHEREAS**, the Township Council recognizes the extraordinary contributions made by volunteer firefighters to our community and seeks to encourage their full participation in professional organizations; and

**WHEREAS**, Crystal Sisco, an active firefighter and member of the Pochuck Valley Volunteer Fire Department, is requesting approval to submit an application for membership to the New Jersey State Firemen's Association.

**NOW, THEREFORE, BE IT RESOLVED** that the Township Council of the Township of Vernon, Sussex County, New Jersey hereby approves Crystal Sisco for membership in the New Jersey State Firemen's Association.

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**ORDINANCES – INTRODUCTION**

**1st Reading of Ordinance #13-09 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-09 on 1st reading by title only.

MOTION: Brian Lynch

SECOND: Dick Wetzel

A roll call vote was taken on Ordinance #13-09:  
AYES: Eddie Dunn, Daniel Kadish, Dick Wetzel, Brian Lynch, Patrick Rizzuto  
NAYS: None  
Ordinance #13-09 was approved on 1st reading.

**ORDINANCE #13-09**

**CAPITAL ORDINANCE PROVIDING FOR VARIOUS IMPROVEMENTS OR PURPOSES TO BE UNDERTAKEN BY THE TOWNSHIP OF VERNON, IN THE COUNTY OF SUSSEX, NEW JERSEY, APPROPRIATING THEREFORE THE SUM OF \$215,000.00 AND PROVIDING THAT SUCH SUM SO APPROPRIATED SHALL BE RAISED FROM THE CAPITAL FUND BALANCE OF THE TOWNSHIP**

**BE IT ORDAINED** by the Township Council of the Township of Vernon, in the County of Sussex, New Jersey, as follows:

SECTION 1 The Township of Vernon, in the County of Sussex, New Jersey (the "Township") is hereby authorized to make the following acquisitions, repairs and improvements in, by and for the Township, for the aforesaid structures, site work, accessories, appurtenances, equipment, work and materials necessary therefore or incidental thereto and suitable therefore:

New Mowing Equipment	Estimated Cost: \$ 80,000.00
Road Repairs	Estimated Cost: \$120,000.00
Improvement to Town Properties	Estimated Cost: \$ 15,000.00

SECTION 2 The sum of \$215,000.00 is hereby appropriated to the payment of the cost of the improvements and acquisitions authorized and described in Section 1 hereof (hereinafter referred to as "purpose"). Said appropriation shall be raised from the Capital Fund Balance of the Township to the payment of the cost of said purpose.

SECTION 3 Said improvements and acquisitions are lawful capital improvements of the Township having a period of usefulness of at least five (5) years. Said improvements and acquisitions shall be made as general improvements, no part of the cost of which shall be assessed against property specifically benefited.

SECTION 4 This ordinance shall take effect at the time and in the manner provided by law.

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**1<sup>st</sup> Reading of Ordinance #13-10 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-10 on 1<sup>st</sup> reading by title only.

MOTION: Patrick Rizzuto  
SECOND: Dick Wetzel

Council Member Kadish noted his problem with the appendix, as he did not feel it belonged in the ordinance. He felt it was something better suited to the Agriculture Extension office. Council President Rizzuto explained that they were for quality of water and that they were being required by the Highlands Council. Mayor Marotta noted that the Department of Agriculture requirements are included by citation at the top of the appendix page. Council suggested having the Township Planner present for the 2<sup>nd</sup> reading.

A roll call vote was taken on Ordinance #13-10:  
AYES: Eddie Dunn, Daniel Kadish, Dick Wetzel, Patrick Rizzuto  
NAYS: Brian Lynch  
Ordinance #13-10 was approved on 1<sup>st</sup> reading.

## ORDINANCE #13-10

### AN ORDINANCE AMENDING CHAPTER 330 LAND DEVELOPMENT ORDINANCE, TO ADD ARTICLE XIX HIGHLANDS PRESERVATION AREA REQUIREMENTS TO UPDATE SUBMISSION REQUIREMENTS FOR APPLICATIONS FOR DEVELOPMENT IN THE HIGHLANDS PRESERVATION AREA OF THE TOWNSHIP OF VERNON

**WHEREAS**, the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.) was enacted by the State Legislature on August 10, 2004 for the purpose of protecting, enhancing, and restoring the natural resources of the New Jersey Highlands Region, in particular the water resources, which provide drinking water to over 5 million New Jersey residents; and

**WHEREAS**, the Highlands Act created the Highlands Water Protection and Planning Council (the “Highlands Council”) and charged it with crafting a comprehensive master plan for the New Jersey Highlands Region; and

**WHEREAS**, the Highlands Regional Master Plan was adopted by the Highlands Council through the adoption of Resolution 2008-27 on July 17, 2008, and became effective on September 8, 2008 as the product of a long-term, participatory, and region-wide planning effort; and

**WHEREAS**, Resolution 2008-27 included the adoption of Highlands Regional Master Plan as well as the adoption of various technical reports and guidelines that accompanied the Plan including the 2008 Plan Conformance Guidelines; and

**WHEREAS**, the Plan Conformance Guidelines provide an overview of the Highlands Act’s bifurcated system for municipal conformance with the Highlands Regional Master Plan – mandatory Plan Conformance for any portion (or if applicable, the whole) of a municipality located within the Preservation Area and voluntary Plan Conformance for any portion (or if applicable, the whole) of a municipality lying within the Planning Area; and

**WHEREAS**, Section 14 of the Highlands Act expressly requires that municipalities must revise and conform their local master plan and development regulations for that portion of their lands within the Preservation Area, as related to development and use of said lands, with the goals, requirements and provisions of the Regional Master Plan within 15 months of the effective date of adoption thereof, or December 8, 2009; and

**WHEREAS**, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may at any time voluntarily revise and conform its local master plan and development regulations, as related to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan; and

**WHEREAS**, the Plan Conformance Guidelines detail the requirements for Plan Conformance including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources; and

**WHEREAS**, the Plan Conformance Guidelines require conforming municipalities to adopt Initial Revisions as a first step of Plan Conformance; the initial revisions are revisions of the existing master plan and development regulations which are deemed necessary by the Highlands Council for prompt enactment by a petitioning local government in order to ensure the protection and enhancement of the resources of the Highlands Region; and

**WHEREAS**, the Plan Conformance Guidelines include the adoption of a Development Application Checklist Ordinance as an Initial Revision in order to ensure that any Application for Development not be deemed complete until such time as certain documents have been submitted by the Applicant and to ensure that

Applications for Development are consistent or revised to be consistent with the Regional Master Plan; and

**WHEREAS**, the Township of Vernon is located in the Highlands Region with lands lying within the Preservation Area only, as defined by section 7 of the Highlands Act; and

**WHEREAS**, the Governing Body of the Township of Vernon has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect to Township lands located within the Preservation Area portion of the Highlands Region; and

**WHEREAS**, the Petition filed with the Highlands Council contains proposed amendments to the municipal planning program, including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources located within the Township; and

**WHEREAS**, the Governing Body finds that the proposed changes to the municipal planning program are of broad and significant effect, are vital to the protection of the Highlands resources of the municipal Highlands Area, and are compelling to the interests and general welfare of the community; and

**WHEREAS**, the Governing Body recognizes that the formal municipal adoption of each component of the revised planning program must take place, in sequential order in accordance with all statutory requirements, involving public hearings and deliberation by the Environmental Commission, in some cases, the Land Use Board, and Governing Body; a process that will require an additional undetermined period of time; and

