

Township of Vernon

REGULAR TOWNSHIP COUNCIL MEETING

June 24, 2013

The Regular Meeting of the Township Council of the Township of Vernon was convened at 7:30pm on June 24, 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 Victor J. Marotta, Business Administrator Jerry Giaimis, and Megan Ward, Esq. who was standing in for Township Attorney Kevin Kelly.

SALUTE TO THE FLAG

The Council President led the salute to the flag.

PRESENTATION – Independent's Week

Council President Rizzuto noted the nature of the following Proclamation, advising that Council Member Dunn had worked closely on this issue. He asked the Council Member to read the Proclamation:

Proclamation



WHEREAS, locally-owned, independent businesses generate thousands of jobs each year and provide unique services and products that give communities their distinct character and sense of place; and

WHEREAS, up to four times more money stays and circulates in the local economy when consumers spend their money at local, independent businesses; and

WHEREAS, Vernon Township's local independent businesses help preserve the uniqueness of the community and give us a sense of place; and

WHEREAS, Vernon Township's core of independently-owned businesses give back to this community in goods, services, time and talent; and

WHEREAS, the health of Vernon Township's economy depends on support of businesses owned by our friends and neighbors; and

WHEREAS, Vernon Township's independent business owners and employees enrich community members' shopping experiences with their knowledge and passion; and

WHEREAS, the Vernon Independent Retailers Association (VIRA) is affiliated with the American Independent Business Alliance (AMIBA), and is part of a growing national movement of communities rallying to support their independent businesses, take control of their local economies, and reverse the trend of chains and big box stores who displace locally owned businesses; and

WHEREAS, VIRA is raising awareness about the importance of patronizing local businesses to foster strong community ties and preserve our unique character for generations to come; and

WHEREAS, individuals will be celebrating Independents Week in communities across the nation by taking the pledge to support local and independent businesses.

NOW, THEREFORE, the Mayor and Council of the Township of Vernon, do hereby proclaim the week of June 30, 2013, as

INDEPENDENTS WEEK

in Vernon Township and salute our community members and locally-owned independent businesses that are integral to the unique flavor of Vernon Township, and honor their efforts to make Vernon Township a place people want to live and work.

Council President Rizzuto asked if Mr. Dunn had anything to add. Council Member Dunn advised that last week's Council work session (June 17) was on this particular issue. He thanked members of Vernon's retailers in attendance tonight, and thanked the Council members who attended the work session.

PUBLIC COMMENTS

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

MOVED: Daniel Kadish

SECOND: Brian Lynch

All were in favor.

Noreen Moran – condo resident – advised that she had met with Mr. Fussman (re: helicopter rides) but still had concerns on the noise factor. She noted her disappointment that he had her home address.

Len Coloccia – condo resident at Great Gorge Village – advised that he had also been contacted by Mr. Fussman. He noted that he had researched the Faulkner Act, and found nothing that would indicate that the Mayor would not be able to answer questions at meetings. He asked about appointments by the Mayor, wondering if Council approves those appointments.

Council President Rizzuto advised that this was not a question and answer period.

Mr. Coloccia became angry and directed that anger at the Council with negative comments.

Dan Borstad – spoke about the Black Creek relocation, giving a brief history of where the creek was, the development that came in, and the change in the Creek. He advised that they had recently put new piping in the creek, and not in the wetlands. He handed some photos to the Council, advising that Old Rudgetown Road now gets flooded.

The Council President advised Mr. Borstad that his five minutes had expired. The audience asked Council to allow him to finish. Council Member Wetzel asked if the recent work had alleviated the problem.

Sally Rinker – spoke about the salary ordinance referendum that was voted down in November of 2012. She noted that performance awards had been given, and questioned the legality of those payments.

Gary Martinsen - spoke on Resolution #13-121, and disputed the procedure at the last meeting when the resolution was tabled. He also disputed the issue of approval of having helicopters being allowed with a letter of Municipal Consent. He pointed out that in addition to the engine noise, there was also the propeller noise to consider. He also had concerns about safety as well as the impact on local nature in the area. He felt an ordinance or ballot question would be required, as well as zoning approval.

Robert Oliver – asked if the Council was aware of any salaries being changed that were part of the referendum question. The Council President advised that none had

been changed. Mr. Oliver advised that his understanding is that bonuses are not salaries.

