

**Lebanon Township Committee
June 17, 2015**

Minutes of Regular Meeting

CALL TO ORDER

Mayor Thomas McKee called the meeting to order at 7:00 p.m. and stated that in compliance with the "Open Public Meeting Act" this is a Regular Meeting of the Township Committee as published in the Hunterdon Review, the agenda has been posted at the Municipal Building and distributed to the Hunterdon Review, Courier News, the Express Times, the Hunterdon County Democrat and the Star Ledger.

FLAG SALUTE

Mayor McKee asked everyone to please stand for the Flag Salute and for a Moment of Silence in remembrance of Libby Koschker who passed away last week.

ROLL CALL

Present - Thomas McKee Ronald Milkowski Bernard Cryan
 Brian Wunder Marc Laul

Absent-

Also Present - Attorney Dick Cushing, Clerk Karen Sandorse and 47 members of the public.

PRESENTATION OF MINUTES

Minutes of the Regular Meeting of June 3, 2015

Motion by Mr. Wunder, seconded by Mr. Laul and carried by unanimous favorable roll call vote, the Township Committee approved minutes of the regular meeting of June 3, 2015.

PUBLIC COMMENTS – for agenda items only.

Motion by Mr. Cryan, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee opened the public comment portion of the meeting.

Ms. Laurie Hoffman asked if the Recreation Ordinance will be posted on the web page. The Clerk stated that the ordinance will be published in the newspaper and posted in the municipal office.

Ms. Hoffman asked for a description of Resolutions No. 45-2015 and No. 46-2015. Attorney Cushing provided a description of the resolutions.

Motion by Mr. Wunder, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee closed the public comment portion of the meeting.

PROCLAMATIONS

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee adopted the following proclamations.

TO QUINN LEVY FOR RECEIVING THE EAGLE SCOUT AWARD

WHEREAS, the conferring of an Eagle Scout is one of the highest awards that can be bestowed upon a Boy Scout; and

WHEREAS, such award is an earned award in that the recipient must perform and successfully complete and pass the rigid requirements exacted to achieve an Eagle Scout Award; and

WHEREAS, Quinn Levy, Boy Scouts of America, Troop 92, attained the designation of “Eagle Scout”; and

WHEREAS, Quinn Levy is to be commended for his Eagle Scout Service Project, which involved the renovation of the sound stage at the Round Valley Youth Center; and

WHEREAS, Quinn Levy and his team of volunteers scraped, power washed, repaired damage and repainted the entire sound stage; and

WHEREAS, Quinn Levy’s efforts will enable more people to use the park for concerts, music festivals, plays and more; and

WHEREAS, Quinn Levy was honored and received his award at an Eagle Court of Honor Recognition Ceremony on June 7th 2015; and

WHEREAS, the Lebanon Township Committee wishes to recognize this noteworthy achievement of Quinn Levy.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Township Committee of the Township of Lebanon hereby extend their congratulations to Eagle Scout, Quinn Levy for having an Eagle Scout Award conferred upon him by the Boy Scouts of America.

TO ERIC PECINA FOR RECEIVING THE EAGLE SCOUT AWARD

WHEREAS, the conferring of an Eagle Scout is one of the highest awards that can be bestowed upon a Boy Scout; and

WHEREAS, such award is an earned award in that the recipient must perform and successfully complete and pass the rigid requirements exacted to achieve an Eagle Scout Award; and

WHEREAS, Eric Pecina, Boy Scouts of America, Troop 92, attained the designation of “Eagle Scout”; and

WHEREAS, Eric Pecina is to be commended for his Eagle Scout Service Project, which involved the resealing and painting of the exterior of the VFW Post 5119 in Glen Gardner; and

WHEREAS, Eric Pecina was mentored by Mr. Al Williams, received funding by Mr. John Kappus, though the VFW and assistance from many community members; and

WHEREAS, Eric Pecina’s and his generous volunteers efforts are in appreciation of the veterans who have given so much for our county; and

WHEREAS, Eric Pecina was honored and received his award at an Eagle Court of Honor Recognition Ceremony on June 7th 2015; and

WHEREAS, the Lebanon Township Committee wishes to recognize this noteworthy achievement of Eric Pecina.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Township Committee of the Township of Lebanon hereby extend their congratulations to Eagle Scout, Eric Pecina for having an Eagle Scout Award conferred upon him by the Boy Scouts of America.

ORDINANCES

Introduction

Ordinance No. 2015-02 Recreation Commissioners

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee approved Ordinance No. 2015-02 as entitled below.

**TOWNSHIP OF LEBANON
HUNTERDON COUNTY, NEW JERSEY
ORDINANCE NO. 2015-02
ORDINANCE AMENDING CHAPTER 85 ENTITLED “RECREATION COMMISSIONERS,
BOARD OF” OF THE GENERAL ORDINANCES OF THE TOWNSHIP OF LEBANON,
COUNTY OF HUNTERDON,
AND THE STATE OF NEW JERSEY**

Public Hearing to be held on July 1, 2015

Introduction

Ordinance No. 2015-03 – Parks Committee

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee approved Ordinance No. 2015-03 as entitled below.