**WHEREAS**, an immediate level of protection to the resources located within the Highlands Region by adoption of revised submission requirements pertinent to Applications for Development therein is required by the Plan Conformance Guidelines; and

**WHEREAS**, the adoption of revised submission requirements pertinent to Applications for Development therein is essential to ensuring that Applicants achieve compliance with the standards and protections required under the Highland Regional Master Plan despite the interim status of the municipal Plan Conformance ordinances and regulations, this interim period not constituting an appropriate instance in which municipal approvals based upon existing municipal regulatory requirements, can appropriately be issued conditioned upon subsequent approval by the Highlands Council or the New Jersey Department of Environmental Protection (NJDEP), as may occur under usual circumstances; and

**WHEREAS**, the Governing Body finds that the adoption of such submission requirements are important not only to provide such immediate resource protections, but to ensure the proper management of Applications for Development involving lands within the Highlands Area of the municipality; and

**WHEREAS**, the Highland Council deems the immediate protections ascribed by this Ordinance to lands in the Preservation Area of the municipality, eligible for application of the provisions of the Highlands Act at N.J.S.A. 13:20-22 and N.J.S.A. 13:20-24 regarding legal representation to municipalities filing for Plan Conformance and regarding the strong presumption of validity and extraordinary deference afforded to such ordinances;

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body of the Township of Vernon that the Land Use Ordinance of the Township of Vernon be and is hereby amended to incorporate the following provisions:

## **SECTION 1.**

### **ARTICLE XIX HIGHLANDS PRESERVATION AREA APPLICATION REQUIREMENTS**

#### **§ 330-229 APPLICABILITY**

This Ordinance shall apply to any Application for Development involving lands located within (or partially within) the Township Highlands Area (as illustrated in Exhibit 1, "Township of Vernon Highlands Preservation Area") that seeks approval of a site plan, subdivision, or change in use, where approval of such Application would: a) result in the ultimate disturbance of one (1) acre or more of land; b) produce a cumulative impervious surface area of one-quarter ( $\frac{1}{4}$ ) acre, or more; c) in the case of residential development, create three or more dwelling units; or d) introduce or expand on any of the following land uses/facilities:

- A. Landfills;
- B. Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
- C. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
- D. Industrial treatment facility lagoons; or
- E. Any Major or Minor Potential Contaminant Source (as identified in Appendix A and Appendix B of this Ordinance, respectively) on lands located within 200 feet of the wellhead of any public community well or public non-community well, as these are defined at Section 4 below.

For purposes of this Ordinance, the phrases "Application for Development," "Highlands Area," "residential development," "ultimate disturbance," and "cumulative impervious surface area" shall be defined as provided at Section 4 below.

## **SECTION 2.**

#### **§ 330-230 ADMINISTRATIVE COMPLETENESS**

A. CONSISTENCY DETERMINATIONS REQUIRED. No Application for Development included in Section 330-29 above, shall be deemed complete or considered for review by the applicable Land Use Board until and unless the Applicant has obtained and provided a copy of:

- 1. A Consistency Determination from the Highlands Council indicating that the application is consistent with the Highlands Regional Master Plan; or
- 2. A Consistency Determination from the Highlands Council indicating that the application is not consistent with the Highlands Regional Master Plan, accompanied by a certification, as detailed in Section 1.B below, by the Applicant's professional(s) that the application has been revised since review by the Highlands Council to achieve consistency with the Highlands Regional Master Plan.

B. FINDINGS OF INCONSISTENCY. Where a Highlands Council Consistency Determination indicates that an Application for Development is inconsistent with the Highlands Regional Master Plan, no such application shall be deemed complete or considered for review by the applicable Township land use Board, until or unless the Applicant has obtained from the professional(s) responsible for preparation of the Applicant's plans, a certification indicating that to the best of the knowledge and abilities of such professional(s), the application has been revised to achieve consistency with the Highlands Regional Master Plan and specifically describing the revisions made to achieve such consistency.

C. CHECKLIST WAIVER. The Township may issue a waiver from the provisions of this Section where it can be established by the Applicant and can be verified by the designated representative(s) of the Township that:

1. The activity, improvement or development proposed by the subject Application for Development has not yet been formally determined to be exempt from the Highlands Act (see Section 330-231.B, below), but eligibility for an exemption has been sufficiently established by the Applicant; or
2. The activity, improvement or development proposed in the Application for Development will neither encroach upon a Highlands Resource or Highlands Resource Area, nor be of detrimental impact to any Highlands resource or Highlands Resource Area as these are identified and delineated in the Highlands Regional Master Plan. The Applicant's professional(s) responsible for preparation of the Applicant's plan shall establish compliance of the above through a formal certification specifically addressing the Highlands Resources and Resource Areas and related policies and objectives as identified in Chapter 4 of the Highlands Regional Master Plan.

D. HIGHLANDS COUNCIL CALL-UP. All municipal waivers or findings of application completeness issued pursuant to this Section shall be issued in writing, inclusive of a statement indicating the rationale for the determination. All such determinations shall be subject to Highlands Council call-up review and shall specifically include conditions requiring same consistent with this paragraph. The municipality shall within five (5) calendar days of issuance of all such determinations, provide a copy of the decision to the Applicant and to the Highlands Council. The Highlands Council call-up review period shall expire 15 calendar days following its receipt of such notice. Absent any notice to the municipality from the Highlands Council within that timeframe, the application shall be considered complete, with the date of the waiver or application completeness to be as of the date of first issuance by the municipality. Upon determining to exercise this authority for call-up review, the Highlands Council shall transmit notice to the Applicant and the municipality.

### **SECTION 3.**

#### **§ 330-231 EXCLUSIONS AND EXEMPTIONS**

A. EXCLUSIONS. The following specific improvements and related applications shall be excluded from the provisions of this Ordinance:

1. The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Ordinance, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
2. Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Ordinance, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
3. Any Agricultural or Horticultural Use or Development that would not result in either:
  - a. An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than three percent (3%) to the total land area of a Farm Management Unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in Section 4, below); or
  - b. Construction of three (3) or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).

B. EXEMPTIONS. Any activity, improvement or development project listed and demonstrated to constitute a Highlands Act exemption shall be exempt from the

provisions of this Ordinance. Formal demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Preservation Area shall consist of one of the following:

1. *State Agency Determination.* State Agency Determinations shall consist of a Highlands Applicability Determination (HAD) issued by the NJDEP indicating that the proposal qualifies as a Highlands Act Exemption.
2. *Municipal Determination.* Pursuant to a Memorandum of Understanding dated July 19, 2012 between the Highlands Water Protection and Planning Council and the New Jersey Department of Environmental Protection, municipalities that are certified by the Highlands Council may adopt an ordinance to approve Highlands Exemptions within the municipality. If the Township chooses to adopt the model ordinance, entitled "Township of Vernon Highlands Area Exemption Ordinance," any application under this Ordinance involving Highlands Act Exemptions #4, #6, #7, or #8, the applicant may request and shall be deemed to have satisfied the evidentiary requirement by obtaining a Municipal Exemption Determination issued by the Municipal Exemption Designee, provided such Determination indicates that the proposal qualifies as a Highlands Act Exemption. The applicant may rely upon the findings of a Municipal Exemption Determination to the same extent and with the same protections as would apply in the case of a HAD issued by the NJDEP.