Krista Gherry – spoke about Mary Ellen Vichiconti speaking at the last meeting and then losing her job as a reporter for the Aim newspaper for doing so. She spoke about the character of the people involved in the OPRA lawsuit.

Margaret Borstad – asked to clarify a point brought up by Mr. Wetzel when her husband was speaking earlier. She advised that the work recently done had actually made the situation worse.

Mary Ellen Vichiconti – asked if all the employees had received the increases. She then verbally attacked Council Member Dunn and the rest of the Council for getting her fired.

Lynn Van Gorder – spoke on the performance payments, questioning how that was done when Civil Service was told money was tight.

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 reported on the following items:

- He advised that the new Verizon tower was operational, with improved service at the high school and that area of town.
- The bill from the County for the Primary Election was 20% higher than last year, noting that we are exploring why that happened.
- The hearing before the Land Use Board on Senior Housing has been moved to the first meeting in July (it was originally scheduled in June).
- Governor Christie's Town Meeting is scheduled for Friday at the Vernon Township High School, with doors open at 10:00am, and the meeting to start at 11:00am. He advised that the last time a sitting Governor was here was in 1975 with Governor Byrne. The meeting will be an open forum, where he will take questions from the audience. The meeting is being coordinated with his aide, Evan Ridley, Freeholder Dennis Mudrick, and Matt DeLaRosa, head of facilities at the school Board. There are 1,000 seats available with a chance for more.

Council President Rizzuto sang the praises of Evan Ridley. He also noted that this event was due in large part to the influence of the Mayor.

MINUTES

Council President Rizzuto asked for a motion to approve the amended minutes of the Regular meeting of April 8, 2013:

MOVED: Patrick Rizzuto

SECOND: Dick Wetzel

A roll call vote was taken:

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

NAYS: None

The Amended Minutes from the Regular meeting of April 8, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Regular meeting of May 30, 2013:

MOVED: Eddie Dunn

SECOND: Daniel Kadish

A roll call vote was taken:

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

NAYS: None

ABSTAIN: Brian Lynch

The Minutes from the Regular meeting of May 30, 2013 were approved.

Council President Rizzuto asked for a motion to approve the minutes of the Executive Session meeting of May 30, 2013:

MOVED: Dick Wetzel

SECOND: Daniel Kadish

A roll call vote was taken:

AYES: Daniel Kadish, Dick Wetzel, Patrick Rizzuto

NAYS: None

ABSTAIN: Eddie Dunn, Brian Lynch

The Minutes from the Executive Session meeting of May 30, 2013 were approved.

CONSENT RESOLUTIONS

Council President Rizzuto asked to have Resolution #13-121 pulled out for separate consideration.

Mr. Rizzuto asked for a motion to consider Resolution #13-121:

MOVED: Dick Wetzel

SECOND: Brian Lynch

Council Member Dunn suggested a temporary approval, but there was no interest from the other members.

A roll call vote was taken:

AYES: Eddie Dunn

NAYS: Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto

Resolution #13-121 was **defeated**.

Council Member Wetzel advised that he had voted for a medivac helicopter as a necessity, but felt this usage was more of an attractive nuisance.

Council Member Lynch noted that he had nothing personal against Mr. Fussman, but was concerned for the safety of Vernon.

Council Member Dunn felt that everything should be viewed in balance – economic impact, nuisance/noise issues, Mr. Fussman’s livelihood, etc. He was disappointed with the vote but was okay with the end result. He still thought a temporary approval would have been okay.

DEFEATED 06-24-2013

RESOLUTION #13-121

AUTHORIZING MUNICIPAL CONSENT FOR EAGLES ARIE LLC. TO OPERATE HELICOPTER RIDES OVER THE MOUNTAIN CREEK AREA

WHEREAS, Eagles Arie, LLC, has informed the Township that they will be operating helicopter rides for guests of Crystal Springs to explore the Mountain Creek area; and

WHEREAS, the New Jersey Department of Transportation has required that Eagles Arie, LLC. inform the Township of Vernon of the landing sites and hours of operation and that they receive a letter of Municipal Consent for this endeavor.

NOW THEREFORE, BE IT RESOLVED by the Township Council of the Township of Vernon that it authorizes the Municipal Clerk to write a letter of Municipal Consent for Eagles Arie LLC., Arie Fussman, principal, of 11 Monroe Street, Vernon, NJ 07462, to operate helicopter rides over the Mountain Creek area in Vernon Township.