**TOWNSHIP OF LEBANON
HUNTERDON COUNTY, NEW JERSEY
ORDINANCE NO. 2015-03
ORDINANCE ADDING CHAPTER __ ENTITLED “PARKS COMMITTEE” OF THE
GENERAL ORDINANCES OF THE TOWNSHIP OF LEBANON, COUNTY OF
HUNTERDON, AND THE STATE OF NEW JERSEY**

Public Hearing to be held on July 1, 2015

RESOLUTIONS

Resolution No. 45-2015 – Declaratory Judgement Action

Motion by Mr. Cryan, seconded by Mr. Laul and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 45-2015 as written below.

TOWNSHIP OF LEBANON,
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 45-2015

RESOLUTION (1) AUTHORIZING THE TOWNSHIP OF LEBANON ATTORNEY AND OTHER TOWNSHIP PROFESSIONALS TO PREPARE AND FILE A DECLARATORY JUDGMENT ACTION WITH THE SUPERIOR COURT SEEKING JUDICIAL APPROVAL OF THE TOWNSHIP'S COMPLIANCE WITH ITS THIRD ROUND MT. LAUREL AFFORDABLE HOUSING OBLIGATIONS IN ACCORDANCE WITH THE NEW JERSEY SUPREME COURT DECISION IN THE MATTER OF THE ADOPTION OF N.J.A.C. 5:96 AND 5:97 BY NJ COUNCIL ON AFFORDABLE HOUSING; AND (2) AUTHORIZING OTHER TOWNSHIP PROFESSIONALS AND OFFICIALS TO TAKE SUCH ACTIONS AS MAY BE APPROPRIATE TO IMPLEMENT AN UPDATE TO THE TOWNSHIP OF LEBANON HOUSING PLAN ELEMENT OF THE MASTER PLAN AND FAIR SHARE PLAN FOR THIRD ROUND MT. LAUREL AFFORDABLE HOUSING COMPLIANCE, TO UNDERTAKE A SURVEY OF ALL VACANT AND UNDEVELOPED LAND IN TOWNSHIP OF LEBANON BY BLOCK AND LOT, TO CONDUCT AN ANALYSIS OF THE TOWNSHIP'S HOUSING STOCK, AND TO CONDUCT SUCH OTHER STUDIES AS MAY BE DETERMINED NECESSARY.

WHEREAS, On March 10, 2015 the New Jersey Supreme Court issued its decision in the case of In Re Adoption of N.J.A.C. 5:96 and 5:97 by NJ Council on Affordable Housing, holding that, effective June 8, 2015, enforcement of the Fair Housing Act ("FHA") and the Mount Laurel Doctrine be transferred from the New Jersey Council on Affordable Housing ("COAH") to the New Jersey Superior Courts, due to COAH's failure to adopt Third Round Rules on municipal affordable housing obligations; and

WHEREAS, the New Jersey Supreme Court further ordered in that decision that municipalities which had either received Third Round Substantive Certification or been declared to have "participating" status by COAH are permitted to file a declaratory judgment action with its County's Superior Court within 30 days after the June 8, 2015 effective date of the decision; and

WHEREAS, the purpose of the declaratory judgment action is to seek a judicial declaration that the municipality's affordable housing plan presents a realistic opportunity for the provision of its fair share of present and prospective need for low and moderate income housing, such that the Township may receive, in effect, from the courts substantive certification and accompanying protection as afforded under N.J.S.A. 52:27D-313; and

WHEREAS, the New Jersey Supreme Court ruled that a municipalities' Third Round fair share obligation and housing plan must be evaluated under the prior round methodology; and

WHEREAS, the Township of Lebanon has "participating status"; and

WHEREAS, throughout and notwithstanding the period of uncertainty over new Third Round Rules, the Township of Lebanon has continued efforts to provide for low and moderate income housing opportunities in the Township; and

NOW, THEREFORE, BE IT RESOLVED by Township Committee of the Township of Lebanon, County of Hunterdon, and State of New Jersey, as follows:

1. Township Attorney Richard P. Cushing, Esq., along with members of his firm, is authorized to prepare and file a Declaratory Judgment action in the Superior Court on behalf of the Township seeking a judgment of compliance with the Township's Third Round affordable housing obligation and also seeking an order of immunity from Mt. Laurel builder remedy lawsuits during the process of adopting and filing the Housing Plan Element and Fair Share Plan with the Court as well as during the period of Court review of the Township's plan and all implementing ordinances.
2. Township Attorney Richard P. Cushing, Esq. and Planner Michael P. Bolan, along with members of their respective firms are authorized to take such as actions as may be appropriate to further both the preparation and implementation of the updated Housing Plan Element of the Township of Lebanon Master Plan and Fair Share Plan for Third Round Mt. Laurel Compliance, to undertake a survey of all vacant and undeveloped land in Township of Lebanon by block and lot, to conduct an analysis of the Township's housing stock, and to conduct such other studies as may be determined necessary.
3. Proposals for these plans and studies shall be submitted in advance for review and approval by the Township of Lebanon Committee and/or Township of Lebanon Planning Board.
4. This Resolution shall take effect immediately upon its passage.

**Resolution No. 46-2015 – Municipal Shared Services Defense Agreement-
Burchell Fair Share Analysis**

Motion by Mr. Laul, seconded by Mr. Wunder and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 46-2015 as written below.

TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 46-2015

WHEREAS, the Township of Lebanon has filed or anticipates filing a Declaratory Judgment Action in the Superior Court of New Jersey, Hunterdon County in furtherance of the Supreme Court's March 10, 2015 decision captioned In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the "Supreme Court Decision"); and

WHEREAS, Fair Share Housing Center ("FSHC"), through the services of David Kinsey, has prepared what it considers to be the statewide fair share numbers (the "FSHC Numbers") for use by the 15 vicinage Mt. Laurel Judges to calculate a municipality's affordable housing obligation pursuant to the Supreme Court Decision; and

WHEREAS, the Township of Lebanon desires to participate in the preparation of a statewide fair share analysis to be undertaken by Rutgers, The State University of New Jersey ("Rutgers"), through Dr. Robert W. Burchell, Principal Investigator, and various other experts employed by Rutgers in order to establish a rational and reasonable methodology (the "Burchell Fair Share Analysis") for determination of a municipality's obligation to provide a realistic opportunity through its land use ordinances for its fair share of the region's affordable housing needs in accordance with the Mount Laurel Doctrine as set forth in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New

Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Decision”) and prior decisions of the Courts of New Jersey, and the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq.; and

WHEREAS, Rutgers, utilizing Dr. Burchell as the Principal Investigator and author has agreed to prepare the Burchell Fair Share Analysis within 90 days of being retained to establish his view of the proper way to determine each municipality’s fair share obligation; and

WHEREAS, Dr. Burchell estimates the cost to prepare the initial Burchell Fair Share Analysis will be \$70,000; and

WHEREAS, it is anticipated that there will be a need for Dr. Burchell to analyze any challenges to his conclusions and prepare a rebuttal report to said challenges which is not included in the \$70,000; and

WHEREAS, it is anticipated that if each municipality contributes \$2,000, there will be sufficient monies to pay the cost to prepare the initial Burchell Fair Share Analysis, to analyze any challenges to the Initial Fair Share Analysis and to Prepare A Rebuttal Report given the number of municipalities that have expressed an interest in retaining Burchell; and

WHEREAS, a Municipal Shared Services Defense Agreement (hereinafter MSSDA”), has been prepared (a) so that monies can be collected to enter into an agreement with Rutgers (hereinafter “the Rutgers Agreement”) and so that Burchell, along with various other experts from Rutgers, can perform the tasks described above and (b) so that the rights and responsibilities of each municipality that wishes to sign the agreement to retain Rutgers are defined; and

WHEREAS, the MSSDA provides that the Law Offices of Jeffrey R. Surenian and Associates, LLC (“Surenian”) will serve as the administrative entity to sign the Rutgers agreement on behalf of the municipalities that signed the MSSDA and paid the \$2,000 fee; and

WHEREAS, it is imperative given the time constraints for municipalities that wish to retain Burchell to sign the MSSDA and pay the \$2,000 fee so that Burchell can conduct the necessary analysis; and

WHEREAS, notwithstanding the foregoing, it is possible that the MSSDA may need to be changed as a result of ongoing negotiations with the Rutgers agreement following execution of the MSSDA and the payment of the \$2,000 fee; and

WHEREAS, in such an event, any member that objects to the changes that Rutgers may require shall have the opportunity to relinquish membership in the Municipal Group and to receive back the \$2,000 payment as more specifically set forth in the MSSDA.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Lebanon, as follows:

1. The terms and conditions of the MSSDA attached hereto are hereby approved, ratified and confirmed.
2. The amount of \$2,000 is hereby authorized to be expended by the Township of Lebanon for Rutgers through Dr. Robert Burchell, Principal Investigator to prepare the Burchell Fair Share Analysis.
3. A certification of funds authorizing the aforesaid expenditure has been signed by the Chief Financial Officer of the Township of Lebanon and is appended hereto.
4. The Mayor be and is hereby authorized to execute the aforesaid MSSDA to memorialize the participation of the Township of Lebanon in the preparation of the Burchell Fair Share Analysis and to take any and all actions reasonably required to effectuate said Agreement.
5. The Township of Lebanon hereby authorizes Jeffrey R. Surenian, Esq. to execute on behalf of the Township of Lebanon the Research Agreement with Rutgers to initiate and complete Burchell Fair Share Analysis and to do such other actions to effectuate the purposes of said Research Agreement.

6. If further changes to the MSSDA are needed as a result of finalizing the Rutgers Agreement, within ten (10) days of notification by Surenian of the changes, the Township of Lebanon will inform Surenian if it objects to the changes and wishes to withdraw from the Municipal Group and obtain a refund of the \$2,000 it paid.
7. This Resolution shall take effect immediately.

Resolution No. 47-2015 – Liquor License Renewal – New Hampton Inn

Motion by Mr. Cryan, seconded by Mr. Laul and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 47-2015 as written below.

TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 47-2015
RESOLUTION RENEWING PLENARY
RETAIL CONSUMPTION LICENSES

WHEREAS, each of the listed Plenary Retail Consumption Licensees have submitted application forms that have been completed in all respects; and

WHEREAS, the applicants are qualified to be licensed according to all statutory, regulatory and local government ABC Laws and regulations; and

WHEREAS, each have paid a filing fee of \$200.00 to the State of New Jersey and a Township License Fee of \$2,500.00

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Lebanon, in the County of Hunterdon, State of New Jersey, that the listed Licenses be granted a renewal for the 2015-2016 year:

1019-33-005-002 THE NEW HAMPTON INN, INC. t/a New Hampton Inn
23 Musconetcong River Road

Resolution No. 48-2015 – Fireworks – AB Stainless

Motion by Mr. Laul seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 48-2015 as written below.

TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 48-2015
RESOLUTION GRANTING FIREWORKS
PERMIT TO A&B STAINLESS VALVE
AND FITTING COMPANY

WHEREAS, A&B Stainless Valve and Fitting Company has applied for a permit for public display of fireworks to be held on July 11, 2015 at 9:00 p.m.; and

WHEREAS, the Lebanon Township Fire Code Official has reviewed the application, investigated the area where the display will take place and recommends that the permit be granted; and
WHEREAS, the necessary bond and surety has been posted.

NOW, THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Lebanon, in the County of Hunterdon and State of New Jersey that a fireworks permit be granted to A&B Stainless Valve and Fitting Company for the activity described in its application.

BE IT FURTHER RESOLVED that the Township Fire Official file copies of this Resolution and any other pertinent document with the appropriate New Jersey agency.

Resolution No. 49-2015 - Return Overpayment of Taxes

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee approved Resolution No. 49-2015 as written below.

TOWNSHIP OF LEBANON
COUNTY OF HUNTERDON
STATE OF NEW JERSEY
RESOLUTION NO. 49-2015
RETURN OVERPAID TAXES 2015

WHEREAS there exists an overpayment for second quarter 2015 taxes for Block 50, lot 23.01, 118 Mt Lebanon Road due to the receipt of a homestead benefit in the amount of \$579.48, and

WHEREAS this amount has been requested for refund by Marc Kaplan, Esq., attorney for Mary Diana Tullo, former owner of this property,

THEREFORE, BE IT RESOLVED that a check in the amount of \$579.48 be prepared and that his check be mailed to:

Marc Kaplan, Attorney at Law
One Seminole Path
Branchburg, New Jersey 08876-5402

OLD BUSINESS

Recycling - Electronic Collection Event

Mr. Laul stated that he spoke to JoAnn Fascenelli about the last electronic recycling event held by the Township and there were six "white goods" items received. The cost to recycle these items, through Advanced Recovery, was \$30 per unit at an additional cost of \$180 to the Township.

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee approved the proposal of Advanced Recovery and authorized the Recycling Coordinator to negotiate a date for the event to be held.

Concrete Bin Blocks

Mr. Wunder asked if the 50 concrete bin blocks have been returned. Mayor McKee stated the block have not been returned. Mr. Milkowski stated that the Committee has not given a location to return the

blocks to. Mr. Wunder stated that the location of the parking lot at the rear of the park was discussed and that fence should be placed around the blocks for safety concerns. Mayor McKee stated that the Park Committee was asked to provide their thoughts on the blocks being stored in the park and the Diane Glass property is being considered. The Township Engineer is conducting a wetlands delineation to see if the heavy blocks can be placed on the property. Mayor McKee noted that there is no room at the DPW site at this time. Mayor McKee stated that he is hoping to hear back from the Engineer regarding the Glass property soon. Mayor McKee said that he has concerns with the park; such as fencing and signage.

Township Picnic

Mr. Cryan stated that the Township picnic went well and thanked Mr. Laul for all of his efforts. Mr. Cryan noted that he received many comments stating that the park is a great venue.

NEW BUSINESS

Hunterdon County Division of Public Health Services – Animal Control Services

The County Health Services sent a letter to the Township offering animal control services. The cost would be \$2.00 per resident. The proposal far exceeds what the Township is paying for the current animal control services.

Police Officer Resignation

Police Chief Chris Mattson sent a letter to the Township Committee with a copy of Patrolman 1st Class, Chris Gurneak's retirement letter attached. Officer Gurneak will be retiring from the Police Department, after 18 years of service, effective September 1, 2015. Officer Gurneak's last shift will be August 13, 2015.

Chief Mattson asked to be advised as to when the hiring process will begin.

Mayor McKee stated that the Township will dearly miss Chris Gurneak. He is a gentleman that the Mayor has had the pleasure of becoming friendly with.

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee accepted Officer Chris Gurneak's resignation with regrets.

PRESENTATION OF VOUCHERS

Committee Members provided a description of vouchers exceeding \$1000.00.

Motion by Mr. Wunder, seconded by Mr. Laul and carried by unanimous favorable roll call vote, the Township Committee approved the June 17, 2015 bill list in the total amount of \$1,004,938.85.

OLD BUSINESS (Continued)

Melick Orchard Pesticide Spraying

Mayor McKee provided everyone with an overview of the concerns raised by Mr. William Swartz and his neighbors, relative to the pesticide spraying at the Melick Orchard. Mayor McKee stated that the Committee decided that it would be a good idea to hold a meeting with key agencies to have an educational discussion on the issue with the residents.

The agencies/representatives present are:

- Knute Jensen - Director, Division of Licensing Operations, Solid Waste & Pesticide Enforcement, NJDEP
- Michael McConville - Bureau Chief of Pesticide Compliance & Enforcement, NJDEP
- Bruce Weingold - Field Investigator for the Pesticide Control Program, NJDEP.
- Win Cowgill - Rutgers University, Rutgers Cooperative Extension, County Agricultural Agent & Research

PUBLIC COMMENTS

Motion by Mr. Wunder, seconded by Mr. Laul and carried by unanimous favorable roll call vote, the Township Committee opened the public comment portion of the meeting.