#### **SECTION 4.**

##### **§ 330-232 DEFINITIONS**

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**Agricultural or Horticultural Development** – means construction for the purposes of supporting common farm site activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

**Agricultural or Horticultural Use** – means the use of land for common farm site activities, including but not limited to, the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease, and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

**Agricultural Impervious Cover** – means agricultural or horticultural buildings, structures or facilities with or without flooring, residential buildings and paved areas, but not meaning temporary coverings.

**Applicant** – means a developer submitting an Application for Development.

**Application for Development** – means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

**Disturbance** – means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

**Disturbance, Ultimate** – means the total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or

subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

**Farm Management Unit** – means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

**Highlands Council** – means the New Jersey Highlands Water Protection and Planning Council.

**Highlands Act** – means the Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

**Highlands Applicability Determination (HAD)** – means the determination made by the NJDEP of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Areawide Water Quality Management Plan.

**Highlands Area** – means that portion of the municipality for which the land use planning and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands Regional Master Plan.

**Highlands Region** – means all that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

**Impervious Surface** – means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

**Impervious Surfaces, Cumulative** – means the total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

**Major Potential Contaminant Sources (PCS)** – means land uses and activities determined by the Highlands Council to pose a major risk of ground water contamination (see Appendix A).

**Minor Potential Contaminant Sources (PCS)** – means land uses and activities determined by the Highlands Council to pose a minor risk of ground water contamination (see Appendix B).

**Municipal Land Use Law (MLUL)** – means the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

**NJDEP** – New Jersey Department of Environmental Protection

**NJDEP Preservation Area Rules** – means the regulations established by the NJDEP to implement requirements of the Highlands Act, titled “Highlands Water Protection and Planning Act Rules,” and codified at N.J.A.C. 7:38-1 et seq.

**Planning Area** – means lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

**Plan Conformance** – means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Guidelines.



**Preservation Area** – means that portion of the Highlands Region so designated by subsection b. of section 7 of the Highlands Act.

**Public Community Well** – A well that provides water to a public water system serving at least 15 service connections used by year-round residents or regularly serving at least 25 year-round residents.

**Public Non-Community Well** – A well that is not a public community well and that provides water to a public water system regularly serving at least 25 individuals for at least 60 days in any given calendar year.

**Regional Master Plan (RMP)** – means the Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

**Solar Panel** – means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array. (As defined by the Highlands Act, N.J.S.A. 13:20-1 *et seq.*, as amended.)

**Structure** – means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

## **SECTION 5**

If any portion, paragraph, clause, sentence or phrase of this Ordinance is determined to be invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining portions of this Ordinance.

## **SECTION 6**

All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency only.

## **SECTION 7**

This Ordinance shall take effect after final passage and publication in the manner prescribed by law.

## **APPENDIX A. MAJOR POTENTIAL CONTAMINANT SOURCES**

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Major Potential Contaminant Sources include those listed below.

1. Underground fuel and chemical storage and oil tanks regulated by NJDEP under provisions of the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 *et seq.*).
2. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
3. Automotive service center (repair & maintenance).
4. Dry cleaning processing facility.
5. Road salt storage facility.
6. Cemetery.
7. Highway maintenance yard.
8. Truck, bus, locomotive maintenance yard.
9. Site for storage and maintenance of heavy construction equipment and materials.
10. Site for storage and maintenance of equipment and materials for landscaping, excluding household storage and maintenance of such equipment.
11. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at NJAC 2:91.
12. Quarrying and/or mining facility.

13. Asphalt and/or concrete manufacturing facility.
14. Junkyard/auto recycling and scrap metal facility.
15. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).

**APPENDIX B. MINOR POTENTIAL CONTAMINANT SOURCES**

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Minor Potential Contaminant Sources include the following:

1. Underground storage of hazardous substance or waste of less than 50 gallons.
2. Underground heating oil storage tank with a capacity of less than 2,000 gallons.
3. Sewage treatment facility regulated by a NJPDES permit granted under NJAC 7:14A.
4. Industrial waste line.
5. Septic system disposal field.
6. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C 7:14A *et seq.*
7. Stormwater retention-recharge basin on an industrial property receiving runoff from surfaces other than roof areas.
8. Dry well on an industrial property receiving runoff from surfaces other than roof areas.
9. Waste oil collection, storage and recycling facility.
10. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.
11. Above-ground storage of hazardous substance or waste in quantities of less than 2,000 gallons.
12. Livestock operation containing 8 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] or those receiving 142 or more tons of animal waste per year as defined by the NJ Department of Agriculture pursuant to its Criteria and Standards for Animal Waste Management, at NJAC 2:91.

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**1<sup>st</sup> Reading of Ordinance #13-11 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-11 on 1<sup>st</sup> reading by title only.

MOTION: Brian Lynch

SECOND: Patrick Rizzuto

A roll call vote was taken on Ordinance #13-11:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

Ordinance #13-11 was approved on 1<sup>st</sup> reading.

**ORDINANCE #13-11**

**AN ORDINANCE OF THE TOWNSHIP OF VERNON, COUNTY OF SUSSEX,  
STATE OF NEW JERSEY TO AMEND CHAPTER 330,  
LAND DEVELOPMENT OF THE CODE OF THE TOWNSHIP OF VERNON**

**BE IT ORDAINED** by the Council of the Township of Vernon, Sussex County, New Jersey, as follows:

**WHEREAS**, the Vernon Township Land Use Board was requested to research the modification of an existing ordinance concerning Performance and Maintenance Guarantees for developments that require final site plan approvals; and

**WHEREAS**, the Land Use Board Engineer explained that performance and maintenance guarantees may be required for development projects, but no specific guidelines exist to explain what type of projects should be required to furnish a guarantee for the purpose of assuring the installation and maintenance of on-tract improvements; and

**WHEREAS**, the Land Use Board Engineer proposed to modify the Section 330-57 of the Township Code to specify that final major subdivisions that include public improvements and site plans which are deemed major development projects be required to furnish guarantees to assure the installation and maintenance of on-tract improvements. A major development project would be defined as a development project that has a disturbance area of 1 acre or more; and

**WHEREAS**, on February 9, 2011, by means of a motion, the Land Use Board favorably approved the recommendation to the Township Council to amend the Township Code Article II Section 330-5 and Article VI Section 330-57.

**BE IT ORDAINED** by the Mayor and Council of the Township of Vernon that Chapter 330, Land Development be amended as follows:

**SECTION 1: Chapter 330, § 330-5 – Definitions**, be amended to include the following:

**MAJOR DEVELOPMENT** – Any development that provides for ultimately disturbing one or more acres of land. Disturbance includes the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation.

**SECTION 2: Chapter 330, § 330-57 – Guarantees required: surety; release** be deleted and replaced with **Chapter 330, § 330-57 – Performance and Maintenance Guarantees** as follows:

**Chapter 330, § 330-57 – Performance and Maintenance Guarantees**

- A. Before recording of final subdivision plats or as a condition of a final site plan approval for a major development project, the governing body shall require and accept guarantees in accordance with the standards of this chapter for the purpose of assuring the installation and maintenance of on-tract improvements.
- B. The furnishing of a performance guarantee shall be required for all subdivisions which include public improvements or major development projects which will have a disturbance area of one (1) acre or more. The performance guarantee shall be in favor of the Township in an amount not to exceed 120% of the cost of installation of improvements which the approving authority may deem necessary or appropriate. Said improvements shall include but not be limited to streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, as shown on the final map and required by the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space and, in the case of site plans only, other on-site improvements and landscaping. The itemized cost estimate for the improvements covered by the performance guarantee shall be prepared by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4.
- C. A maintenance guarantee shall be posted with the governing body for improvements constructed as part of subdivision or development projects which are deemed public improvements or are in the interest of the governing body to assure proper post-construction maintenance. Said maintenance guarantee shall be for a period not to exceed two years after final acceptance of the improvement, in an amount not to exceed 15% of the cost of the improvement, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4.
- D. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the Township for such utilities or improvements.

