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BERNARDS TOWNSHIP - TOWNSHIP COMMITTEE MINUTES

MARCH 5, 2019 – SPECIAL COMBINED AGENDA/REGULAR MEETING

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CALL TO ORDER

The mayor called the meeting to order at 5:00 PM in the Warren Craft meeting room of the Municipal Building, 1 Collyer Lane, Basking Ridge, NJ. Those assembled saluted the flag and the mayor read the open public meetings statement in accordance with the law.

ROLL CALL

Present: Baldassare, Carpenter, Esposito (5:33), Harris, Bianchi

Absent:

Also Present: Administrator Monaco, Attorney Belardo, Engineer Timko, Deputy Municipal Clerk Pisano

EXECUTIVE SESSION – [RESOLUTION #2019-0160](#)

Motion by Baldassare, second by Harris, and unanimously agreed that Resolution #2019-0160 be approved. The meeting temporarily adjourned to Executive Session at 5:01 PM.

WHEREAS, NJSA 10:4-12 allows for a public body to go into closed session during a public meeting; and

WHEREAS, the Township Committee has deemed it necessary to go into closed session to discuss certain matters which are exempted from the public; and

WHEREAS, the regular meeting of the Township Committee will reconvene.

NOW THEREFORE BE IT RESOLVED, that the Township Committee will go into closed session for the following reason(s) as outlined in NJSA 10:4-12; and

NOW THEREFORE BE IT FURTHER RESOLVED, that the Township Committee hereby declares that the discussion of subject(s) may be made public at a time when the Township Attorney advises the Township Committee that the disclosure of the discussion will not detrimentally affect any right, interest or duty of the Township or any other entity with respect to said discussion. That time is currently estimated as the time of said matter.

NOW THEREFORE BE IT FINALLY RESOLVED that the Township Committee, hereby declares that the public is excluded from the portion of the meeting during which the discussion(s) shall take place and hereby directs the Municipal Clerk to take the appropriate action to effectuate the terms of this resolution.

<u>Reason for Closed Session</u>	<u>Estimated Time of Disclosure or Upon Occurrence Of</u>
<input checked="" type="checkbox"/> Any pending or anticipated litigation or contract negotiations which the public body is or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as lawyer. <i>Under certain circumstances, if public disclosure of the matter would have a potentially negative impact on the Township's position in the litigation or negotiation, this information may be withheld until such time that the matter is concluded or the circumstances no longer present a potential impact.</i> <i>Attorney-Client Privilege – BOA Application, Millington Quarry, Inc. ZB18-026</i>	

The meeting resumed in open session at 5:32 PM.

Motion by Baldassare, second by Harris, and unanimously approved to amend the agenda to add TC and Staff comments as item 6A and Resolution 2019-0162 as item 7C.

PUBLIC COMMENT

None

TOWNSHIP COMMITTEE/BOARD REPORTS & STAFF COMMENTS

Committee and staff members reported on their recent activities and commented on the successful snow removal efforts after the recent storm.

AGENDA PORTION OF MEETING

[Resolution #2019-0161](#) *Personnel Appointment Judge of Municipal Court “Judge” – Honorable Katherine E. Howes, Esq.*

Carpenter recused himself and left the dais.

Motion by Baldassare, second by Harris, that 2019 -0161 be approved.

Roll Call

Aye: Baldassare, Esposito, Harris, Bianchi

Nay:

Abstain:

Motion carried.

WHEREAS, the position of Judge is a statutory position, pursuant to N.J.S. A. 2B:12-4; and

WHEREAS, Judge Donald Bogosian’s appointment expires March 20, 2019; and

WHEREAS, members of the Township Committee interviewed Judge candidates, and Judge Katherine E. Howes applied; and

WHEREAS, the Township Committee, Township Administrator and Human Resources Manager recommend appointment of Katherine E. Howes as the Judge; and

WHEREAS, Judge Howes meets all statutory requirements and is presently serving as the municipal court judge for the Township of Bedminster, Borough of Bernardsville, Borough of Peapack-Gladstone, Borough of Raritan, and her resume and application cover letter is on file with the office of Township Clerk; and

WHEREAS, the Bernards Township Employee Handbook states: “Per the New Jersey Pensions and Benefits Handbook, any newly appointed or elected officer will be required to work a minimum of 35 hours per week to be considered “full-time” and eligible for coverage under the State Health Benefits Program/School **Employees’** Health Benefits Program.”; and

WHEREAS, the Judge will not work 35 hours a week, Her Honor is not eligible for State Health Benefit Program coverage; and

WHEREAS, subject to the approval of the Township Committee, Judge Howes will select a day of the week to hold court in Bernards Township on a day when Her Honor is available 9 a.m. to 3 p.m., although the number of hours worked each week will depend on caseload volume, and therefore, this appointment is expressly conditioned upon Judge Howes's ability to comply within a reasonable time frame with this provision, but no later than 90 days from March 5, 2019; and

WHEREAS, Judge Howes agrees and acknowledges by acceptance of this appointment that, if Bernards Township enters a joint municipal court agreement, N.J.S.A. 2B:12-1 to 8, with another municipality before the expiration of Judge Howes’s three year term, the Township Committee may elect to terminate her Judge position or, alternatively, continue her Judge position under any new shared court agreement with other municipalities.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards, that Honorable Katherine E. Howes, Esq. is appointed Judge pending the Township’s pre-employment screening process for a three-year term effective March 21, 2019, expiring March 21, 2022, at a salary of \$47,858.40 a year.