Mr. Swartz stated that the situation goes back to the mid 1980's when the orchard was established. He lives on the boarder of the orchard and has experienced frequent drifts from the pesticide spraying, onto his property, for over 20 years. Mr. Swartz stated that he and his wife did not ever think that the Township or the State would permit a dangerous condition to exist. Mr. Swartz stated that Mr. Melick should not have picked that location for a pesticide spraying orchard because there are homes and a river surrounding it. Mr. Swartz stated that he has worked from home for the past six years and has logged the spraying and the weather conditions. Melicks violated the law in 2009 and ultimately had a settlement with the NJDEP. Melick's was then required to notify Mr. Swartz what they will be spraying. Mr. Swartz stated that he kept record of what was being sprayed and was able to look into the toxicity of the pesticides and how dangerous they are as well as the rules on the label.

Mr. Scwartz stated that there are two sets of laws; the DEP laws and the Township laws. Mr. Swartz stated that in 2009, after he called the DEP 3 times, they came out and took samples. They found that there was a significant drift that had occurred. The DEP tried to then teach the Melicks how to spray correctly.

Ms. Joan Swartz stated that they have lived there almost as long as the orchard has been there. Ms. Swartz stated that when she had her child she tried to talk to Mr. Melick about what he was spraying. She did not feel that he was very helpful or forthcoming. Ms. Swartz stated that she was home for 15 years while raising her son. She said that she now has multiple health problems; however, she cannot prove that they are a result of the pesticides. Ms. Swartz stated that she and other neighbors have had miscarriages and she has also experienced nerve damage to her leg and eye problems. Ms. Swartz stated that they have tried to work with the DEP and the farmer but they have gotten nowhere, which is why

LTCM

06/17/2015

Page 11 of 18

they have turned to the Township Committee. Ms. Swartz stated that the location is not a good place for an apple orchard as apples need a lot of pesticides to produce good apples.

Ms. Terry Kinney stated that her number one concern is her family's health and also the water runoff. She informed the agencies that she wants to be able to trust them as they are "holding the health and wellbeing of her family in their hands". Ms. Kinney stated that, at the last meeting she attended she felt that the issue was passed off to another agency, and she cannot trust at all. Ms. Kinney stated that she wants to know that her children and family are held at a higher level than what grows in the orchard.

Mr. Knute Jensen stated that he spoke with Mr. Swartz on many occasions in the past. He feels that the conversations terminated because, despite the structure of guidelines, the existence of the DEP and the mission and the purpose of it, they cannot guarantee the health of all people.

Mr. Jensen stated that based on the practices at the Melick farm it does not give the DEP serious concern for exposure; however, even when the best practices are followed things can still happen. This is why the DEP is prepared to respond to every complaint and evaluate it on its individual merits.

Mr. Laul stated that some droplets have been found on residents cars and they have had to run carbon filters in their homes due to the odor.

Mr. Jensen stated that the DEP would be very concerned with this type of information; however, the DEP has never received that kind of report. If the DEP were to find droplets it would initiate a formal administrative action against the person who caused the situation. Mr. Jensen noted that Mr. Swartz has made complaints to the DEP which were investigated and some were found to be problems. Steps were taken to address the problems, which is appropriate. Additional steps would also be taken in any new situation.

Mr. Cryan asked if there are different pesticides that can only be used on farms that are close to residential properties based on their effects on people.

Mr. Win Cowgill stated that there is no allowable drift permitted to a neighbor. Therefore, there should be no pesticide on the neighbor's property. The type of pesticide does not matter because it should not drift. If the pesticides were to drift it would be actionable. Mr. Cowgill stated that farmers do not want to use pesticides at all and always try to use the softest, safest pesticide possible.

Mr. Bruce Weingold said that the first priority to the DEP and EPA is to protect human health and safety. Rutgers is the science behind the program. Mr. Weingold stated that when the first sample came back showing a very minute level of pesticides on a property, other than Melick's Orchard, Rutgers reviewed the practices of the farm and the spraying techniques. Rutgers made changes, such as nozzle size, wind awareness, buffer zones and barrier formation. Mr. Weingold stated that when there is an investigation due to the possibility of a drift, a sample will be taken and the level of pesticide will be determined. It is not always that a level is found. In the past there were minor amounts and they have since made changes in their practice of spraying.

Ms. Nancy Lawler stated that in 2009 there was a call with a low level of pesticides found and asked where the DEP sample the properties. Ms. Lawler also asked if storm water runoff is tested as it can affect the river that runs along the property. Ms. Lawler also asked if water samples are taken from the river.

Ms. Lawler asked if the Township Fire Department receives an annual list from any non residential properties.

Ms. Judy Mae stated that she lives in Tewksbury Township and asked how Rutgers rates the pesticides that the Melicks use and what their effect is on health.

Mr. Mark Darcy asked which spray techniques the orchard uses and which ones are legal and which are restricted. Mr. Darcy would like the same information on the pesticides. Mr. Darcy asked how often the orchard is monitored by the DEP or other agencies and since the incidents in 2009 have there been any other issues. Mr. Darcy questioned if the Melicks have been fined or have there been any legal ramifications from issue that were brought up. Mr. Darcy asked if the orchard is watched more closely due to prior incidents.

Mr. Weingold stated that the term "restricted pesticides" mean that they cannot be purchased by an individual unless they have a pesticides applicators license; "general pesticides" means that it can be purchased over the counter by the general public. Mr. Cowgill stated that if a pesticide has an EPA number then it can only be applied by a licensed applicator and needs to be recorded.

Mr. Jensen stated that all spraying techniques used and pesticides used at the Melick Orchard are legal.

Mr. Jensen stated that on May 1st of each year a report needs to go to the Fire Department stating a list of the chemicals and the location of the storage facility.