- E. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 as of the time of the passage of the resolution.
- F. If the required improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Township for the reasonable cost of the improvements not completed or corrected and the Township may, either prior to or after receipt of the proceeds thereof, complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.
- G. Inspection and list of uncompleted or unsatisfactory improvements.
- (1) Upon substantial completion of all required street improvements (except for the roadway surface course paving) and appurtenant utility improvements, the obligor may request of the governing body in writing (by certified mail addressed in care of the Township Clerk) that the Township Engineer prepare an updated itemized cost estimate and that the performance guarantee be appended to include only the uncompleted or unsatisfactory completed improvements that exist at the time of the request. If such a request is made, the obligor shall send a copy of the request to the Township Engineer. The request shall indicate which improvements have been completed and which improvements remain uncompleted in the judgment of the obligor. Thereupon the Township Engineer shall inspect all improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.
  - (2) The list prepared by the Township Engineer shall state, in detail, with respect to each improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement. The report prepared by the Township Engineer shall identify each improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee that has been posted.
- H. Approval or rejection of improvements.
- (1) The governing body, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of these improvements upon the establishment in the resolution of cause for rejection. The governing body shall also approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Township Engineer. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the performance guarantee posted may be retained to ensure completion of all acceptability of all improvements.
  - (2) If the Township Engineer fails to send or provide the list and report as requested by the obligor within 45 days from receipt of the request, the obligor may apply to court in a summary manner for an order compelling the Township Engineer to provide the list and report within a stated time, and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party. If the governing body fails to approve or reject the improvements

determined by the Township Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Township Engineer's list and report, the obligor may apply to the court, in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to Subsection A of this section; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

- (3) In the event that the obligor has made a cash deposit with the Township or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee.
- I. If any portion of the required improvements is rejected, the approving authority may require the obligor to complete or correct such improvements, and, upon completion or correction, the same procedure of notification, as set forth in this section, shall be followed.
- J. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Township Engineer.
- K. The obligor shall reimburse the Township for all reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; provided that the Township may require of the developer a deposit for the inspection fees in an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of improvements, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4. For those developments for which the reasonably anticipated fees are less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited by a developer shall be 50% of the reasonably anticipated fees. When the balance on deposit drops to 10% of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall deposit the remaining 50% of the anticipated inspection fees. For those developments for which the reasonably anticipated fees are \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited by a developer shall be 25% of the reasonably anticipated fees. When the balance on deposit drops to 10% of the reasonably anticipated fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall make additional deposits of 25% of the reasonably anticipated fees. The Township Engineer shall not perform any inspection if sufficient funds to pay for those inspections are not on deposit.
- L. In the event that final approval is by stages or sections of development, the provisions of this section shall be applied by stage or section.
- M. To the extent that any of the improvements have been dedicated to the Township on the subdivision plat or site plan, the governing body shall be deemed, upon the release of any performance guarantee required pursuant to Subsection A of this section, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the approving authority, provided that such improvements have been inspected and have received final approval by the Township Engineer.

### **SECTION 3: Effective Date**

This ordinance shall take effect after publication and passage according to law.

**SECTION 4: Severability**

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

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**1<sup>st</sup> Reading of Ordinance #13-12 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-12 on 1<sup>st</sup> reading by title only:

Council Member Lynch moved to table Ordinance #13-12.

SECOND: Dick Wetzel

A roll call vote was taken to table Ordinance #13-12:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel,

NAYS: Patrick Rizzuto

Ordinance #13-12 was tabled.

**AN ORDINANCE TO AMEND ARTICLE XXI “SOLAR ZONING AND STANDARDS”,  
BEING SECTIONS 330-260 AND 330-261 OF THE CODE OF THE TOWNSHIP OF  
VERNON TO REVISE SOLAR ZONING AND STANDARDS**

**ORDINANCE #13-12**

**BE IT ORDAINED** by the Township Council of the Township of Vernon that Article XXI entitled “Solar Zoning and Standards”, of the Land Development Code shall be and is hereby amended as follows:

**Section 1.** Section 330-260 entitled “Solar: Zoning” and Section 330-261 entitled “Solar: Standards” are hereby deleted in their entirety and the following shall be inserted in their place:

§330-260. Solar: Zoning and Standards.

A. Solar or photovoltaic energy facilities and structures are not permitted uses in any zone within Vernon Township. The Land Use Board shall approve a site plan for a minor solar or photovoltaic energy facility or structure and a major solar or photovoltaic energy facility or structure which shall meet site plan review standards and requirements as set forth in Article VI “Subdivision and Site Plan Review and Approval, of this Chapter” with the following exception:

1. A roof-mounted solar system shall be a permitted accessory use in all zones. A roof-mounted solar system and all necessary equipment shall not extend more than 12 inches beyond the edge of the roofline or 12 inches above the highest point of the roof surface or structure. Flat roofs shall be exempt from the height requirement. However, solar panels on a flat roof shall not extend more than five (5) feet above the roofline.

B. Ground-mounted minor solar or photovoltaic energy facilities or structures shall be allowed only in accordance with the following requirements:

1. Minor solar facilities shall have a setback requirement consistent with building regulations for accessory structures. Ground arrays which are accessory to an existing structure shall not be permitted in any front yard. These systems shall not exceed 15 feet in height when installed as ground arrays. Cadmium telluride solar panels shall not be permitted due to the highly carcinogenic nature of cadmium and the possible detrimental effects on children, wildlife, water supplies and the environment. Screening of the minor facilities shall be deemed necessary, in the Board’s discretion, to minimize impacts on adjacent parcels.

C. Major solar or photovoltaic energy facilities or structures shall be allowed only in accordance with the following requirements:

1. Minimum lot size: 20 acres. Preliminary and final site plan approval shall be obtained prior to obtaining a zoning permit. In the LI District, approval for major solar or photovoltaic energy facilities or structures on lots smaller than 20 acres shall be at the discretion of the Land Use Board. Solar facilities for non-preserved farmland shall be a maximum of 10 acres, have a 2 Megawatt (MW) limit and have a 1:5 ratio, i.e. one acre of the farm in solar use for every 5 acres of the farmland assessed area in order to continue to maintain Right to Farm protection.
2. All major solar or photovoltaic energy facilities or structure installations shall comply with all applicable State and Federal laws and regulations.
3. No soil shall be removed from any site upon which major solar or photovoltaic energy facilities and structures are constructed unless approved as per the Vernon Township Soil Removal Ordinance (Chapter 483). Grading within Prime Farmland and Farmlands of Statewide Significance shall be limited to only that necessary to construct access roads, berms for screening and for construction of inverter and switching equipment pads.
4. Except pursuant to a permit issued by the New Jersey Department of Environmental Protection (NJDEP), no portion of major solar or photovoltaic energy facilities and structures shall occupy areas of land designated and regulated by NJDEP as floodplains, flood hazard areas, wetlands, wetland transition areas or riparian corridors. An applicability determination from the NJDEP shall be provided to document the presence and/or absence of these regulated areas. Buffer maintenance shall be consistent with the Municipal, State and Federal regulations. Any Highlands Preservation Area permits must be obtained prior to any work being completed on the site.
5. Major solar or photovoltaic energy facilities and structures shall not occupy any area beyond the required principal building setbacks for the zone in which the facility is to be located, exclusive of poles for interconnection of the facility to the electrical grid. The minimum vegetated visual and security buffer width for major solar or photovoltaic energy facilities or structures shall be 50 feet and shall be provided in all zoning districts. The minimum principal setbacks shall be increased to 50 feet in any zoning district where the principal building setback is less than 50 feet. Otherwise minimum setbacks for principal structures within the zoning district shall apply. The Board may reduce setback requirements in the Light Industrial District if the Board finds that such a reduction will not impact adjacent parcels.
6. Major solar or photovoltaic energy facilities and structures shall be visibly screened from the public traveled way (public roads, trails, navigable waterways, scenic highways and by-ways), open space, preserved farmland, publicly owned properties and historic resources, including sites and buildings listed or eligible for listing on the State and National Registers of Historic Places.
  - a. To the extent achievable, solar or photovoltaic energy facilities and structures shall be sited using the natural topography to screen the energy project from public view and the view of any adjoining residences.
  - b. If the property is adjacent and contiguous to a permanently preserved farm, open space and/or public access easements it shall buffer the farm, open space and/or easements from view.