The Council President gave a brief description of Resolutions #13-122 through #13-128.

Mr. Rizzuto asked for a motion to accept Resolutions #13-122 through #13-128:

MOVED: Brian Lynch

SECOND: Daniel Kadish

Council Member Lynch spoke about the grant for the Fire Service, noting its importance. He advised that there were dead spots in radio communications with the current equipment. This would allow for 75 units of portable radios, 3 repeaters, and 5 base stations. He noted that these upgrades were recommended by FEMA after the Irene and Sandy storms.

A roll call vote was taken:

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

NAYS: None

ABSTAIN: *Brian Lynch on Res. #13-124

Resolutions #13-122 through #13-128 were approved.

RESOLUTION #13-122

**RENEWAL OF LIQUOR LICENSES IN VERNON TOWNSHIP
FOR THE 2013-2014 LICENSING TERM**

WHEREAS, all licenses to dispose alcoholic beverages must be renewed and reissued no later than July 1, 2013; and

WHEREAS, pursuant to R.S. 33:1, the Vernon Township Police Department has made the necessary inspections and reported same to the Township Clerk; and

WHEREAS, all of the licenses have complied with all of the regulations as set forth by the Alcoholic Beverage Control Commission of the State of New Jersey;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Vernon that the following licenses shall be reissued for the 2013-2014 licensing period effective as of July 1, 2013.

PLENARY RETAIL CONSUMPTION		
HV Hospitality, LLC dba Hickory Sticks Grill		1922-33-004-005
HOTEL EXCEPTION		
Appalachian Liquors Corp.		1922-36-014-002
LIMITED RETAIL DISTRIBUTION		
Wanda East LLC (Lake Wanda Store)		1922-43-005-002

RESOLUTION #13-123

TAX OVERPAYMENT

WHEREAS, a duplicate payment was made on the second quarter **2013** taxes; and

WHEREAS, such payment created an **OVERPAYMENT**.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Township of Vernon, County of Sussex, State of New Jersey, that it hereby authorizes the Township Treasurer to issue a check for said overpayment, and that the Tax Collector refund said overpayment of taxes on the following account:

<u>BLOCK</u>	<u>LOT</u>	<u>NAME</u>	<u>AMOUNT</u>	<u>QTR</u>	<u>LOCATION</u>
205.11	1	BAC Tax Services Corp (Re: Beth Nolan #352943028)	\$ 1175.05	2nd	████████████████████
199.08	19 C0056	Core Logic (Re: Heykoop Jordan #78313362)	\$ 784.47	2nd	████████████████████

RESOLUTION #13-124

**FY 2012 FEMA-AFG (ASSISTANCE TO FIREFIGHTERS GRANT)
GRANT FUNDING TO SUPPORT THE PURCHASE OF
NEW FIRE SERVICE RADIO COMMUNICATIONS**

WHEREAS, the Township of Vernon has applied for grant funding through the FEMA-AFG program for the FY 2012 Assistance to Firefighters Grant; and

WHEREAS, the purpose of this grant is to promote shared services between local units through the sharing of fire service radio communications to enhance their ability to protect the public and fire service personnel from fire and related hazards; and

WHEREAS, Vernon Township has been awarded an Assistance to Firefighters Grant for the total amount of \$380,625.00, with the federal share being \$342,562.00 and the Township's share being 10% or \$38,063.00; and

WHEREAS, Vernon Township accepts full responsibility and ownership of the equipment once received and installed and further agrees to maintain said equipment for its useful lifetime at its own cost; and

WHEREAS, Vernon Township affirms that as of this date it is in full compliance with the National Incident Management System (NIMS).

NOW THEREFORE THE GOVERNING BODY OF THE TOWNSHIP OF VERNON, STATE OF NEW JERSEY, RESOLVES that Mayor Victor J. Marotta, or the successor to the office of Mayor, is authorized to execute a grant agreement for the FY 2012 Assistance to Firefighters Grant in an amount not more than \$38,063.00.

BE IT FURTHER RESOLVED that the Grantee agrees not to deviate from the approved scope of work without prior written approval from FEMA.

This Resolution shall take effect immediately upon adoption according to law.