Mr. Jensen stated that there were four specific violations that occurred since the settlement agreement in 2010. They were minor violations and were corrected. They had to do with posting of information relative to the spraying for the farm workers, records relative to such for follow up, a slight over application for the number of acres and indication of drift. However, there was an indication of a pesticide in the sample but it was such a low level that it could not be measured. In 2009 there was a greater level of drift; it was acted on and they improved their practices. Mr. Jensen stated that the Melick Farm receives much more attention than other farms in the state because of the complaints and the DEP's responsibility to respond to them.

Mr. Jensen stated that the DEP does not always sample. The inspectors evaluate the situation by what is reported, they will check the weather conditions and interview the applicator. If information collected points to the likelihood of a problem they will sample. There is no set way that sampling is done. It is based on evaluation of the situation.

Mr. Weingold stated that if there is a label violation, such as, an application should not be done during rain but it was, then the DEP would have a reason to sample the water.

Mr. Cowgill stated that the farmers use the pesticides that are needed for the type of bug they are dealing with. The Melicks receive guidance from a Rutgers pest management scout. Rutgers does not do testing on the health effects from the pesticides. Toxicology is done by the manufacturer. Every pesticide has an MSDS sheet which can be found online. This sheet provides medical information.

Mr. Laul questioned that if technology has improved, why can't Mr. Melick put a weather center at his orchard? Mr. Melick collects wind measurements prior to the application. If the winds change during the application he must stop.

Mr. Cryan questioned, when there are so many complaints about a farm, why didn't the DEP test the water to be on a safe side. Mr. Weingold stated that the DEP is not a research agency. They are there to be sure that the label was followed and that the application was done appropriately. If there is visual evidence of a drift then they will check. Mr. McConville stated that there has never been a report of a fish kill and if there is a report of pesticides in the water, by the time they get there the pesticides are downstream. Mr. Laul stated that the Raritan River Watershed tested the water two years ago and the results came back poor.

Attorney Cushing asked the neighbors to make testimony on their experience with the spraying.

Mr. Paul Mae of Route 513 stated that the concerns of the community are the safety of the people and children. Mr. Mae asked how far the drift travels and where does it go and how concerned should they be in breathing the air. Mr. Mae asked what would be considered an upset such as a black cloud.

Mr. Kevin Ryan stated that he is living next to the Melick property and is a neighbor of Mr. Swartz and he is pro farmer. Mr. Ryan asked how quickly the DEP would be out if a complaint was made. Mr. Ryan wants to be sure that what they are doing is safe. Mr. Ryan asked if there is some kind of device to collect residue to test long term for drifts,

Mr. Swartz asked if the DEP was ever asked to place drift catchers. He feels that the DEP is undermanned and underfunded to do this. Mr. Weingold stated that drift catchers are a great idea and he can place independently and reported to the DEP. The DEP does not have the staff or the funding to look into the drifting.

Ms. Nancy Lawler stated that in 2009 the DEP took samples of the river and there were no sensitive organisms in the samples. Five years prior, the water quality was good. Mr. Lawler stated that she understands that there is no standard for pesticides and questions how much communication there is between bureaus. Possibly the data was not looked at by all to determine that the incident may have been more serious. The date may be a reflection of something.

Mr. Jensen stated that there are difficulties to effective communications between bureaus and understanding the constraints of each Department makes it difficult but they are in touch. Mr. Jensen did speak to the water department and there is no framework to address the issues Ms. Lawler made.

Mr. Jensen stated that the DEP will respond to a complaint as soon as possible. The DEP asks the complainant to cover the droplet with plastic to preserve it so they can view and sample it when they arrive.

Mr. Cowgill stated that drift is not supposed to go offsite. If it does it needs to be reported. The technology of changing nozzles and air induction nozzles helps to prevent drift.

Mr. Jensen stated that Melicks removed a few rows of trees which create a larger buffer and helps to restrict the drift from making it off of the property. Mr. Cowgill stated that there will not be a black cloud. A hose could blow off but the sprayer stops and there may be a small spill.

Mr. Jason Matthews stated that his property backs up to the rear of the Melick property. Mr. Matthews stated that the trees that were removed from the front of the property are now located in the back of the property. Mr. Matthews asked if there is regulation as to how close they can plant to the property line?

Mr. Matthews asked why he is not notified when and what the Melicks are spraying. He feels that a notification should be sent out.

Mayor McKee stated that part of the 2009 stipulation with the Melicks was that they were to notify Mr. Swartz. The Township was not notified either. Mr. Jensen stated that farms are highly valued and he is not aware of any obligations farmers have for notifications to the residents. The Melicks would have to agree to notify the neighbors. The DEP can work to encourage this to be done if there is documentation of droplets landing on cars.

Mr. Jensen stated that if there is a problem with notification that needs improvements the DEP can assist based on a matter that is new and that is a regulatory consequence. Mr. Jensen stated that this issue may be addressed through mediation. There are county assisted processes to work with neighbors and farms to resolve matters. They can bring in hired third party mediators to work through the problems. The DEP would encourage the process.

Mr. McConville and Mr. Weingold are not aware if there is a buffer requirement and feel that it would be a municipal matter. It would be a bad decision to put a tree on the property line because there cannot be drift on to someone else's property.

Attorney Cushing stated that the DEP regulates the area and the Township does not have jurisdiction to enforce the regulations with regard to pesticides and applications. The Committee must rely on the DEP to regulate as they are charged with and has the expertise to enforce.