- c. The following minimum screening requirements shall be met. However, notwithstanding the minimum requirements, the applicant shall demonstrate, to the satisfaction of the Land Use Board that the proposed screening provides a visual screen of the facility from neighboring properties. Additional screening may be needed to meet this requirement as determined by the Board.
- (1) Screening shall consist of a combination of native plantings, to the extent possible. Alternately, an earthen berm may be employed if existing vegetated screening and native plantings will not suffice to provide the necessary buffer and maintain the rural character of the Township. The need for and location of vegetative screens includes the identification of appropriate species and varieties of vegetation to ensure that there is adequate visual screening throughout the year.
  - (2) The landscaping plantings shall be designed for enhancing the quality of the soil and the ability of the land to absorb rainwater.
  - (3) Landscaping shall be limited to the extent possible of native species of deciduous and coniferous trees and shrubs that are indigenous to the area, as listed in the Natural Resource Inventory, and shall not include invasive species as listed in Natural Resource Inventory of Vernon Township. Such plantings shall be depicted on a plan prepared by a licensed professional. The applicant shall rely upon existing vegetation, including existing hedgerows or windbreaks that provide screening, to the maximum extent practical. The appropriate height or caliper of the vegetation to be planted shall ensure that there is a 75 percent screening of the solar energy generation facilities within 5 years of completing the installation of the facilities. A photo simulated exhibit depicting screening at key locations at the projected 5-year period shall be required.
- d. A barrier shall be installed behind the required screen which shall:
- (1) Secure the facility at all times.
  - (2) Restrict access to all electrical wiring that may be readily accessible.
  - (3) All electrical control equipment shall be labeled and secured to prevent unauthorized access.
  - (4) Conform to the Uniform Construction Code and other applicable standards.
  - (5) One or more access gates to the facility shall be provided. Each access gate shall include a sign identifying the property owner as well as responsible parties for operation of the major solar and photovoltaic energy facilities and structures; for maintenance of the facility; and for maintenance of the visual screen, landscaping and security fence. Contact information for all of the above responsible parties shall be provided on each access gate sign.
  - (6) No signs shall be posted on a solar facility or any associated building, structures, or fencing with the exception of access gate signs, appropriate warning signs, and manufacturer's or installer's identification.
  - (7) All transformers and high voltage equipment shall be situated within a compound, which shall be enclosed within a security fence and access gate, which shall remain locked. If appropriate, the



entire facility shall be enclosed within a security fence and access gate.

(8) The height of security fences and access gates shall not exceed 8 feet. Barbed wire fences are not permitted except in cases where it is demonstrated to the satisfaction of the Board of jurisdiction that barbed wire fencing is required for security purposes. In such cases the total height of the fence and access gates including barbed wire shall not exceed 8 feet. Approval of barbed wire fencing for solar facilities is at the discretion of the Board of jurisdiction.

7. A Maintenance Plan shall be submitted by the applicant for the continuing maintenance of all required plantings, including a schedule of specific maintenance activities to be conducted. A Maintenance Plan narrative shall also be included on the site plans in note form. Maintenance of the required landscaping and fencing shall be a continuing condition of any approval that may be granted. A cost estimate for required plantings shall be presented as part of any application and a 5-year maintenance bond approved by the Township Engineer, which posts a minimum of 5 percent of total landscaping costs, shall be a condition of approval. The Maintenance Plan shall be environmentally responsible.
8. All ground areas occupied by a major solar or photovoltaic energy facility or structure installation that are not utilized for access to operate and maintain the installation shall be planted and maintained with shade tolerant grasses for the purpose of soil erosion control and soil stabilization:
  - a. A seed mixture of native, non-invasive shade tolerant grasses shall be utilized and specified in a landscaping plan that shall be provided.
  - b. If it can be demonstrated by the applicant that an alternative vegetative ground cover consisting of a seed mix of native, non-invasive plant species and non-native, non-invasive shade tolerant species shall be accepted for soil erosion control and soil stabilization, and the alternative can be better sustained over the life of the facility, the reviewing Board may approve such an alternative to the requirement for native, non-invasive shade-tolerant grasses or mix of grasses.
  - c. Roadways within the site shall not be constructed of impervious materials in order to minimize the amount of soil compaction, except that driveways into the site shall meet the Township standards for driveway entrances from public roadways. Internal roadways shall be constructed to the minimal extent possible. Roadways within the occupied area shall be designed as grassed roadways to minimize the extent of soil disturbance, water runoff and soil compaction. The use of geotextile fabrics and gravel placed on the surface of the existing soil for the construction of temporary roadways during the construction of the solar energy generation facilities is permitted provided that the geotextile fabrics and gravel are removed once the solar energy generation facilities are in operation.
  - d. The bed and banks of existing drainage ditches, brooks, streams and drainage swales shall be maintained in their natural condition, except that where soil erosion is evident in these features due to a lack of suitable stabilized vegetation. The Board may require such areas to be planted and stabilized in accordance with the recommendations found in Chapter 8, Restoration Design, of the publication entitled Stream Corridor Restoration, Principles, Processes and Practices, 10/98 Published Version. Revised 8/2001, prepared by the Natural Resource Conservation Service and available at [www.nrcs.usda.gov/technical/stream\\_restoration/newtofc.htm](http://www.nrcs.usda.gov/technical/stream_restoration/newtofc.htm).