RESOLUTION #13-125

**AUTHORIZING APPLICATION AND EXECUTION OF THE
"2013 DRIVE SOBER OR GET PULLED OVER" GRANT ADMINISTERED BY THE
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

WHEREAS, the Vernon Township Police Department wishes to apply for funding from the National Highway Safety Administration "2013 Drive Sober or Get Pulled Over Grant"; and

WHEREAS, the grant project consists of an enforcement overtime campaign from August 16, 2013 through September 2, 2013 to raise awareness about the dangers of drinking and driving, to offer deterrence through visible enforcement, to arrest impaired drivers, and to issue summonses for relevant motor vehicle violations; and

WHEREAS, participating departments will incur all costs and then submit the necessary documentation to the Division of Highway Traffic Safety for reimbursement up to a maximum of \$4,400.00.

NOW THEREFORE BE IT RESOLVED, that the Council of the Township of Vernon, hereby authorizes the submission of the application to the Division of Highway Traffic Safety for participation in the "2013 Drive Sober or Get Pulled Over Grant" to raise awareness about the dangers of drinking and driving; and

BE IT FURTHER RESOLVED, by the Township Council of the Township of Vernon, County of Sussex, State of New Jersey, that the Mayor, CFO and Township Clerk are hereby authorized to execute and sign any and all documents in order to effectuate the receipt of the Grant monies between the Township of Vernon and the Division of Highway Traffic Safety for the 2013 Drive Sober or Get Pulled Over Grant.

RESOLUTION #13-126

**CHAPTER 159 RESOLUTION REQUESTING APPROVAL OF REVENUE
AND APPROPRIATION AMENDING THE 2013 BUDGET AS A REVENUE
AND APPROPRIATION OF \$30,642.00**

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any county or municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, said Director may also approve the insertion of an item of appropriation for an equal amount; and

WHEREAS, the Township has been awarded a \$30,462.00 No Net Loss Grant from the State of New Jersey Department of Environmental Protection, Division of Parks and Forestry, and wishes to amend its 2013 budget for this amount as a revenue.

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Vernon hereby requests the Director of the Division of Local Government Services to approve the insertion of an item of revenue in the budget of the year 2013 in the sum of \$30,462.00 which is now available as a revenue from the State of New Jersey Department of Environmental Protection, Division of Parks and Forestry and;

BE IT FURTHER RESOLVED that a like sum of \$30,462.00 is hereby appropriated under the caption 2013 Forestry No Net Loss Grant.

RESOLUTION #13-127

**AUTHORIZING THE RELEASE OF A PERFORMANCE BOND
FOR URGENT CARE FACILITY AT MOUNTAIN CREEK RESORT
BLOCK 231, LOT 12, 12.01, 12.02, 12.03, 12.04, AND Block 233 Lot 7.01**

WHEREAS, Mountain Creek Resort, Inc. constructed an Urgent Care Facility with Major Site Plan and Use Variance approval (LUB #4-12-7); and

WHEREAS, Mountain Creek Resort, Inc. was required to post a performance bond in the amount of \$131,748.00; and

WHEREAS, Mountain Creek Resort, Inc. has made a request for the bond to be released in full; and

WHEREAS, the Vernon Township Engineer has reviewed said request and approved the bond release as contained in a memorandum to the Land Use Board, dated May 17, 2013.

NOW THEREFORE BE IT RESOLVED, by the Township Council of the Township of Vernon, County of Sussex, that it hereby approves and authorizes that the performance bond is to be released in its entirety. The performance bond was issued by the Hudson Insurance Company in the amount of \$131,748.00.

RESOLUTION #13-128

ACCEPTANCE OF PERFORMANCE BOND FROM AQUA NEW JERSEY, INC. FOR ROADWAY REPAIRS FOR PHASE II WATER MAIN REPLACEMENT ALONG CEDAR RIDGE DRIVE AND WOODLAND DRIVE

WHEREAS, Aqua New Jersey, Inc. has submitted plans to Vernon Township for a Phase II water main replacement project on Cedar Ridge Drive within Vernon Township; and

WHEREAS, the Township Engineer, Cory Stoner, has reviewed and approved the final plans, prepared by James C. Barbato, P.E. with a requirement of a performance bond be posted per a letter dated May 9, 2013; and

WHEREAS, based on the estimated cost of the project, the Township Engineer is requiring a performance bond in the amount of \$114,600.00 and a \$2,000.00 amount for engineering escrow submitted to Vernon Township by Aqua New Jersey, Inc.