Carpenter returned to the dais.

[Resolution #2019-0155](#) - *Appointment to the Agricultural Advisory Committee – James Milito, RM, 3yr. term, expiring 12/31/2021*

Motion by Baldassare, second by Esposito, and unanimously agreed that Resolution 2019-0155 be approved.

WHEREAS, a vacancy exists on the Agricultural Advisory Committee; and

WHEREAS, James Milito has submitted an application to serve on the Agricultural Committee.

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Bernards that James Milito of Milito Way in Basking Ridge be appointed as a Regular Member of the Agricultural Advisory Committee for a 3 year term expiring 12/31/2021.

Resolution #2019-0162 - Authorizing Appearance in Millington Quarry, Inc. Zoning Board of Adjustment Application and Addressing Rehabilitation Plan Status

Esposito recused himself and left the dais.

Motion by Baldassare, second by Harris, that resolution 2019-0162 be approved.

Roll Call

Aye: Baldassare, Harris, Bianchi

Nay: Carpenter

Abstain:

Motion carried.

WHEREAS, Millington Quarry, Inc. (“MQI”) submitted with the Zoning Board of Adjustment (ZBA”) on October 25, 2018, an application for preliminary and final minor subdivision with variances for Block 6001, Lot 6 (the “Property”) to create two new lots: proposed lot 6.01 (50.285 acres) and proposed lot 6.02 (129.48 acres); and

WHEREAS, Township Ordinance Section 4-9.5 a.3 provides.

Alternative or Revised Rehabilitation Plan. The applicant shall submit an alternative or revised rehabilitation plan **within 60 days of application submittal**, if the quarry or property owner has submitted a land use development application that would, if approved, result in a change or revision to the last approved and still valid rehabilitation plan. An alternative or revised rehabilitation plan shall be reviewed by the Planning Board and approved by the Township Committee in the same manner as an initial rehabilitation plan.

WHEREAS, furthermore MQI and Bernards Township (the “Township”) entered into a Settlement Agreement and Release dated April 24, 2014, pursuant to which Section 1 stated:

The 2011 Rehabilitation Plan shall be effective upon the date of this Settlement Agreement and Release and shall expire on January 31, 2017 (the “Expiration Date”) and , in accordance with Section 4-9.5a.4, a revised rehabilitation plan shall be submitted not less than three (not six) months before the expiration of said rehabilitation plan.

WHEREAS, MQI has failed to submit to the Planning Board as required by both the Settlement Agreement and Release and Township ordinance a revised rehabilitation plan; and

WHEREAS, as evidenced by Schedule A attached hereto, at a minimum the Township Engineer has determined that Items 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, are still either not completed or are in the process of ongoing completion, including lake maintenance; and

WHEREAS, security for MQI to complete the rehabilitation of \$3,435,608 remains with the Township; and

WHEREAS, the 2011 Rehabilitation Plan and Settlement Agreement and Release envisioned and approved the rehabilitation of the Property as a singular lot, and not two lots (as MQI’s application to the ZBA seeks approval), in which the lake is to consist of 33.6 acres on proposed lot 6.01 and 14.5 acres on proposed lot 6.02; and

WHEREAS, courts in New Jersey have consistently held that municipal governments have a substantial interest in ensuring the rehabilitation of quarry properties after mining has ceased, and such interest is pursuant to local police power to protect the public health, welfare and safety of the community; and

WHEREAS, the Township Committee pursuant to Paruszewski v. Township of Elsinboro, 154 N.J. 45 (1998) has the authority to appear and oppose applications before its ZBA through appearance of the township attorney when approval of such an application by the ZBA may detrimentally impact the general welfare and land use scheme of the municipality, and is further a matter of major concern to the community as an issue of substantial public importance; and

WHEREAS, the ZBA has no jurisdiction to approve MQI's minor subdivision plan when such alteration of the prior approved 2011 rehabilitation plan can only be approved by the Township Committee and Planning Board and, therefore, for the ZBA to hear MQI's application is an arrogation of the Township Committee's and Planning Board's authority.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Township Committee authorizes Township Attorney John P. Belardo, Township Planner David Banish and, if necessary, Township Engineer Thomas Timko to appear before the ZBA on the MQI application.
2. That the Township Committee opposes MQI's ZBA application on jurisdictional grounds as MQI has not submitted a revised rehabilitation plan to the Planning Board as required by Township Ordinance and the Settlement Agreement and Release, and the MQI application before the ZBA is an arrogation of the powers of the Planning Board and Township Committee.
3. The Township Attorney forward a copy of this resolution to the ZBA attorney and seek a dismissal or, alternatively, an adjournment of the MQI application before the ZBA scheduled for March 6, 2019.
4. That the Township Attorney notify MQI's counsel before the ZBA of this resolution and for MQI to submit a revised rehabilitation application to the Planning Board by April 30, 2019.

Esposito returned to the dais.

PUBLIC COMMENT

Todd Edelstein, Riverside Dr. – thanked Mr. Esposito.

ADJOURNMENT

By unanimous consent, the meeting adjourned at 6:02 PM.

Respectfully submitted,

Rhonda Pisano
Deputy Municipal Clerk

Carol Bianchi
Mayor