- e. The components of this plan may be combined with the requirements of the Grading and Drainage Plan. See Subsection A(7), below.
9. The required landscaping plan shall include the provision of adequate and appropriate drainage features, which shall be designed such that site grading and construction maximizes the natural drainage patterns of stormwater originating within the property boundaries and beyond property boundaries. If grading is proposed, then a grading and drainage plan shall be submitted, which shall demonstrate that the project is in compliance with the Township's Stormwater Ordinance (Chapter 330, Article XII) and other applicable State standards.
- a. A grading and drainage plan, including a soil erosion, a soil stabilization and a soil grading plan shall be submitted under the seal of a licensed professional engineer prior to any permits being issued. The plan shall adequately demonstrate to the Board of jurisdiction's engineer that no stormwater runoff or natural water shall be diverted as to overload existing drainage systems or create flooding. Such plan shall also address the need for additional drainage structures on other private properties or public lands.
  - b. The grading and drainage plan shall show, among other things:
    - (1) All existing and proposed natural and artificial drainage courses and other features for the control of drainage, erosion, and water generally;
    - (2) The calculated volume of water runoff from the slope and from the lot in question, as proposed to be improved; the existence of all natural and artificial drainage courses and facilities within 500 feet of the lot, which are or will be used to carry or contain the runoff from the slope and the lot; and
    - (3) The effect of any increased water runoff on all adjacent properties and any other property which will be materially affected by increased water runoff.
  - c. Calculations shall be provided to adequately demonstrate that existing preconstruction stormwater drainage velocities shall not be exceeded in the post development condition.
  - d. The use of stone shall not be permitted for soil erosion control and soil stabilization unless as part of an overall plan approved by the Board of jurisdiction.
10. In addition to those items required for an application to be deemed complete, a site plan application shall depict the following:
- a. Location, dimensions, and types of existing structures on the property.
  - b. Location of proposed and existing overhead and underground utility and transmission lines.
  - c. Location of any proposed or existing substations, inverters or transformers.
  - d. Details of solar panels and arrays. Cadmium telluride solar panels shall not be permitted due to the highly carcinogenic nature of cadmium and the possible detrimental effects on children, wildlife, water supplies and the environment.
  - e. Details of all inverters and equipment on the site including size dimensions and noise levels during use.

- f. Description of how the energy generated by the facility will be connected to the electrical distribution or transmission system or the electrical system of the intended energy user. This description shall also address the ability to disconnect the system in the event of an emergency or maintenance.
  - g. Description of shielding of any electric equipment to prevent interference of radio or television reception at the property line.
  - h. Description of any necessary upgrades or modifications to existing substations or the necessity for a new substation.
  - i. For projects over 2MW, the location and elevations of all transmission lines, support structures and attachments to a substation(s).
  - j. Location and condition of existing hedgerows and vegetated windbreaks.
  - k. A description of any lighting and its impact on neighboring residences and properties.
  - l. A construction plan to include, but not limited to mounting techniques and a description of on-site construction.
  - m. A description of glare on neighboring properties and residences.
  - n. An as-built plan shall be provided following completion of the project as a condition of approval for the site plan.
11. Permitted height – the maximum permitted vertical height above ground for solar and photovoltaic energy panels shall be 15 feet.
12. The use of lead-acid batteries shall not be permitted in major solar energy systems and facilities except as standby power supplies for control systems. Cadmium telluride solar panels shall not be permitted due to the highly carcinogenic nature of cadmium and the possible detrimental effects on children, wildlife, water supplies and the environment.
13. Solar energy generation facilities shall be designed to comply with either of the following standards for sound emission:
- a. The sound level shall not exceed 40 dBA when measured at any point on the property line of the solar facility; or
  - b. The sound level shall not exceed the ambient sound levels measured at locations at the property line of the solar facility that reasonably represent current or potential off-site sensitive receptors in accordance with the following requirements:
    - (1) Ambient sound level measurements shall be made with an octave band sound level meter during daylight hours for periods of at least 1/2 hour and on 3 separate occasions, a minimum of 4 hours apart, representing morning, mid-day and evening, at least one of which shall be during a non-rush hour. The meter shall be set for slow response with a one-second sampling interval; and
    - (2) The data reported for each occasion shall be the octave band values (31.5 Hz to 8,000 Hz) from the one second sample that represents the L90 or Lmin broadband value (“unweighted” or “flat” response, e.g., dBZ).
14. Any disturbance of wooded or forested areas shall be in compliance with the Vernon Tree Protection Ordinance (Chapter 330, Article XX).

15. All applications for a major solar facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of solar energy systems. The decommissioning plan shall be submitted in accordance with the requirements of this section. The decommissioning plan shall also be documented on the site plans in note form. Prior to removal of solar energy systems a demolition permit for removal activities shall be obtained from the Vernon Township Construction Official. Prior to issuance of a demolition permit, the owner or operator of the facility shall post a performance bond to ensure removal of the facility or systems in accordance with the decommissioning plan. Disconnection of solar energy systems shall be supervised by an electrician licensed in the State of New Jersey. The Zoning Official shall be responsible for compliance with the decommissioning plan.
- a. Solar and photovoltaic energy facilities and structures which have not been in active and continuous service for a period of 18 months shall be removed from the property to a place of safe and legal disposal in accordance with a decommissioning plan. In order for the facility to maintain its status as an operating solar farm, an annual report shall be submitted to the Township Zoning Official stating the amount of electricity generated by the facility in the previous year and the number of days the facility was operational.
- b. If the applicant ceases operation of the project for 18 months; or begins, but does not complete, construction of the project within 18 months of start of construction, the applicant shall restore the site according to a decommissioning plan prepared by the applicant and approved by the Board. The applicant shall submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without significant delay, including but not limited to the following:
- (1) Removal of aboveground and underground equipment, structures and foundations. The plan shall describe the means by which all equipment and components of the system(s) shall be disposed of in an environmentally responsible manner and in accordance with prevailing Federal, State and local regulations.
  - (2) Restoration of the surface grade and soil after removal of aboveground structures and equipment.
  - (3) Revegetation of restored soil areas with native seed mixes, plant species suitable to the area, which shall not include any invasive species. In farmland areas, the revegetation component of the decommissioning plan may include provisions to resume agricultural use of the site.
  - (4) The plan must provide for the protection of public health and safety and for protection of the environment and natural resources during site restoration. The decommissioning of all solar energy generation facilities shall be done in accordance with a conservation plan designed to address the impacts of the decommissioning process.
  - (5) The plan must include a timeline for completion of site restoration work.
- c. A cost estimate shall be provided for the cost of fully implementing the decommissioning plan prior to the issuance of a demolition permit. The cost estimate shall be subject to review and approval by the Township Engineer.

- d. Before beginning any decommissioning activities, the applicant must submit a performance bond in a form and amount satisfactory to the Township Attorney, which shall be based upon an estimate approved by the Township Engineer, assuring the availability of adequate funds to remove the solar infrastructure and restore the site to a useful, nonhazardous condition in accordance with the decommissioning plan.
- e. Upon cessation of activity for a cumulative period of 18 months of construction or installation activities of an approved major solar or photovoltaic energy system, the Township may notify the owner and/or the operator of the facility to complete construction and installation of the facility. If the owner and/or operator fail to complete construction and installation activities within 180 additional days, the Township may order the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator shall substantially complete all activities in the decommissioning plan.
- f. Upon cessation of activity of a fully constructed major solar or photovoltaic energy system for a cumulative period of one year, the Township may notify the owner and/or the operator of the facility to implement the decommissioning plan. The Township Zoning Official shall be responsible for enforcement. Within 180 days of notice being served, the owner and/or operator shall either resume energy generation to at least 80 percent capacity of the facility at cessation of activity, or fully implement the decommissioning plan. If, within 180 days of receipt of notice, the owner and/or operator of the facility or system fail to resume energy generation to at least 80 percent of capacity of the facility or system as established at the time of approval, the Township may order the owner and/or operator of the facility to implement the decommissioning plan.
- g. If the operator fails to fully implement the decommissioning plan subject to the procedures and timelines set forth in paragraphs (e) and (f) above, or is otherwise unable to restore the site as required within 180 days of the Township's service of notice in accordance with this section, the Township may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may in accordance with the law recover all expenses incurred for such activities from the defaulted operator and/or the property owner. The costs incurred by the municipality shall be assessed against the property, shall become a lien and tax upon the said property, shall be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officers and in the same manner as other taxes.