NOW THEREFORE BE IT RESOLVED, by the Council of the Township of Vernon, that it accept a performance bond in the amount of \$114,600.00 and a \$2,000.00 amount for engineering escrow as submitted by Aqua New Jersey, Inc. for road repairs in relation to the water main replacement on Cedar Ridge Drive and Fox Hollow Court, Vernon, NJ; and

BE IT FURTHER RESOLVED, the performance bond can be formally released when construction has been completed and approved by the Township Engineer and further accepted by the Township Council by way of Resolution; and

BE IT FURTHER RESOLVED, that prior to release of the performance bond, Aqua New Jersey, Inc., shall submit a maintenance bond for a period of one (1) year from the Township's acceptance of the roadway repairs, with said bond being formally accepted by the Township Council by way of Resolution; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the Department of Public Works for their records.

This Resolution will take effect immediately according to law.

MOTION – WOLOSKY v. VERNON – GRC COMPLAINT NO. 2010-311

A motion was made to accept the recommendation of Township Attorney Kevin Kelly to approve the payment of legal fees for Walter Luers, attorney for Jesse Wolosky, in the amount of \$1,000.00, in settlement of Wolosky v. Vernon – GRC Complaint No. 2010-311.

MOTION: Daniel Kadish

SECOND: Dick Wetzel

A roll call vote was taken:

AYES: Daniel Kadish, Dick Wetzel, Patrick Rizzuto

NAYS: Eddie Dunn

ABSTAIN: Brian Lynch

Motion carried.

ORDINANCES – INTRODUCTION

1st Reading of Ordinance #13-14 by Title Only

Council President Rizzuto asked for a motion to approve Ordinance #13-14 by title only:

MOTION: Brian Lynch

SECOND: Eddie Dunn

Mr. Rizzuto asked Ms. Ward to explain this ordinance. Ms. Ward explained that a similar request has come up in the last few years (Ord. #11-27). She advised that the NJ BPU has approved this usage, and that the vendor must coordinate with all other utilities. She noted that public interest is a first consideration.

A roll call vote was taken:

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

NAYS: None

Ordinance #13-14 was approved on 1st reading.

ORDINANCE #13-14

AN ORDINANCE GRANTING NON-EXCLUSIVE PERMISSION TO CO-LOCATE TELECOMMUNICATIONS EQUIPMENT AND FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY IN VERNON TOWNSHIP

WHEREAS, facilities and equipment are co-located at various locations within the public Rights-of-Way in Vernon Township to facilitate the efficient and reliable distribution and provision of utility services; and

WHEREAS, Cross River Fiber, Inc. ("Cross River Fiber") was approved by the New Jersey Board of Public Utilities to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket No. TE11050320 on July 14, 2011 and Docket No. TE12040297 on June 18, 2012 and intends to provide telecommunication services in accordance with that Order and the rules and regulations of the Federal Communications Commission and the New Jersey Board of Public Utilities; and

WHEREAS, Cross River Fiber proposes to co-locate its telecommunication facilities aerially on existing utility poles or in underground conduit within the Public Rights-of-Way of Vernon Township for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system; and

WHEREAS, the best interests of the Township and its citizenry are served by granting consent for co-location of equipment and facilities within the public rights-of-way for provision of telecommunication and other utility service; and

WHEREAS, the consent granted herein is for the non-exclusive use of the Public Rights-of-Way within the Township for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

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

Section 1. Grant of Consent.

The Township hereby grants Cross River Fiber its municipal consent for the non-exclusive use of the Public Rights-of-Way within the municipality for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

Section 2. Duration of Consent.

The non-exclusive municipal consent granted herein shall expire fifty (50) years from the Effective Date of this Ordinance.

Section 3. Public Purpose.

It is deemed to be in the best interests of the Township and its citizenry, particularly including commercial and industrial citizens, to grant non-exclusive municipal consent to Cross River Fiber to co-locate within said Public Rights-of-Way of the Township for this purpose.

Section 4. Scope of Use.