Mr. McConville stated that when the DEP received the complaint in 2009 they addressed the matter and went further by putting the Melicks in connection with the Ag Extension program. The Ag Extension program reviewed the complete spray program. The DEP also applied provisions that there were to be larger buffers between the properties, new spray technology and better wind data. The DEP's efforts were to reduce the risk of drift. The Melicks then made the changes and in addition established that Mr. Swartz is to be notified of the spraying. The DEP has been reactive and will put the procedures in place for the next farm-neighborhood issue and can hopefully use it nationwide.

Mr. McConville stated that the DEP does not do research on drift technology. A private consultant would have to be hired to see what kind of technology there is to monitor the drifting. Leaving items out for exposure cannot be used to develop a case.

Attorney Cushing stated that in conclusion if there is drift coming onto neighbor's properties that is a problem. If drift should occur, a neighbor is to call the DEP immediately so they can take action. Attorney Cushing noted that there were not many comments from those present about drift on their properties. It is important to inform the DEP if there is signs of drift on a property. Attorney Cushing also stated that there needs to be more dialogue between the neighbors and the farmer; to come up with a solution that suits all. Attorney Cushing stated that he feels that the suggestion of the Environmental Commission working with the neighbors may be a great idea. There are also mediation discussions that can be had with the CADB.

The Committee recessed the meeting at 10:21 p.m.

CORRESPONDENCE

- a. Recreation Commission May 7, 2015 Meeting Minutes
- b. Lebanon Township Planning Board Resolution No. 05-2015 – Declaratory Judgement Action
- c. Tax Collector's Report for the Month of May 2015
- d. Park Committee June 8, 2015 Meeting Minutes

PUBLIC COMMENTS

Motion by Mr. Wunder, seconded by Mr. Laul and carried by unanimous favorable roll call vote, the Township Committee opened the public comment portion of the meeting at 10:32 p.m.

Mr. George Piazza stated that he was present at the meeting due to an article he read in the Hunterdon Review: Committeeman Must Return Concrete Blocks. Mr. Piazza stated that he was the Mayor the year the blocks were removed from the Township DPW site and he is present to clarify things that were discussed. Mr. Piazza stated that Lebanon Township is a Committee Form of government and all decisions made by the Committee need to be done at an advertised open public meeting. Mr. Piazza noted that no one Committee person has the authority to make decisions on his or her own. Mr. Piazza stated that when Mr. Milkowski took his oath as a Committeeman, Mr. Piazza took his oath to sit as the Mayor. Mr. Milkowski was made liaison to the Dept. of Public Works. Mr. Piazza had received a call, two months into the year, from the DPW project Architect, who informed him that Mr. Milkowski was at the DPW site daily, micromanaging the project and the contractor is now threatening to walk off the job. Mr. Piazza stated that there was a Committee meeting soon after and during executive session he informed Mr. Milkowski that he is not in charge of the Road Dept. or the building project. He was told that any problems should be brought to the Committee. A few months later Mr. Milkowski informed the Committee, at a public meeting, that the DPW is delivering extra dirt to the community from the DPW site. Mr. Milkowski told the Committee that the DPW has their own work to do, the Contractor is being paid to remove the dirt and the DPW is saving time and money for the contractor. The Committee agreed and authorized Mr. Milkowski to tell the DPW Manager to stop delivering the dirt. Mr. Piazza stated that months had passed and he heard that Mr. Milkowski had removed bin blocks from the Township. Mr. Piazza stated that the questions is: Did he do wrong?

Mr. Piazza stated that it was wrong when Mr. Milkowski took the blocks without authorization from the Committee as one member of the Committee cannot make a decision. Mr. Piazza stated that if a Township employee loaded their personal vehicle with the block and took them home they would have been fired.

Mr. Piazza stated that when Mr. Milkowski arranged for and oversaw a Lebanon Township employee load Mr. Milkowski's vehicle, with Township equipment, three times, it was wrong. Mr. Piazza asked the Committee to consider an employee, who was just reprimanded for delivering dirt to residents and is now forced to load a Committeeman's personal truck with Township property, when he knows it is not right but has to because he could lose his job; this is not right either.

Mr. Piazza stated that before Mr. Milkowski took the block from the DPW site he spoke to Mr. Wunder of his intentions. Mr. Wunder informed Mr. Milkowski that it is wrong and that he would not do that.

Mr. Piazza stated that he questions if Mr. Milkowski spoke to Mr. Wunder so if he were to be caught he could blame someone, a senior committeeperson for his action. Mr. Piazza noted that two members do not have power to make a decision, so even if Mr. Wunder stated that it was acceptable to take that block it was not. Mr. Piazza stated that the blocks have a monetary value; however, they also have a recycling tonnage value. If the contractor had recycled the block, which he was paid to do, the Township would have received credit for the recycling tonnage report and received money back. Committeeman Milkowski released the contractor from the responsibility of recycling the block and saved him time and money. This is the same thing that Mr. Milkowski complained to the Township Committee about when the DPW was providing dirt to the residents. Mr. Milkowski also provided a loss of revenue for the Township.

Mr. Piazza stated that when the formal complaint was made about the block being taken, Mr. Milkowski made-up a story that he was storing the blocks for the Township. Mr. Milkowski did not realize that prior to his tenure, the Township Committee made the decision for the DPW to take the blocks that they needed, which they did, and the contractor would then be responsible to remove the rest. Mr. Piazza stated that he is not sure where Mr. Milkowski got the idea to store them at his property.