**Section 2.** Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason by any Court of competent jurisdiction, such provision(s) shall be deemed severable and the remaining portions of this Ordinance shall remain in full force and effect.

**Section 3.** All ordinances or parts of ordinances or resolutions that are inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

**Section 4.** The Township Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. The Township Clerk is further directed to refer this Ordinance to the Township Land Use Board, pursuant to N.J.S.A. 40:55D-64. Upon the adoption of this ordinance, after public hearing, the Township Clerk is further directed to publish notice of the passage and to file a copy of this ordinance, as finally adopted, with the Sussex County Planning Board, as required by N.J.S.A. 40:55D-16.

**Section 5.** This ordinance shall take effect after publication and passage according to law.

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**ORDINANCES – PUBLIC HEARING/2<sup>ND</sup> HEARING**

**2<sup>ND</sup> Reading of Ordinance #13-05 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-05 on 2<sup>nd</sup> reading by title only.

MOTION: Brian Lynch

SECOND: Dick Wetzel

Council Member Kadish recused himself and stepped down from the dais. He advised that the 2<sup>nd</sup> property on the listing is for the residence only.

**Open to Public Comments on Ordinance #13-05 only:**

MOTION: Dick Wetzel

SECOND: Brian Lynch

All were in favor.

No one wished to speak at this time.

**Closed to Public Comments on Ordinance #13-05**

MOTION: Brian Lynch

SECOND: Dick Wetzel

**A roll call vote was taken on Ordinance #13-05:**

AYES: Eddie Dunn, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

ABSENT: Daniel Kadish

Ordinance #13-05 was adopted.

**ORDINANCE #13-05**

**AN ORDINANCE GRANTING MUNICIPAL HISTORIC DESIGNATION TO CERTAIN PROPERTIES IN THE TOWNSHIP OF VERNON**

**WHEREAS**, the Historic Preservation Commission has studied the following properties for inclusion in the Historic Element of the Master Plan pursuant to the Township Administrative Code §330-146 et seq and has recommended the properties to the Land Use Board by Resolution as required;

- |                          |             |          |
|--------------------------|-------------|----------|
| 1. Glenwood Cemetery     | Block 31    | Lot 8.01 |
| 2. Edsall Farm           | Block 32    | Lot 7    |
| 3. Edsall Slave Cemetery | Block 33.01 | Lot 1    |
| 4. McCamly Cemetery      | Block 42    | Lot 3.01 |
| 5. Cherry Ridge Cemetery | Block 210   | Lot 1    |
| 6. Canistear Cemetery    | Block 203   | Lot 1    |

**WHEREAS**, after public review and discussion, the Land Use Board, by resolution at the regular meetings of February 8, 2012, February 27, 2013, and March 13, 2013, approved the recommendation to the Township Council that the above named properties be added as Historic Landmarks within the Township of Vernon.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Vernon, County of Sussex and State of New Jersey as follows:

1. The properties as designated above are hereby granted Municipal Historic Designation.
2. A copy of this Ordinance shall be served upon the owners of the properties by certified mail return receipt requested and regular mail after the first reading and prior to final adoption.

3. The Township Clerk is hereby directed to give notice at least ten days prior to the adoption of this Ordinance to the County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63 (if required). Upon the adoption of this ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Sussex County Planning Board as required by N.J.S.A. 40:55D-16. The Clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Assessor as required by N.J.S.A. 40:49-2.1.

4. All ordinances or parts of ordinances or resolutions that are in conflict with the provisions of this Ordinance are repealed to the extent necessary.

5. If any article, section, subsection, term or condition of this Ordinance is declared invalid or illegal for any reason, the balance of the Ordinance shall be deemed severable and shall remain in full force and effect.

6. This Ordinance shall take effect after publication and passage according to law.

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**2<sup>ND</sup> Reading of Ordinance #13-07 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-07 on 2<sup>nd</sup> reading by title only.

MOTION: Brian Lynch

SECOND: Dick Wetzel

**Open to Public Comments on Ordinance #13-07 only:**

MOTION: Dick Wetzel

SECOND: Brian Lynch

All were in favor.

No one wished to speak at this time.

**Closed to Public Comments on Ordinance #13-07**

MOTION: Brian Lynch

SECOND: Dick Wetzel

**A roll call vote was taken on Ordinance #13-07:**

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

Ordinance #13-07 was adopted.

**ORDINANCE #13-07**

**AN ORDINANCE OF THE TOWNSHIP OF VERNON,  
COUNTY OF SUSSEX, STATE OF NEW JERSEY,  
AUTHORIZING THE SALE OF CERTAIN PROPERTY  
OWNED BY THE TOWNSHIP AND NOT REQUIRED FOR  
PUBLIC PURPOSES AND MORE COMMONLY KNOWN AS  
10 BARBERRY STREET, BLOCK 90.05, LOT 5**

**WHEREAS**, the Local Lands and Buildings Law, N.J.S.A. 40A:12-13 authorizes the sale by municipalities of any real property, capital improvements or personal property, or interest therein, not needed for public use by open public sale at auction to the highest bidder after the required newspaper advertisements; and

**WHEREAS**, the Township of Vernon is the owner of certain real property known as 10 Barberry Street, Block 90.05, Lot 5; and

**WHEREAS**, said property is not needed for public use, and the Township Council has determined that it is in the best interest of the Township to sell the property; and

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Vernon, County of Sussex, State of New Jersey, that:

1. The property known as 10 Barberry Street, Block 90.05, Lot 5 shall be offered for sale by open public sale at auction to the highest bidder, pursuant to N.J.S.A. 40A:12-13. Said auction shall be conducted on June 10, 2013, at 7:30 p.m. at the Municipal Building, 21 Church Street, Vernon, New Jersey.

2. This property shall be sold subject to the following terms and conditions:

(a) After legal advertisement of this Ordinance the sale shall be made to the highest bidder at public auction.

(b) The Township does not warrant or certify title to the property and in no event shall the Township of Vernon be liable for any damages to the purchaser-successful bidder if title is found unmarketable for any reason. The purchaser-successful bidder waives any and all right in damages or by way of damages.

(c) Acceptance of the highest bid shall constitute a binding agreement of sale and the purchaser shall be deemed to agree to comply with the terms and conditions of the sale herein contained.

(d) Upon acceptance of the bid, the purchaser shall be required to pay ten percent (10%) of the bid plus \$450.00 to cover the Township's transaction costs, in cash or by check.

(e) A Quit Claim Deed without covenants will be delivered at the office of the Township Clerk within thirty (30) days, at which time and place the balance of the purchase price shall be required to be paid in cash or by bank check. The Mayor and Clerk are hereby authorized to execute said Deed.

(f) The Deed of Conveyance will be subject to all matters of record, which may affect title herein, what an accurate survey may reveal, the Ordinances of the Township of Vernon and reserving an easement for all natural or constructed drainage systems, waterways and water easements on the premises, if any, and the continued right of maintenance and flow.

(g) The property will be sold subject to 2013 taxes, pro-rated from the date of delivery of the Deed under subsection 2(f) above and all municipal assessments.

3. Where all bids have been rejected a private sale is hereby authorized pursuant to N.J.S.A. 40A:12-13(b).

**Effective Date.**

This Ordinance shall take effect upon final passage and publication as provided by law.