Any and all rights expressly granted hereby shall be exercised at Cross River Fiber's sole cost and expense, and shall be subject to the prior and continuing right of the Township under applicable laws to use any and all parts of the Public Rights-of-Way exclusively or concurrently with any other person or persons, and shall by further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect such Public Rights-of-Way. Nothing in this Ordinance shall be deemed to grant, convey, create or vest in

Cross River Fiber a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

Section 5. Location and Relocation of Facilities and Equipment.

Cross River Fiber's facilities and equipment shall be located and relocated in accordance with applicable standards, including, but not limited to, Township ordinances, as may be mutually agreed upon with the Township. Underground facilities shall be placed at least eighteen (18) inches below the surface of the public streets. Manholes shall be located at such points along the line of underground conduits as may be necessary or convenient for placing, maintaining, and operating the facilities and shall be constructed to conform to the cross-sectional and longitudinal grade of the surface so as not to interfere with the safety or convenience of persons or vehicles. Cross River Fiber shall reimburse the Township for costs or fees incurred for engineering, legal or other review of its plans.

Section 6. Construction Requirements.

Cross River Fiber shall comply with the street opening or excavation permit requirements of the Township. Any area affected by the construction shall be restored to as good condition as it was before commencement of the work. No public streets or ways shall be encumbered for a period longer than reasonably needed to execute the work.

Section 7. No Obligation to Accept or Open Street.

Nothing contained herein shall be construed as an acceptance by the Township of any unaccepted street nor impose an obligation on the part of the Township to open any street not dedicated or opened to the public use.

Section 8. Maintenance of Facilities and Equipment.

Cross River Fiber shall maintain its facilities and equipment within the Township.

Section 9. Copies of Maps and Plans

Cross River Fiber agrees to provide to the Township, free of charge, copies of such maps and/or plans of its facilities and equipment as may be necessary or helpful to the Township in connection with any of its construction projects. This Section does not impose any obligation to create maps and plans specifically for the Township's use. Any maps or plans provided pursuant to this section shall be for general information purposes only and are not to be relied upon as an indication of the exact location of the facilities and equipment.

Section 10. Liability Insurance

Cross River Fiber shall at all times maintain a comprehensive liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy amount in the amount of Five Million Dollars (\$5,000,000.00).

Cross River Fiber shall file with the Township Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies prior to the commencement of any work in the Public Rights-of-Way.

The Township shall notify Cross River Fiber within thirty (30) days after the presentation of any claim or demand to it, either by suit or otherwise, made against the Municipality on account of any of Cross River Fiber or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this municipal consent.

Section 11. Indemnification

Cross River Fiber, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Municipality, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any

person(s) or entities claiming to be or being harmed as a result of Cross River Fiber actions under this Use Agreement and costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys fees, court costs and any other expenses that may be incurred by the Municipality in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Cross River Fiber activities pursuant to the rights hereby granted.

Section 12. Taxes, Fees and Charges

Cross River Fiber shall pay reasonable fees imposed by the Township for actual services made and provided in connection with this municipal consent and its non-exclusive use of the Public Rights-of-Way. This municipal consent does not affect the ability of the Township to impose real property taxes on the telecommunications facilities and equipment under current law. Further, in the future should applicable law change so as to enable the Township to impose a franchise fee or other fee, tax, charge, or other monetary obligation on Cross River Fiber's operations or facilities, it agrees that the provisions of this municipal consent shall not preclude the Township from imposing or collecting such fee, tax, charge or other monetary obligation as may be permitted by law.

Section 13. Successors and Assigns.

The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 14. Severability.

If any article, section, subsection, sentence, clause or phrase of this Ordinance is for any reason declared to be unconstitutional or invalid by any court of competent jurisdiction, such declaration shall not affect the remaining portions of this Ordinance.

Section 15. Effective Date

This Ordinance shall take effect upon notice, publication and adoption as required by law.

ORDINANCES – PUBLIC HEARING/2ND HEARING

2ND Reading of Ordinance #13-10 by Title Only

Council President Rizzuto asked for a motion to adopt Ordinance #13-10 on 2nd reading by title only.

MOTION: Brian Lynch
SECOND: Daniel Kadish

The Council President advised that the Township Planner, Jessica Caldwell, was in attendance, and asked her to give a brief overview of the nature of this ordinance. Ms. Caldwell noted that the Highlands Council must approve the application request prior to any Land Use Board involvement.