Mr. Piazza stated that in hearing the Committee speak of locations to place the block, until they can be auctioned off, he thinks that there may be regulations that need to be considered. He advised the Committee to speak to the Township Attorney about such.

Mr. Piazza stated that with the question of whether Mr. Milkowski did something wrong; "of course he did". Mr. Milkowski put his friends in a difficult position and they now feel responsible to cover his act. Mr. Piazza stated that Mr. Milkowski has lost the respect of the employees.

Mr. Piazza stated that Mr. Milkowski has been a boss his entire life and does things his way; which is not going to change. Mr. Piazza noted that he does not believe that Mr. Milkowski can adhere to government guidelines and cannot be a group participant without being in control. Mr. Piazza stated that Mr. Milkowski has "stepped out of line before and will again". Mr. Piazza stated that all are aware that the Township Committee will not address the issue and maybe they should not, as they did not break the rules. Mr. Piazza said that Mr. Milkowski should admit that he has done wrong and consider resigning from his position.

Mr. Milkowski asked Mr. Piazza if he wrote his statement and Mr. Piazza stated that he did. Mr. Milkowski stated that it is a "lie" that the DPW loaded his vehicle with the blocks, on three different days. Mr. Piazza asked if they did it one time. Mr. Milkowski stated that the DPW employees did load the blocks that needed to be moved out of the way. Mr. Piazza stated that one time is enough, an employee would have been fired. Mr. Milkowski stated that he did not come to the Committee when he donated his time to do the excavation and install the septic system in the park. He said that he did it at his expense. Mr. Milkowski stated that there was no place to store the blocks that is why the contractor asked him if he could get rid of them. There were five or six that needed to be moved out of the way. Mr. Piazza told Mr. Milkowski that he can say it however he chooses but it did not happen the way he is describing. Mr. Wunder asked how five or six blocks ended up being fifty. Mr. Milkowski stated that the contractor was taking the block to a ball field and asked him if he would take more. Mr. Milkowski figured he would take enough to make four or five bins. Mr. Milkowski stated that the Township paid 100% for all of the demolition of the building because the architect said that the work was done but it was never done. The architect released the remaining \$10,000.00 and the building needed to be taken down by the DPW. Mr. Piazza stated that Mr. Milkowski was against the DPW building from the start

and he took the opportunity to be involved. Mr. Milkowski stated that he wanted to make sure that the Township received the best building possible. He was not looking for any additional expenses. Mr. Milkowski noted that when he did the excavation for the squad building he did not come before the Committee to ask anything because it was at his own expense. Storing the blocks was at his expense as well as moving them to his property and bringing them back when needed. Mr. Piazza stated that you need to have permission to do things in a Committee form of government and as Mayor he did not know that the blocks were moved. Mr. Piazza asked why Mr. Milkowski moved the block and did not say anything until a complaint was filed. Mr. Milkowski stated that if he were going to sell them, they would be gone now.

Mr. Wunder and Mr. Piazza told Mr. Milkowski he did wrong. Mr. Milkowski told Mr. Wunder that he never discussed that he was going to take the block, with him. Mr. Wunder stated that he did have the conversation with him and he told Mr. Milkowski that he did not think it was a good idea especially with the situation going on at the DPW and Mr. Milkowski not getting along with the DPW Manager. Mr. Wunder stated that that was the last he heard of it until he heard about the meeting where he lied to the public saying that he was storing the blocks for the Township. Mr. Milkowski stated that the blocks are sitting where they were unloaded. Mr. Milkowski stated that there were problems with the contractor because he did not have a certificate of insurance. That is why he had problems with the architect. You cannot do a project without a certificate. Mr. Milkowski stated that he never took ownership of the blocks.

Mr. Piazza stated that taking the blocks was not right and the past members of the Committee will be tainted because there is corruption in Lebanon Township and nothing is being done about it. The problem is made a joke of. Mr. Piazza stated that he never took a thing from the Township and everything went through the Committee. He would speak to the Clerk to be sure he was doing right then went to the Committee. Mr. Wunder stated that Mr. Piazza taught him to watch the township funds and if there was a need to speak to the Township Attorney someone else had to agree that it was necessary to spend the money on the call. An individual committee member should not be calling the attorney every time they have a question and spending money.

Mr. Piazza stated that he did not like the rules but you need to go by the rules if you are going to be a Committeeman. Mr. Piazza told Mr. Milkowski that he never went by the rules, he is not diplomatic about it and hurts people.

Mr. EJ Skidmore stated that there are a lot of things that are left undone in the investigation. The prosecutor's office said made their comments and he thinks he knows what the investigation consisted of, which was not an investigation. Mr. Skidmore stated that the way to find out the truth is to ask the prosecutor's office to do a thorough and complete investigation. All parties should be interviewed and let the grand jury decide who is telling the truth.

Motion by Mr. Laul, seconded by Mr. Cryan and carried by unanimous favorable roll call vote, the Township Committee closed the public comment portion of the meeting at 10:50 p.m.

ADJOURNMENT

Having no further business to come before the Committee a motion was made by Mr. Wunder seconded by Mr. Laul and carried by unanimous favorable roll call vote to adjourn the meeting at 10:51 p.m.

LTCM
06/17/2015
Page 18 of 18

Respectfully submitted,

Karen J. Sandorse, RMC/CMC
Municipal Clerk

Approved: July 1, 2015

Thomas McKee, Mayor