**CONTIGUOUS PROPERTY OWNERS**

**Block 90.05, Lot 3 & 4**

Helene Steffen  
[REDACTED]  
[REDACTED]

**Block 90.05, Lot 6**

Thomas Nye  
[REDACTED]  
[REDACTED]

**Block 90.05 Lot 9, 10 & 11**

Kenneth J. Pier and  
Linda J. Pier  
[REDACTED]  
[REDACTED]

**Block 90.05, Lot 12 & 13**

Mihoko Alford  
[REDACTED]  
[REDACTED]



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**2<sup>ND</sup> Reading of Ordinance #13-08 by Title Only**

Council President Rizzuto asked for a motion to approve Ordinance #13-08 on 2<sup>nd</sup> reading by title only.

MOTION: Dick Wetzel

SECOND: Brian Lynch

**Open to Public Comments on Ordinance #13-08 only:**

MOTION: Daniel Kadish

SECOND: Brian Lynch

All were in favor.

No one wished to speak at this time.

**Closed to Public Comments on Ordinance #13-08**

MOTION: Daniel Kadish

SECOND: Brian Lynch

**A roll call vote was taken on Ordinance #13-08:**

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

NAYS: None

Ordinance #13-08 was adopted.

**ORDINANCE #13-08**

**AN ORDINANCE OF THE TOWNSHIP OF VERNON,  
COUNTY OF SUSSEX, STATE OF NEW JERSEY,  
AUTHORIZING THE SALE OF CERTAIN PROPERTY  
OWNED BY THE TOWNSHIP AND NOT REQUIRED FOR  
PUBLIC PURPOSES AND MORE COMMONLY KNOWN AS  
8 CLOVER LANE/2 GILBERT DRIVE, BLOCK 83.08, LOT 2**

**WHEREAS**, the Local Lands and Buildings Law, N.J.S.A. 40A:12-13 authorizes the sale by municipalities of any real property, capital improvements or personal property, or interest therein, not needed for public use by open public sale at auction to the highest bidder after the required newspaper advertisements; and

**WHEREAS**, the Township of Vernon is the owner of certain real property known as 8 Clover Lane/2 Gilbert Drive, Block 83.08, Lot 2; and

**WHEREAS**, said property is not needed for public use, and the Township Council has determined that it is in the best interest of the Township to sell the property; and

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Vernon, County of Sussex, State of New Jersey, that:

1. The property known as 8 Clover Lane/2 Gilbert Drive, Block 83.08, Lot 2 shall be offered for sale by open public sale at auction to the highest bidder, pursuant to N.J.S.A. 40A:12-13. Said auction shall be conducted on June 10, 2013, at 7:30 p.m. at the Municipal Building, 21 Church Street, Vernon, New Jersey.
2. This property shall be sold subject to the following terms and conditions:
  - (a) After legal advertisement of this Ordinance the sale shall be made to the highest bidder at public auction.
  - (b) The Township does not warrant or certify title to the property and in no event shall the Township of Vernon be liable for any damages to the purchaser-successful bidder if title is found unmarketable for any reason. The purchaser-successful bidder waives any and all right in damages or by way of damages.

(c) Acceptance of the highest bid shall constitute a binding agreement of sale and the purchaser shall be deemed to agree to comply with the terms and conditions of the sale herein contained.

(d) Upon acceptance of the bid, the purchaser shall be required to pay ten percent (10%) of the bid plus \$450.00 to cover the Township's transaction costs, in cash or by check.

(e) A Quit Claim Deed without covenants will be delivered at the office of the Township Clerk within thirty (30) days, at which time and place the balance of the purchase price shall be required to be paid in cash or by bank check. The Mayor and Clerk are hereby authorized to execute said Deed.

(f) The Deed of Conveyance will be subject to all matters of record, which may affect title herein, what an accurate survey may reveal, the Ordinances of the Township of Vernon and reserving an easement for all natural or constructed drainage systems, waterways and water easements on the premises, if any, and the continued right of maintenance and flow.

(g) The property will be sold subject to 2013 taxes, pro-rated from the date of delivery of the Deed under subsection 2(f) above.

3. Where all bids have been rejected a private sale is hereby authorized pursuant to N.J.S.A. 40A:12-13(b).

**Effective Date.**

This Ordinance shall take effect upon final passage and publication as provided by law.

**CONTIGUOUS PROPERTY OWNERS**

**Block 83.08, Lot 1**

James F. White and  
Patricia Ann White

██████████  
██████████

**Block 83.08, Lot 3**

Mark Zaremba and  
Ann Marie Zaremba

████████████████████  
████████████████████

**Block 83.08, Lot 4**

Jennifer A. Fedorka

████████████████████  
████████████████████

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**COUNCIL PRESIDENT**

Council President Rizzuto addressed the following items:

- Expressed his pleasure with the Mayor's Proclamation to our Building Inspector, Tom Pinand.
- He noted that the Mayor had been unable to attend the last Council meeting, as he was being honored by being appointed to the Board of Directors of the New Jersey Conference of Mayors. He congratulated Mr. Marotta.
- With the spring season, there are many youngsters on the streets. He asked everyone to keep an eye out for them when driving.
- County Road 644 (Vernon Crossing) is now open! The stop sign at the end of Church Street is active again at that intersection.

**COUNCIL BUSINESS**

Council Member Wetzel spoke on behalf of the Council and the Mayor to commend the following for their rescue efforts at the recent Mountain Creek crash site:

1. The Vernon Police Department, especially Patrolman Justin Mangano, Patrolman Charlie Reid, Detective Derrick Scudieri, and Patrolman Kenny Kuzicki (who was a former student of Mr. Wetzel)
2. The Rescue Squads of Vernon, Glenwood, and Pochuck

3. The Fire Departments of MacAfee and Vernon
4. St. Clare's medics
5. a family friend, Mr. Tom Hayes

He was not sure if they give out a Hero of the Month Award in Franklin and Vernon, but these gentlemen (the patrolmen and detective) were first on the scene. The Rescue Squads were there and the Fire Departments. He said, "God bless the Mayor and Police Chief for recommending we buy 4-wheel vehicles. Without them and a John Deere Gator, those 3 people might not be with us today."

Council Member Lynch had the following to report:

- Wednesday, May 15, is Peace Officers Day and he asked the Mayor to have all flags flown at half staff.
- Congratulations to Tom Pinand.
- Thanked the Mayor for keeping the front of the Municipal Building looking good.
- Was glad that Mrs. Rizzuto was feeling better.
- Advised that he heard on the news this week that statistics for young people has shown that texting and driving deaths have surpassed those for drunk driving deaths.
  - As he drives many miles each day for work, he sees that texting and driving is becoming more and more of a problem.
  - He heard that Connecticut is coming down hard on offenders, including very stiff fines.
  - There needs to be more effort on the state level to combat this problem.
  - This is a problem that affects all age groups.

Council Member Kadish read a letter relative to the Municipal Utilities Authority. He noted that the MUA has yet to develop a hardship policy for commercial properties. He hoped that the Council would urge the MUA to do so, noting that he feels this could hurt the Town if one was not made.

Council Member Dunn congratulated Mr. Pinand for doing a great job, and that of his team, as well.

#### **ADJOURNMENT**

There being no further items of business to be conducted at the Regular Meeting, a motion for Adjournment was made by Council Member Lynch. Motion seconded by Council Member Kadish, with all members voting in favor.

The Regular Meeting of the Township Council of the Township of Vernon was adjourned at 9:07pm.

Respectfully submitted,

Susan S. Nelson, RMC  
Municipal Clerk

Minutes approved: May 30, 2013

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Patrick Rizzuto, Council President