Open to Public Comments on Ordinance #13-10 only:

MOTION: Brian Lynch
SECOND: Eddie Dunn
All were in favor.

No one wished to speak at this time.

Closed to Public Comments on Ordinance #13-10

MOTION: Brian Lynch
SECOND: Eddie Dunn
All were in favor.

A roll call vote was taken on Ordinance #13-10:

AYES: Eddie Dunn, Daniel Kadish, Brian Lynch, Dick Wetzel, Patrick Rizzuto
NAYS: None
Ordinance #13-10 was adopted.

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.

2ND Reading of Ordinance #13-11 by Title Only

Council President Rizzuto asked for a motion to adopt Ordinance #13-11 on 2nd reading by title only.

MOTION: Brian Lynch
 SECOND: Daniel Kadish

The Council President asked Ms. Caldwell to explain this ordinance. Ms. Caldwell noted that this was developed to update the current requirements for performance and maintenance guarantees. Council Member Kadish asked if it would require escrow funds and Ms. Caldwell confirmed that it did.

Open to Public Comments on Ordinance #13-11 only:

MOTION: Brian Lynch
 SECOND: Eddie Dunn
 All were in favor.

Gary Martinsen – was concerned in the case of less than an acre, a bond would not be required and the site could be in any shape.

Closed to Public Comments on Ordinance #13-11:

MOTION: Dick Wetzel
 SECOND: Brian Lynch
 All were in favor.

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

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

NAYS: Daniel Kadish

Ordinance #13-11 was adopted.

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.

2ND Reading of Ordinance #13-12 by Title Only

Council President Rizzuto asked for a motion to adopt Ordinance #13-12 on 2nd reading by title only.

MOTION: Brian Lynch
SECOND: Patrick Rizzuto

Open to Public Comments on Ordinance #13-12 only:

MOTION: Brian Lynch
SECOND: Dick Wetzel
All were in favor.

Owen Highland – questioned the issue of a ground-mounted minor solar facility requiring a variance. He described various scenarios on this issue. Council President Rizzuto asked Mr. Highland if this is the business he is in. Mr. Highland confirmed that it was.

Ms. Caldwell noted that a use-variance addresses impacts to neighboring properties for ground-mounted facilities.

Closed to Public Comments on Ordinance #13-12

MOTION: Brian Lynch
SECOND: Dick Wetzel
All were in favor.

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

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

NAYS: Eddie Dunn

Ordinance #13-12 was adopted.

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.
 - 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.

COUNCIL BUSINESS

Council Member Wetzel offered congratulations to the Class of 2013 at Vernon Township High School.

Council Member Lynch had the following items:

- Advised that summer is here, and that texting/talking on cell phones in cars is alive and well in Vernon. He advised that these are creeping up on the largest reasons for vehicular deaths for 17-25 year olds.
- Addressed the resident of Laurel Lake who felt the entrance/exit is dangerous. He noted that he passes there every day and feels that cutting back on the vegetation at the entrance would make it more visible to motorists on Canistear. Mayor Marotta advised that he would contact the Board of Directors to discuss the issue.

- He told everyone to have a good summer.

Council Member Kadish had nothing to report at this time.

Council Member Dunn thanked the Council for the work session last week, and their continued support. He also welcomed the public and their feedback. He reminded everyone that there is a tax incentive to participate in the Buy Local campaign. He advised that a resolution will be brought to the Council at a future meeting.

Council President Rizzuto noted the following for the 2nd half of the year:

- Asked the Council to let him know if they had any issues of interest for a work session.
- He had been asked to participate in Teacher for a Day in March. He received a thank you note from Mrs. Tallerico's class, noting that he is "cool." He showed the poster that was sent to him, noting that he was looking forward to participating again next year (as Mr. Wetzel has done for many years).
- He wished everyone a wonderful summer.
- Advised everyone to come see the Governor on Friday.

Council Member Lynch advised everyone that the Highland Lakes and Vernon Fire Departments were having their fireworks display on July 6, and that the gates were opening at 5:30/6:00pm. He asked everyone to support their local fire departments.

ADJOURNMENT

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

The Regular Meeting of the Township Council of the Township of Vernon was adjourned at 9:00pm.

Respectfully submitted,

Susan S. Nelson, RMC
Municipal Clerk

Minutes approved: July 22, 2013

Patrick Rizzuto, Council President